



中国·欧盟法律研究系列
EU-China Law Studies Series



欧盟反倾销 制度与实务研究

[英]Snyder 唐青阳 主编



EU Anti-dumping Law:
Theory and Practice



法律出版社
LAW PRESS·CHINA



欧盟反倾销 制度与实务研究

陈永霞 王健 主编



EU Anti-Dumping Law
Practical Application

中国政法大学出版社



中国·欧盟法律研究系列
EU-China Law Studies Series



EU-CHINA
Legal and Judicial Cooperation Programme
中国-欧盟法律司法合作项目

欧盟反倾销 制度与实务研究

[英]Snyder 唐青阳 主编

EU Anti-dumping Law:
Theory and Practice



法律出版社
LAW PRESS·CHINA

图书在版编目(CIP)数据

欧盟反倾销制度与实务研究/唐青阳主编. —北京:
法律出版社, 2005. 3

(中国欧盟法律研究系列)

ISBN 7-5036-5367-1

I. 欧… II. 唐… III. 欧洲联盟—反倾销法—研
究 IV. D950.229

中国版本图书馆 CIP 数据核字(2005)第 011828 号

©法律出版社·中国

责任编辑/高如华

装帧设计/乔智炜

出版/法律出版社

编辑/对外合作出版分社

总发行/中国法律图书有限公司

经销/新华书店

印刷/永恒印刷有限公司

责任印制/张宇东

开本/A5

印张/16.125 字数/492 千

版本/2005 年 3 月第 1 版

印次/2005 年 3 月第 1 次印刷

法律出版社/北京市丰台区莲花池西里 7 号(100073)

电子邮件/info@lawpress.com.cn

电话/010-63939796

网址/www.lawpress.com.cn

传真/010-63939622

对外合作出版分社/北京市丰台区莲花池西里 7 号(100073)

电子邮件/copyright@lawpress.com.cn

读者热线/010-63939702

传真/010-63939701

中国法律图书有限公司/北京市丰台区莲花池西里 7 号(100073)

传真/010-63939777

客服热线/010-63939792

网址/www.chinalawbook.com

电子邮件/service@chinalawbook.com

中法图第一法律书店/010-63939781/9782 中法图北京分公司/010-62534456

中法图上海公司/021-62071010/1636 中法图苏州公司/0512-65193110

中法图深圳公司/0755-83072995 中法图重庆公司/023-65382816/2908

中法图西安分公司/029-85388843

书号:ISBN 7-5036-5367-1/D·5084 定价:30.00 元

This document has been produced with the financial assistance of the European Union.
The contents of this document are the sole responsibility of Southwest University of Political Science and Law and can under no circumstances be regarded as reflecting the position of the European Union.

本文件的出版得到了欧盟的财政资助。

本文件的内容由西南政法大学单独负责并且在任何情况下不得视为反映了欧盟的立场。

中国·欧盟法律研究系列

EU-China Law Studies Series

龙宗智

[德]Rudolf Steinberg

总顾问 General Counsels

吴 越

主 编 Editor-in-Chief

特邀顾问/Special Advisors

陈忠林 但彦铮 付子堂

李昌麒 李开国 刘想树

孙长永 唐青阳 杨树明

张玉敏 赵学清 赵万一

[英]Francis Snyder

[法]Christian Louit

[德]Helmut Kohl

财务主管/Financial Officer

张 英

技术主管/Technical Officer

印 辉

国际交流/International Exchange

郑达轩

中文编辑

Chinese Language Editors

李兆玉 刘 蕴

胡筱曼 韩 颖

西文编辑

Foreign Language Editors

李立宏 施鹏鹏 李大雪

王 衡 曹 俊 冯惊雷

曲虹妍 景 蕾 孟庆芳

[德]Volker Konopatzki(特约)

总 序

自欧洲共同体成立来,欧洲就有了广义和狭义之分。狭义的欧洲其实就是欧共体(EC),而欧盟(EU)有取代欧共体的趋势。欧盟的成立极大地促进了欧洲的统一,这种统一进程还远没有完结,欧盟由西欧向中东欧扩展就是例证。作为当今最大的经济与政治实体,欧盟以追求共同市场(common market)与政治统一为终极目标,同时也是维护世界和平的重要一极。在经济全球化与多元化并存的国际政治与经济格局中,对任何国家或国际组织而言,关注与研究欧盟都具有战略意义。

