

区域经济一体化 法律制度研究

兼评中国的区域经济一体化法律对策

杨丽艳 · 著

Study on the Legal System of
Regional Economic Integration



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——兼评中国的区域贸易一体化进程

张瑞明 著

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Regional Economic Integration

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Liyan Yang, SJD(Wuhan University) is tenured professor of International Economic Law in the Department of law, P.R.China. And She is a member of Council Chinese Law Society and a member of Council Chinese Society of International Economic Law. And she was a visiting scholar at Lauterpacht Research Centre for International Law at the University of Cambridge from 2001~2002; was a visiting professor at the Institute of Social Science of the University of Tokyo from July 2004-Nov.2004. She teaches and writes in the area of International Law, especially focus on the International Economic Law. She is the author of over 20 books and articles, including "Analysing the Law and policy of ASEAN in Contemporary International Law" etc. .Her recent research focus on the legal system of regional and world economic integration.

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序 言

人类进入 21 世纪以来,区域经济一体化和经济全球化的双向发展趋势明显加快。尽管区域经济一体化对于全球贸易自由化和多边贸易体制的利弊在理论上一直众说纷纭,但是以自由贸易区为基本形式的区域一体化的数量急剧增加,而且正在突破“疆域相邻”的传统束缚,正在朝着跨区域、跨大陆和跨大洋的方向发展。与此同时,区域经济一体化的内容也正在发生新的变化,即除了货物贸易和服务贸易之外,贸易与投资、贸易与环境、贸易与竞争、贸易与劳工标准等正在成为区域经济一体化拓展的新领域。一个多层面的区域一体化世界网络正在形成之中。

无论是在适应经济全球化的趋势方面,还是在融入区域经济一体化的实践之中,我国都是一个后来者,在继续重视对多边贸易体制研究的同时,我们切不可忽略对区域经济一体化现象的探讨。然而,迄今为止,有关这方面的研究主要是从国际政治和国际经济的角度入手,很少有从国际法及国际组织法的角度对它进行系统研究。事实上,区域经济一体化的建立、运作以及发展无不是要以国际法和国际组织法为基础的,区域经济一体化的各项活动和发 展无不是通过国际法和国际组织法来调整和保证的。因此,对区域经济一体化的研究离不开国际法及国际组织法。《区域经济一体化的法律制度研究》一书的出版,在一定程度上弥补了我国区域经济一体化研究领域的不足。

本书的特点在于:作者注重运用法律,尤其是国际法及国际组织

法对经济一体化的术语、模式和程度等进行阐释;同时还运用历史、法律经济学的方法对区域经济一体化的历史、理论基础和法律制度进行综合、比较分析;兼用政治、经济以及法律文化等方法对区域经济一体化法律制度的成因、影响,尤其是对我国的影响进行了深层次的解剖和透视,并总结了若干规律性的认识。

例如,本书认为,区域经济一体化的术语不仅仅是一个经济学领域研究的问题,同时也属于法学研究的范围。事实上,区域经济一体化的形成与发展自始至终都离不开法律,区域经济一体化能够促进该区域的经济贸易的发展,无不是运用法律作为有效的工具。

区域经济一体化的法律制度主要表现在经济、贸易领域,其中货物贸易的关税减让、非关税措施的限制与取消、知识产权保护、服务贸易自由化是其最主要的内容,但是近年来与贸易有关的环境保护、社会权利的规则一体化在欧盟、北美自由贸易区等区域经济一体化体制中得到确立和发展,并建立了独特的争端解决机制,该书通过对这些现象进行研究,总结出区域经济一体化的法律制度是区域经济一体化程度高低的主要决定因素,从而证实了经济一体化不仅仅是一种经济发展的潮流和趋势,同时也必须是一个法律一体化的过程和趋势。

本书的作者对于东南亚国家联盟法律问题颇有研究,几年前曾经出版了个人专著《东盟的法律和政策与现代国际法》。在此基础上,本书通过比较研究,概括了当今区域经济一体化的不同法律模式,即具有“超国家因素的以硬法为主的欧共体模式”、“南北经济合作型的混合软法、硬法”的北美自由贸易区模式、“南南经济合作型以软法机制为主的模式”(如东盟、拉美经济一体化)、“南北经济松散合作型的软法机制模式”(如亚太经合组织)、“南南经济合作型的软法机制模式”(如非洲的经济一体化)。

本书还值得称道的一点,就是资料十分丰富,作者不仅吸收了国内有关区域经济一体化研究的资料,而且借鉴了在这一领域大量的国外研究成果。作者曾远赴英国剑桥大学从事数月的专门研究工

