# Book Review

## A BOOK REVIEW ON PASHA L. HSIEH, "NEW ASIAN REGIONALISM IN INTERNATIONAL ECONOMIC LAW" (CAMBRIDGE UNIVERSITY PRESS, 2021)

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**ABSTRACT**

*Pasha L. Hsieh's book sees the entry into force of the Regional Comprehensive Economic Partnership Agreement (hereinafter "RCEP") as well as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (hereinafter "CPTPP") as evidence of the emergence of "new Asian regionalism." He argues that the "new Asian regionalism has emerged amid the third wave of global regionalism and contributed to the New Regional Economic Order." What makes his book unique is that a legal perspective underlies his analysis throughout the book. He envisages that the Free Trade Area of the Asia-Pacific (hereinafter "FTAAP") can be brought into reality through pathways of the CPTPP and the RCEP as well as the trade and investment agreements between, on one hand, Singapore and Vietnam, and the EU on the other. It should not be forgotten that the political and economic landscape has dramatically changed since the idea of the FTAAP was first officially endorsed in 2006. One must ask whether the goal that was envisioned at that time remains valid in today's world. Nonetheless, his book serves as an essential roadmap to help us understand and navigate the complex landscape of regionalism.*

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On 15 November 2020, Australia, China, Japan, South Korea, New Zealand and the ten Association of Southeast Asian Nations (hereinafter "ASEAN") members signed the Regional Comprehensive Economic Partnership Agreement (hereinafter "RCEP"). The RCEP entered into force on 1 January 2022. As of writing, eleven of the participating parties have completed the ratification process. The RCEP covers nearly 30% of the global gross domestic product (GDP), and its economic scale is "comparable to that of the European Union (hereinafter "EU") and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (hereinafter "CPTPP") combined."[1]

Pasha L. Hsieh's book sees the entry into force of the RCEP as well as the CPTPP as evidence of the emergence of "new Asian regionalism." He argues that the "new Asian regionalism has emerged amid the third wave of global regionalism [the 'Third Regionalism'] and contributed to the New Regional Economic Order (hereinafter "NREO"), which reinvigorates the role of developing countries in shaping international trade norms."[2]

According to Hsieh, the Third Regionalism, which has developed in tandem with the World Trade Organization (hereinafter "WTO") since the 2000s, has the four characteristics that are different from those of the first regionalism in the 1950s and 1960s and the second in the 1980s and 1990s: 1) South-South free trade agreements (hereinafter "FTAs"); 2) mega FTAs; 3) inter-regional FTAs; and 4) comprehensive FTAs.[3] The New Asian regionalism, which is defined as a "new normative integration process that has evolved with the ASEAN Plus Six framework"[4] is one of the most successful examples of the Third Regionalism. Hsieh also presents the NREO as the "normative framework through which to understand the contemporary dynamics of Asia-Pacific trade and investment agreements that have shaped new Asian regionalism."[5] More specifically, he suggests that the NREO witnesses the multilateralization of the "ASEAN way" (consultations and consensus).[6] Based on the theoretical and normative concepts articulated above, Hsieh first analyzes the origin of the ASEAN framework and the legalization of the ASEAN way.[7] In particular, he provides the "most up-to-date examination" of the legalization of the ASEAN Economic Community (hereinafter "AEC") through the new AEC Blueprint 2025.[8] He examines three "interrelated agreements" of the AEC—

[1] PASHA L. HSIEH, NEW ASIAN REGIONALISM IN INTERNATIONAL ECONOMIC LAW 67 (2021).
[2] *Id.* at 1.
[3] *Id.* at 10-12.
[4] *Id.* at 4.
[5] *Id.* at 18.
[6] *Id.* at 23.
[7] *Id.* ch. 2.
[8] *Id.* at 31.