属于这种战略研究之重要组成部分的,当属对欧盟及其成员国法律的探索,原因在于欧盟的统一正是在国际条约以及欧盟自身的立法推动下逐步实现的。

由国际法以观,欧盟在性质上仍属于国际组织。不过,欧盟所实现的国家联合与统一是任何国际组织无法比拟的。欧盟不但建立了三个共同体,即经济共同体、钢煤共同体与原子能共同体,也仅形成了统一的货币体系,而且其成员国在外交与安全、治安与司法协作方面有着共同的对外政策。这三个共同体与两大共同的对外政策就构成了欧盟的“五大支柱”。不仅如此,欧盟还享有自身的立法权与欧洲法院为标志的司法权。可见,欧盟属于名副其实的“超级国际组织”。作为一个单独的法律学科,欧盟法业已成为成员国内的法律系学生的必修课。

依据欧盟条约,欧盟自身的立法主要分为条例与指令两种。其中,条例(Regulation)在成员国直接生效,而无须成员国转化为国内法。由于各成员国的法律尤其是私法相差较大,如果只能取得最低限度的协调,欧盟一般采用指令(Directive)形式。成员国必须在规定的期限内将欧盟的指令转化为国内法,这样可以使得各成员国的法律维持一定的共性,同时又得以保留一定的差异性。从这些条例与指令中,其他国家可以发现法律发展的动向,原因不仅在于欧盟成员国包括了大陆法系与英

2 欧盟反倾销制度与实务研究

美法系国家,还在于欧盟成员国均是发达国家并有着悠久的法律传统。欧盟及其成员国法律间的协调与发展在一定程度上代表了世界法律发展的趋势。研究欧盟法不仅具有国际法意义,而且对完善本国的法治也具有他山之石的功效。我们注意到,中国民商法、刑法、经济法、社会法、环境保护法与诉讼法都不同程度地受到欧盟法律的良性影响。此外,随着中国的和平崛起,欧盟也越来越关注中国法律的发展。

中国与欧盟在国际经济与政治舞台上均扮演着重要角色。在多元化的国际格局背景下,中国与欧盟展开了全方位的合作,二者间的战略合作伙伴关系也趋于明朗。而中国—欧盟合作项目的启动,正是双方良性互动的见证。作为该项目的子项目之一的中国—欧盟法律和司法合作项目的启动,无疑为二者间的法律文化交流架起了桥梁。

在中国—欧盟法律和司法合作项目的推动下,西南政法大学致力于欧盟与中国法律的比较研究及译介。为此,我们十分感谢中国—欧盟法律和司法合作项目管理办公室,尤其是欧方主任 Stephan Forbes 先生、中方主任赵林娜女士以及合作伙伴法律出版社的大力支持。我们也对丛书主编兼欧盟法律研究所主任吴越教授富有成效的协调工作表示赞赏。

最后,我们祝愿“中国·欧盟法律研究系列”丛书的出版能够为推动中国与欧盟的法学交流作出贡献。

龙宗智

法学博士、教授、博士生导师

西南政法大学校长

西南政法大学欧盟法律研究所荣誉所长

2004 年春于重庆歌乐山

Rudolf Steinberg

Dr. iur., Professor

President, J. W. Goethe University

Honorable Director, Institute of

EU Law, SWUPL

Frankfurt am Main, Spring 2004

Preface

The foundation of the EU (European Union) has accelerated the process of European integration. Starting with six member states, it, by now, extends to 25 countries from the Atlantic far into the former Soviet Bloc, from the Mediterranean to Arctic Sea. With the ultimate aims of establishing a single market and an ever growing union, the EU has evolved as a major factor in maintaining world peace. In an era of economic globalisation and political pluralism, any state or international organisation should be attentive to the development in the EU. In other words, studies of the EU are of global strategic importance.

Research on the laws of the EU and its member states is essential. The integration process cannot be understood without a thorough knowledge of its founding treaties and EU legislation. The EU consists of three communities, namely the European Economic Community, the Steel and Coal Community, and the Atomic Energy Community. The EU has attained a level of integration incomparable to any other organisation of states. It has even established a single currency system adopted by the majority of the old member states. The member states are held to coordinate both foreign policy and defence policy. The three communities and two common policies constitute the “five pillars” of the EU. In addition the EU has its own legislature and judiciary, i. e. the European Court. A European Constitution is presently being prepared. Consequently, the EU is worthy of the name “supranational organization”. The study of EU laws is compulsory in law schools in all member states.

According to its founding treaties, EU legislation can be either regulations or directives. Regulations are immediately applicable law in all EU

member states. More commonly used is the legislative tool of the directive which addresses the member states. This allows the national legislatures to pursue the regulatory aims set out by the directive in a manner more compatible with the respective national legal systems. The member states must transform directives into national laws within given periods.