作,从而为本书的最终完成奠定了良好的基础。

当今的各种区域一体化协定接近 300 项。要对如此众多的区域经济一体化形式进行系统、全面研究,并试图得出科学的结论,显然不是一本书能完成的,更何况区域经济一体化一直处在不断地纵横发展之中。因此,本书中的个别认识也许还不成熟,有的观点似乎尚待商榷。希望作者跟踪研究区域经济一体化的法律问题,使自己的这一研究成果日臻完善。

最后,需要说明的是,本书是作者在其博士论文的基础上修改而成的。我曾经是作者在职攻读博士学位期间的指导教师,作者出于礼貌多次请求我为本书作序,因为老师为学生的著作撰序似乎已经是一种不成文的惯例。我原本想改变这种俗套,故多次婉言相拒,但最终还是经不住作者的执意邀请,赘言如上,以为序。

曾令良

2004 年 5 月 24 日于武汉珞珈山

中文摘要

区域经济一体化作为全球经济一体化中的一部分,在当今国际贸易自由化的浪潮中扮演了重要的角色。而区域经济一体化法律制度是使它扮演重要角色的关键因素。因此,区域经济一体化法律制度是国际经济、贸易的法律中最重要的法律制度之一。一方面,它以经济学、政治学以及法学等多种理论为基础;另一方面又由法学、经济学角度的概念、硬法机制、效率机制、自我约束或承诺机制等机制、一系列特有原则以及相关法律制度构成。其中相关法律制度不仅包括了制度化了的经济一体化的经济学模式,更重要的是包括了以国际法为主、辅之以其他各部门法的理论和规则。随着经济一体化的深入,正逐渐形成一个新的体系——经济一体化法。这一法律制度目前主要是集中于货物、服务贸易、与贸易有关的知识产权、投资、劳工与环境、便利贸易自由化的其他经济一体化相关制度等一系列与贸易有关的经济领域。同时还包括为了协调、促进经济一体化所必须建立的相关机构、争端解决机制,它们也是该法律制度所要涉及的内容。这些制度的构成不仅需要必备的背景条件,而且还有政治、经济及法律方面的原因。其中以贸易利益换取制度统一、制度改变是最重要的动因,而这不仅从事实上已经得到证实,还可从法律经济学的理论上得到充分的解释。

鉴于这一法律制度已经遍及全球,并且对全球经济贸易产生了

重大影响:即既在理论上补充、完善国际法、促进世界法律文化的融合,同时对发展中国家产生了利与弊兼而有之的影响。作为一个国际社会的重要成员和世界上最大的发展中国家,中国既不能回避经济一体化的作用,也不能长期游离于该类制度之外。因为这可能使中国丧失获取国际贸易利益的一个重要机会,从而对中国的包括政治、经济在内的国家利益有所不利。同时对中国更多地运用国际法、提高运用国际法的水平乃至至于提升中国的国际地位也有所影响。因此,中国应该更多地参与区域经济一体化中去,充分运用区域经济一体化法律制度,使其成为能为我国国家利益服务的法律制度之一。

全文共分成六章。第一章中在总结了经济学角度的经济一体化概念的基础上,首次从法律角度阐述了经济一体化的概念以及特征。指出法律角度的经济一体化是指某一地域内的诸个国家以一定协议建立一定机构,在某些特定经济领域有效地实施统一规则的整合过程。并将其与全球化的概念作了比较区分研究。在此基础上,作者对经济一体化的机制与原则作了法律分析,并论述了经济一体化与国际法的关系,特别指出国际法是经济一体化运作的主要法律依据。

在第二章中,作者以历史方法对经济一体化的演变做了系统总结和深入分析,认为经济一体化有三个阶段、地域和行业领域之分,并且相互之间具有纵向递进和横向交叉影响关系的结论。其中三个阶段是由民族国家内的、区域的以及世界的经济一体化组成;地域是由全球和区域两个范围组成;而行业领域则包括贸易及与贸易有关的经济或非经济领域。在此基础上,整体而言,作者得出了区域经济一体化的发展水平领先于世界经济一体化的结论。而区域经济一体化发展水平领先的关键因素是区域经济一体化的法律制度的作用。作者对该法律制度进行的概述,为后续章节的全面论述区域经济一体化法律制度做了铺垫。本章中同时对经济一体化的以经济学、政治学和法学为其理论基础的状况进行了概述,从而充分地证明了经济一体化是一个由多学科理论支撑、具有相当合理性和科学性的规则整合过程。

区域经济一体化法律制度主要由两大方面的内容构成。其一,具有法律特征的区域经济一体化的运行模式;其二,区域经济一体化各领域的法律制度。作者在第三章、第四章中采用比较、综合以及法律经济的分析方法着重论述了这两方面的内容。