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the ASEAN Trade in Goods Agreement (ATIGA), the ASEAN Trade in Services Agreement (ATISA), and the ASEAN Comprehensive Investment Agreement (ACIA)—as well as the ASEAN's external agreements—ASEAN Plus One agreements and the RCEP. He observes that the "legalization of the AEC has transformed the ASEAN way to a hybrid political and legal concept."[9] He cautions that regarding the ASEAN way as a "nonlegal or soft-law approach" undervalues the outcome of the AEC legalization and that characterizing the AEC as an "incomplete or halfway version of the EU" is an "oversimplification."[10] In his view, the ASEAN way should be considered as an "alternative model to the EU," that is particularly valuable for developing countries.[11]

Hsieh next examines the RCEP and argues that it "represents a historic milestone of new Asian regionalism that manifests Asia's collective response to populist protectionism and the recovery of the economic effects of the COVID-19 pandemic."[12] In his thorough and up-to-date examination of the path leading up to the signing of the RCEP, he insists on the importance of the ASEAN. He rejects the conception that the RCEP is "an FTA of low quality and ambition," which he considers a "myth."[13] Although limited in some areas, Hsieh describes the RCEP as a "living agreement," which pursues the pragmatic incrementalism seen in the ASEAN.[14]

In Chapter 4, Hsieh expands his research beyond the Asia Pacific Region by examining the "rapidly evolving legal framework between Asia and Europe."[15] Hsieh argues that the interregionalism between ASEAN and the EU has undergone three major periods: the "First Interregionalism," which encompasses the initial interactions between the two blocs in the 1950s and 1970s, the "Second Interregionalism," which started after the conclusion of the 1980 ASEAN-European Economic Community (EEC) Cooperation Agreement, and the "Third Interregionalism," which coincides with the Third Regionalism.[16] In the Third Interregionalism, ASEAN is rising as "a central player" in the region from economic and geopolitical perspectives, and the EU is seeking to build a region-to-region FTA with ASEAN.[17] According to Hsieh, on the roadmap to the ASEAN–EU FTA, the EU's new trade and investment agreements with Singapore and Vietnam serve as "pathfinders" and "also signify the new phase of ASEAN–EU relations and

[9] *Id.* at 34.
[10] *Id.* at 35-36.
[11] *Id.* at 36.
[12] *Id.* ch. 3.
[13] *Id.* at 69-70.
[14] *Id.* at 88.
[15] *Id.* at 101.
[16] *Id.* at 111-14.
[17] *Id.* at 115.

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present legal models for interregionalism."[18] He makes a thorough analysis of these agreements to make his point.[19]

In Chapter 5, Hsieh explores how the US policy toward Asia has shifted under the Obama, Trump, and Biden administrations. He first points out that "'inherent bilateralism' exhibits the long-standing feature of US trade policy that has influenced Asian integration"[20] and that the "trade strategy based on inherent bilateralism culminated in Trump's approach to China."[21] He criticizes that neither America's engagement with China under the Obama administration nor the US-China trade war under the Trump administration achieved what was intended and ended up creating the global leadership vacuum, thereby giving President Xi an opportunity to fill it.[22] Against this background, he argues that the Biden administration should consider joining the CPTPP and concluding the ASEAN–US FTA to "respond to the growing influence of China over global institutions and FTAs" as well as to "restore US leadership in shaping norms of new Asian regionalism."[23]

In Chapter 6, the scope of the book extends to the broader Asia-Pacific region, in particular, the members of the Asia-Pacific Economic Cooperation (hereinafter "APEC"). Hsieh argues that "APEC's two cardinal principles, i.e., 'open regionalism' and 'concerted unilateral liberalization,' have yielded a salient yet oft-ignored impact on trade liberalization in selected areas."[24] To make his point, he demonstrates how APEC's soft-law approach has led to the making of hard-law obligations in the WTO and FTAs on various trade and investment matters such as trade facilitation and information technology liberalization.[25] At the same time, Hsieh acknowledges that APEC has encountered an "identity crisis" amid the increasing importance of FTAs, geopolitical instability illustrated by the US-China rivalry, and the COVID-19 pandemic.[26] He argues that in order to "rejuvenate" APEC and enhance its "incubator role" for hard-law obligations, particularly, a Free Trade Area of the Asia-Pacific (hereinafter "FTAAP"), APEC's institutional reforms, such as the professionalization of the APEC Secretariat and strengthening of the Policy Support Unit (PSU) and peer review process will be imperative to achieving this.[27]

Hsieh's book provides a timely and up-to-date comprehensive account of the dynamic development of regional integration in Asia. He highlights

[18] *Id.* at 103.
[19] *Id.* at 120-58.
[20] *Id.* at 169.
[21] *Id.* at 172.
[22] *Id.* at 173-76.
[23] *Id.* at 190-96.
[24] *Id.* at 198.
[25] *Id.* at 217-26.
[26] *Id.* at 197-98.
[27] *Id.* at 197-99, 226-30.