Other countries may discover general tendencies of modern legislation by studying EU regulations and directives. This is particularly relevant since EU member states include both common law and continental law countries. Moreover, the laws of each EU member state have evolved through a long process of legal development. One can say that the coordination of laws between the EU member states is exemplary of the developmental tendency of world laws. The study of EU law is of great significance not only for the field of international law but also for the legal developmental process of China. It is noted that EU laws have positively effected Chinese civil law, criminal law, economic law, social law, environmental law and procedural law. On the other hand, the EU is paying attention to developments of Chinese Law due to the peaceful development of China.

Both the EU and China play an important part on the international economic and political stage. In this era of globalisation and pluralism, the EU and China have been cooperating in all fields. A strategic partnership between the EU and China is taking shape. The start of the EU-China Programme is a good example of this cooperation. As one of its sub-programmes, the EU - China Legal and Judicial Cooperation Programme has set up a bridge of communication between legal cultures.

Within the context of the EU-China and Judicial Cooperation Programme, the Southwest University of Political Science and Law (SWUPL) and the Johann Wolfgang Goethe- University School of Law commit themselves to bi-directional translation and comparative studies on European and Chinese laws. We acknowledge our thanks to the Project Management Office, especially European director Mr. Stefan Forbes and the Chinese director Madame Zhao Linna and our partner Law Press • China for their generous

support. We also appreciate the effective coordination of editor-in-chief Prof. Dr. Helmut Kohl, Johann Wolfgang Goethe University, and Prof. Dr. Wu Yue, director of Institute of EU Law, SWUPL. We commend the publication of EU-China comparative law studies series.

Rudolf Steinberg
Dr. iur., Professor
President J. W. Goethe University
Honorable Director
Institute of EU Law, SWUPL
Chongqing, Spring 2004

Long Zongzhi
Dr. iur., Professor
President SWUPL
Honorable Director,
Institute of EU Law, SWUPL
Frankfurt am Main, Spring 2004

前 言

根据中国商务部官方网站 2004 年 12 月 20 日发布的《中国对外贸易形势报告》，欧盟东扩后首次成为中国第一大贸易伙伴，双边贸易额达 1280.2 亿美元，这表明，在中国加入世界贸易组织以及欧盟东扩以后，中欧经济贸易往来越来越频繁，中欧经济贸易关系越来越密切，在整个世界贸易格局中所占的地位也越来越重要。但是，另一方面，我们必须看到，欧盟也是世界上对华实施反倾销措施最多的地区，其对华反倾销案件数居全球第一，约占全球对华反倾销案件数的 20%。特别是今年以来，欧盟对华反倾销呈现的数量多、立案时间集中、涉案金额大等特点更为突出。从 2004 年 1 月份到现在，欧盟接连对中国反倾销 9 起，而去年同期只有 2 起；涉案金额达到 5.7 亿美元，是去年同期的 6 倍多。由此可见，欧盟对华反倾销已经成为影响中欧经贸关系的一个重要问题，加强对欧盟反倾销法律制度与实务研究对于推动中欧经济贸易关系进一步发展具有十分重要的意义。

令人高兴的是，在中国—欧盟法律与司法合作项目的资助下，西南政法大学欧盟法律研究所将《欧盟反倾销制度与实务研究》列为一个专门的课题，并邀请中欧两方面的学者共同组成课题组进行合作研究。课题组将整个课题分为“全球化与欧盟反倾销法”、“欧盟反倾销法与中国”两大板块，共计 17 个专题。这些专题既有关于经济全球化对欧盟反倾销制度影响的研究，又有关于法律多元化对欧盟反倾销制度影响的研究；既有关于欧盟反倾销制度的历史、现状与发展趋势的研究，又有关于欧盟对华反倾销的成因、特点、态势及应对策略的研究；既有关于欧盟反倾销制度中某些重大实体问题的研究，又有关于欧盟反倾销程序问题的研究。在研究过程中，课题组把欧盟反倾销制度置于经济全球化、法律多元化的大背景下来加以审视，立足于理论与实践相结合，广泛搜集和

2 欧盟反倾销制度与实务研究

采用第一手资料,综合运用历史分析、实证分析、比较分析等多种研究方法,形成了有创新性、有说服力的研究成果。我们相信,这些研究成果必将有助于人们加深对欧盟反倾销制度的理解、认识和研究,有助于破解“欧盟对华反倾销”这一影响中欧正常贸易关系的重大问题。

最后,我们要感谢中国—欧盟法律与司法合作项目办公室,感谢西南政法大学欧盟法律研究所及所长吴越教授,感谢法律出版社,感谢课题组的全体同仁!