第三章中,以世界上几个典型的区域经济一体化组织或集团作为研究对象,从组织结构、法律依据及经济一体化的法律规则的内容等组成经济一体化的模式的几个关键方面作了具体的比较分析。其中首次提出了区域经济一体化模式的概念为一个区域经济一体化的集团在其实现经济一体化进程中,在组织形式、经济一体化类型、各经济领域的一体化的规则、原则、机制以及争端解决的制度等经济一体化实现的关键方面的相对固定的标准式样。并总结出了几个模式:高度经济一体化超国家因素的以硬法机制为主的欧共体模式、南北经济合作型混合软、硬法机制的模式、南南经济合作型的以软法机制为主的模式以及南北经济松散合作型的以软法机制为主模式。通过对它们的法律文件、组织机构以及具体的法律规则的比较,最终得出结论:超国家因素的以硬法机制为主的类型以及南北经济合作型混合软、硬法机制的模式是较为有效的经济一体化的模式的结论。

在第四章中,作者采用法律分析的方法,从区域经济一体化的各领域的法律制度切入,尽可能地对区域经济一体化所涉及的各项法律制度:如货物、服务、知识产权保护、投资措施和法律制度、与贸易相关的社会条款、环境保护以及争端解决机制等方面进行具体、深入和透彻的剖析。指出在区域经济一体化的各领域的法律制度中,货物贸易制度是最为全面的;服务贸易法律制度、知识产权保护、投资措施和法律制度在全球的经济一体化中是较为领先的;而与贸易相关的社会条款、环境保护则是最为领先的;争端解决机制是较为有效的。从而得出区域经济一体化的法律制度比世界经济一体化法律制度全面而深入的结论。

通过这两章的分析,确切地证实了:区域经济一体化的法律制度是区域经济一体化发展水平领先于世界经济一体化的关键因素。而

这恰恰揭示了经济一体化是一股经济潮流的同时,也是一个法律趋同的过程。

第五章中,提出国际贸易的存在和发展、贸易主体的多元、组织结构和法律制度的充分供给以及国家主权弱化的全球性因素增多是区域经济一体化的实现背景条件。而政治、经济和法律等方面的因素是区域经济一体化法律制度的形成原因。其中获取贸易利益使国家利益最大化应该是最重要的原因之一。尽管这要以一定领域的制度统一、制度改变作为代价。总之,该章最终得出了区域经济一体化法律制度的形成不仅与背景条件紧密相联,而且与当时的国家利益直接相关的结论。

最后一章对区域经济一体化法律制度的影响和发展趋势作了分析,得出了区域经济一体化的法律制度对国际法、世界法律文化,发展中国家乃至我国有巨大影响等几个探索性的结论:(1)区域经济一体化法律制度虽以国际法为主要法律依据,但在实践中却以其独特的原则、规则加强了国际法的硬法性质、扩展国际法渊源和国际经济法的主体等表现,发展和完善了国际法和国际经济法;(2)区域经济一体化法律制度不仅是一个获取贸易利益的制度机制,还是一个以贸易利益换取制度改变的制度输出装置,因此对发展中国家的影响不仅是贸易利益的获取,更重要的是带来了制度和其他法律文化;(3)我国不仅要参加区域经济一体化,而且要根据区域经济一体化法律制度的特点、内容及发展趋势作出正确的决策,既要与发展中国家进行区域经济一体化,也要充分运用这种体制与发达国家进行国际合作,这样才能获取更大的国家利益。

关键词:区域经济一体化 区域经济一体化法律制度 经济一体化

ABSTRACT

The regional economic integration plays an important role in the waves of the contemporary international trade liberalization as a part of the global economic integration. And the legal system of regional economic integration is the key element that makes it play the role. Therefore the legal system of regional economic integration is the one of the most important legal systems in international economic law. On one hand, the legal system of regional economic integration is based on the economic, political, and legal theories, etc. On the other hand, it is made up of the concepts of legal and economic perspective, the mechanism of hard law, the mechanism of efficiency, the mechanism of self-restriction and commitment and a series of special principles and the related legal systems. It not only involves the institutionalized model of economic integration, more importantly it also involves the theories and regulations with the international law as the leading factor supplemented by other departmental laws. A new system—the law of economic integration takes shape gradually with the deepening of economic integration. This law system focus on the economic fields relative to trade that contain visible trade, trade in service, the trade-related intellectual property rights, investment, the trade-related labor and environment, and the trade-related system which facilitates the economic integration meanwhile it includes the necessary

institutions and the mechanism of dispute settlement which can coordinate and promote the economic integration. The formation of this system not only needs the essential conditions but it is also based on the political, economic and legal motivations among which the most important is to exchange the trade profits with the unity and change of the legal system. This was not only verified by the facts, but also can be explained sufficiently by the legal and economic theories.