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the ASEAN centrality in Asian regional integration and expects that the ASEAN's incremental approach will present an alternative to the Western approach. It is also worth noting that the arguments in Hsieh's book have been convincingly substantiated by recent developments in the region. In particular, the conclusion of the RCEP drew significant attention not only from within the region covered by the RCEP but also from every corner of the world. It signals the emergence of the Global South as a leading power in the deepening of regional and interregional integration and the reinvigoration of the multilateral trading system. While the US is embroiled in a trade war with China and the EU is struggling to obtain its members' parliamentary ratification of FTAs, Asia has become an incubator for new ideas and approaches to regionalism.

What makes Hsieh's book unique is the legal perspective that underlies his analysis throughout the book. Hsieh criticizes a conventional view that considers the ASEAN way as a nonlegal or soft-law approach.[28] Instead, he observes that the ASEAN has been legalized through the creation of the AEC and the adoption of the ASEAN Charter and predicts that Asian regionalism will be further legalized.[29] He envisages that the FTAAP can be brought into reality through pathways of the CPTPP and the RCEP as well as the trade and investment agreements between Singapore and Vietnam, on the one hand, and the EU, on the other.

While Hsieh's prospects for the legalization of Asian regionalism and the formation of the FTAAP may appear ambitious, they are far from unreasonable. In fact, the APEC 2021 Leaders' Declaration reiterates the APEC leaders' determination that they "will advance the APEC Free Trade Area of the Asia-Pacific (FTAAP) agenda in line with implementing the Lima Declaration, to contribute to high quality and comprehensive regional undertakings."

However, it cannot be neglected that the political and economic landscape has dramatically changed since the first official endorsement of the idea of the FTAAP by the APEC economies in 2006. One must ask whether the goal that was envisioned at that time remains valid in today's world.

Most importantly, trade and investment have been increasingly politicized and securitized amid the heightened economic and political rivalry between the US and China. Given that the legalization of trade and investment relations through the WTO and FTAs were made possible, at least partly, by separating them from the highly sensitive political arena, the re-politicization of trade and investment may undermine the effectiveness and feasibility of another legally binding mega-FTA.

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[28] *Id.* at 35-36.
[29] *Id.* at 34-38.

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Moreover, global problems, such as climate change, human rights, and public health, have become increasingly urgent and intricately connected to trade and investment. While these non-trade concerns are embedded, to some extent, in the CPTPP, RCEP, and other major FTAs in Asia, by way of exception clauses, similar or identical to Articles XX and XXI of the General Agreement on Tariffs and Trade (GATT), an advanced trade and investment regime requires proactive integration of non-trade concerns. In other words, consideration of the non-trade concerns in the making and implementation of trade and investment policy is required as an obligation, rather than allowed as an exception, in any future regional or interregional regime.

Legalization also faces challenges in terms of dispute settlement. While the Appellate Body is dysfunctional, the legitimacy of investor-state dispute settlement has already been questioned for some time. While Hsieh suggests that mediation should be used to settle investor-state disputes in the region,[30] he does not deny that there is value in judicial state-to-state dispute settlement. He is right in highlighting the Asian countries' preference for nonconfrontational nonlegal dispute settlement.[31] Nevertheless, some Asian countries have potential for and have commenced actual trade and investment disputes with each other, and the question must be asked as to how such disputes should be settled.

Hsieh's book may not remove all these uncertainties that cloud the future of regional and interregional integration in Asia. In fact, these uncertainties intrinsically exist in the current world and cannot be removed in any way. Nonetheless, what is certain is that Hsieh's book serves as an essential roadmap to help us understand and navigate the complex landscape of regionalism.

[30] *Id.* at 150-51.
[31] *Id.* at 57-58, 236.

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