弗朗西斯·施耐德

唐青阳

2004年12月

Forward

In accordance with the Foreign Trade Report of China issued by the official website of Chinese Ministry of Commerce on December 20, 2004, EU has become the biggest trade partner of China for the first time after its enlargement, and the China – EU trade has reached 128.02 billion US Dollars. It indicates that after China's accession into the WTO and the enlargement of EU, the China – EU economic and trade transactions are of increasing significance, which plays a more and more important role in the international trade. However, on the other hand, it is EU that takes the most antidumping measures against China. The number of EU antidumping cases against China has been ranked the first in the world. In 2004, EU antidumping against China is more noteworthy for the crush of antidumping cases, and the great amount involved in the antidumping cases. Since January 2004, there are 9 antidumping cases initiated by EU against China, whereas there were 2 antidumping cases in the corresponding period of 2003; these cases involve 0.57 billion US Dollars which is more than six times of the amount in the corresponding period of 2003. From the above, it is evident that the antidumping issue has become an important one in the China – EU economic and trade relationship. It is of great significance for the further development of the EU – China relationship to deepen the study of the EU antidumping legal system and practice.

It is cheering that under the funding of EU – China Legal and Judicial Cooperation Programme, the Institute of EU Law, Southwest University of Political Science and Law has chosen the study of EU antidumping system and practice as a special subject, and invited the Chinese and EU scholars to

form a research team to conduct the research jointly. Overall, the research team has divided the subject into two parts: the globalization and EU antidumping law, EU antidumping law and China. These parts include 17 topics. The study covers the impact of both economic globalization and the legal pluralism on EU antidumping system. This book probes into not only the history, present situation, and development tendency of EU antidumping system, but also the cause, features, state and responding solution of EU antidumping against China. The authors have analyzed the important substantive issues as well as the procedural aspects of the EU antidumping system. During the work in these fields, the objective of the research team has been to research into the EU antidumping system under the context of economic globalization and legal pluralism, highlight the interplay between theory and practice based on the abundant first hand materials, and adopt the multiple methodologies including historical analysis, research based on real evidence, and comparative study. All these work to conduct innovative and convincing research. We believe that this book could be helpful to the further understanding and study of EU antidumping system, and the handling of the EU antidumping against China which affects the normal trade relationship between the two sides.

Finally, we would like to thank the Project Management Office of the EU - China Legal and Judicial Cooperation Programme. We would also thank the Institute of EU Law, Southwest University of Political Science and Law, especially Director Prof. Wu Yue. We acknowledge our thanks to Law Press.China. We are grateful to all the members of the research team.

Francis Snyder
Tang Qingyang
December, 2004

主 编 弗朗西斯·施耐德 唐青阳
副主编 张永华 张仕权 陈咏梅

上 篇

作 者: 弗朗西斯·施耐德

翻 译: 曲虹妍(第1专题、第7专题)

李春蓉(第2专题)

张薇、阳路(第3专题、第4专题)

王衡(第5专题)

徐文静(第6专题)

译 校: 王衡(第2专题、第3专题、第5专题、第7专题)

彭翔(第1专题、第4专题、第6专题)

总译校: 唐青阳

下 篇

作 者: 陈咏梅、李春蓉(第1专题、第2专题)

唐青阳、阳路、张薇(第3专题、第4专题、第5专题)

张永华、徐文静、蒋鹏(第6专题、第7专题)

张仕权、何敏、易静、祝阳(第8专题、第9专题)

王衡(第10专题)

目 录

1 总序

1 前言

上篇 全球化与欧盟反倾销法

- 3 第一专题 21 世纪的经济全球化与法律
- 28 第二专题 治理全球化:欧盟、中国和全球法律多元论
- 83 第三专题 全球化和区域化:全球经济网与欧盟法
- 113 第四专题 欧盟反倾销法中“非市场经济”规则的起源
- 190 第五专题 欧盟反倾销法中的单独待遇问题:从行政做法到软法再到硬法
- 207 第六专题 守卫者:欧洲的法院与 WTO 法律
- 271 第七专题 构筑未来:道德、WTO 和全球法律多元论

下篇 欧盟反倾销法与中国

- 299 第一专题 欧盟反倾销制度的历史和形式渊源
- 315 第二专题 欧盟现行反倾销法主要制度述评
- 339 第三专题 欧盟反倾销法中的“市场经济”规则与替代国制度
- 360 第四专题 欧盟反倾销法中的“公共利益”问题
- 383 第五专题 欧盟反倾销法中的反规避制度
- 407 第六专题 欧盟与 WTO、美国反倾销程序制度之比较
- 422 第七专题 欧盟与中国反倾销程序制度之比较及中国反倾销程序制度之完善
- 434 第八专题 欧盟对华反倾销新趋势
- 453 第九专题 欧盟对华反倾销之原因剖析及应对策略
- 477 第十专题 从欧盟对华小型电子荧光灯反倾销案件判决看我国应有对策