In view of the fact that system (the legal system of economic integration) has expanded worldwide and has generated a vital impact on global economy and trade, that is, to supplement and improve the theories of international law and promote the integration of world legal culture. At the same time, it has favorable and unfavorable impact on China. As an important member in international community and the largest developing country in the world, PR China can't avoid the impact of the economic integration and nor can it free from this system for a long time because this will deprive China of the opportunity to get the international trade profits, and it is against the national political and economic interests meanwhile it may influence China on its using international law and even the promotion of China's international position. So China should participate in the regional economic integration and make full use of the legal system of the regional economic integration to make it one of the legal systems that can serve China's national interests.

There are 6 chapters in this dissertation. In the first chapter, on the basis of summarizing the concept of economic integration from economic perspective, for the first time the paper discusses the concepts and features of economic integration from the legal perspective. It is pointed out that the economic integration from the legal perspective refers to the integrated process in which several countries in a certain area establish certain institutions based on some agreements and effectively implement unified

rules in some specific economic region. And the author compares the concept of economic integration with that of globalization on the basis of which the author makes legal analysis on the mechanism and principles of the economic integration and discusses the relation between the economic integration and the international law. The author indicates the international law is the main legal basis for practicing economic integration.

In the second chapter, the author sums up systematically and analyzes deeply the evolution of economic integration by historical approach. And the author thinks the economic integration is divided into three stages, different regions and sectors' fields that influence each other. Those three stages are made up of the national, regional and world economic integration. The areas are divided into two parts—world and region. And the sectors involve trade and the trade-related economic and non-economic fields. On the basis of these, the author reaches the conclusion that the developmental level of regional economic integration is in general more advanced than that of the world economic integration. And the key element responsible for the more advanced level of regional economic integration is the use of the legal system of regional economic integration. Also the author summarizes this legal system setting off the comprehensive discussion on the regional economic integration in the following chapters. In the chapter the author also states this system is based on the theories of economics, political science and law. Then it proves sufficiently that economic integration is the reasonable and scientific rules integrated process that is supported by multidisciplinary theory.

The legal system of regional economic integration mainly includes two parts: the first part is the operating model of economic integration with legal features and the second part is the legal systems of different fields in regional economic integration. In chapter three and four the author expounds these two parts by comparative and synthetic method.

In chapter three, the author chooses several typical institutions of regional economic integration as research object and analyzes the key aspects that constitute economic integration, such as organizational structure, legal basis and the legal rules on economic integration. For the first time, the author puts forward the model of regional economic integration is the standard mode adopted by a regional economic integration group during the process of economic integration whose key aspects, organizational structure, the type of economic integration, the regulations, principles, mechanism of integration in different economic fields and dispute settlement system for example, are comparatively fixed. Then the author sums up several models: European model which is characteristic of supranational highly-developed economic integration and hard laws; south-north economic cooperation model with the combination of soft law and hard law; south-south economic cooperation model based on soft laws and south-north cooperation model whose salient features are loose economy and soft law. Through the comparison of their legal documents, institutions and the specific regulations, a conclusion is made: the EC model and south-north economic cooperation model with the combination of soft law and hard law are the most effective economic integration models.

In chapter four, the author, starting from laws concerning regional economic integration, tries to analyze in detail the laws related to regional economic integration through legal approach, such as goods, service, intellectual rights protection, investment, trade-related social provision, environmental protection and dispute settlement mechanism. The author further points out that among the laws concerning regional economic integration, laws on visible trade is the most sophisticated, that laws on service, intellectual rights protection and investment are more advanced, that the trade-related social provision and environmental protection are the most advanced while the dispute settlement mechanism is the most effective.

Therefore a conclusion is drawn that the law of regional economic integration is more comprehensive and sophisticated than that of world economic integration.

Through the analysis of the two chapters, it is proved that the law of regional integration is the key factor contributing to the fact that regional economic integration is more developed than the world economic integration. And this just reveals the economic integration is not only the economic trend but also the process of legal convergence.

In chapter five, the author indicates the increase of global factors such as the exist and development of international trade, the multiple trading subjects, sound organizational structure and sufficient supply of legal system and the weakness of state sovereignty is the condition for the realization of regional economic integration. And the political, economic, and legal factors etc. contribute to the forming of the legal system of regional economic integration. Among the factors, obtaining the trade benefits to maximize the national interests is the most important one although it is at the cost of the unification and change of the system in a certain area. In a word, in the chapter, the author arrives at the conclusion that the forming of legal system on regional economic integration is not only closely linked with the conditions but also directly related to the current national interests.

In the final chapter, the author draws the exploring conclusion that the legal system of regional economic integration affects the international law, world legal culture and the developing countries. (1) Although the international law is the main legal basis of the regional economic integration, in practice the legal system of regional economic integration has strengthened the nature of hard law of international law and expanded the sources of international law and the subjects of international economics by its unique principles and regulations. It has also developed and con-