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内国经济法域外效力的国际法依据
International Legal Foundation on Extraterritoriality
of National Economic Law

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内容摘要

内国经济法的域外效力指的是国际法意义上的域外管辖权，即国家是否有权“将法律适用于域外人们的所作所为”的问题。这里的“是否有权”取决于是否存在国际法上的管辖权依据。所以，厘清国际法上的管辖权原则显得十分必要。本文试图梳理经济法域外效力的国际法依据及实践中的相关经典案例，分析富有争议的理论，并且提出自己的见解。

文章以国际法上的四种管辖原则为主线展开阐述，四种原则分别为属地管辖原则、属人管辖原则、普遍管辖原则和保护性管辖原则。

在引言部分，作者通过中国对可口可乐收购汇源果汁展开反垄断调查并最终被否决一案引出我们关注经济法域外效力的推行以及探究域外管辖权依据的必要性。

第一章概述经济法域外效力，作者指出经济法域外效力的国际法依据，是指一国相对于其他国家所拥有的权力，国家是否有权将法律适用于域外人们的所作所为的问题。第二章介绍属地管辖原则和经济法的域外效力。以往，根据严格属地原则，地域是主权内的概念，因此属地原则一度限制法律域外效力的推行。然而，随着实践的发展，对属地原则的解释出现了扩张，产生了主、客观属地原则和经济效果原则、行为归属原则以及部分行为规则。第三章介绍属人管辖原则和经济法的域外效力，传统属人法的扩张出现了积极人格和消极人格的说法，在税法领域，还出现了居民管辖权的概念。在出口管制领域，以美国为代表的西方国家基于“控制”理论推行域外效力，是属人管辖的延伸和国家公权力的辐射，但尚未得到国际法的承认。第四章讨论普遍管辖和经济法的域外效力。被国际社会用来打击“种族隔离罪、海盗罪、劫持航空器罪、贩卖毒品”等严重犯罪的普遍管辖原则也被用来推行经济法的域外效力，如劳工权益立法、通过贸易制裁打击种族隔离犯罪以及以打击恐怖主义的名义推行金融监管法律的域外效力等。第五章介绍保护性管辖权原则和经济法的域外效力。在国际法上，保护性管辖原则适用于影响国家安全和重大利益的行为。但是，它也成为

一些国家推行经济法律域外效力的依据。特别是，《美国贸易法》著名的“301条款”，是典型的自我利益保护条款，以美国市场为武器，迫使其他国家接受美国所认可的标准，实质上是以其自身的超级大国地位单边地推行法律域外效力。

在结语部分，笔者主张应该充分重视经济法的域外效力及其国际法依据，并对我国在经济立法方面大胆推行域外效力以及立法技巧方面作出展望。

关键词：内国经济法； 域外效力； 管辖权

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ABSTRACT

Extraterritoriality of economic law means the jurisdiction which in the sense of the international law, that is, whether the government has the right to “make the laws be applied to people when one does or not”. Here the “whether the government has the right to” depends on if there is rational basis on jurisdiction of international law. So, also in the aspects of the theory and practice, it is very necessary to clarify the principle of the jurisdiction in international law. In this paper, it will be present integrity theory by combing the jurisdictional basis and related typical case. In the meantime, the controversial theory will be analyze and my opinion will be put forward.

The article including four jurisdictional principles and that discusses around these .The principles are territorial principle, nationality principle, universal jurisdiction and protective jurisdiction .

First for introduction: emphasize the necessity to focus on the implementation of extraterritoriality of economic law and explore the jurisdictional basis by the case “Coca-Cola acquire huiyuan juice”, in which Chinese government rejected Coca-Cola’s application about acquisition of huiyuan juice through antitrust investigation.

The first part of the paper is the overview of Extraterritoriality Effect. Clearly define the basis in international law means the power of one country relative to other countries.The second chapter introduce territorial principle and extraterritoriality of economic law. Before, strictly according to the principle of territoriality, the region belongs to the concept of sovereignty, so the principle of territoriality ever limit the implementation of the extraterritoriality of economic law. However, with the deepening of practice, the interpretation of the principle of territoriality appeared expansion, produce theory of the subjective territorial principle, the objective territorial principle, the Effects

Doctrine, Single Economic entity and Part behavior Doctrine. Chapter 3 shows nationality principle and extraterritoriality of economic law. The expansion of traditional nationality principle appears positive personality and passive personality, with the implementation of the extraterritorial jurisdiction in tax law, also appeared the concept of resident jurisdiction. In the field of export administrative, the western countries, especially the United States, carry out extraterritoriality base on “control” theory. The fourth chapter for universal jurisdiction and extraterritoriality. The universal jurisdiction is used to strike serious crimes, for example, genocide, piracy, hijacking of aircraft and terrorism. Which is also used to implement extraterritoriality of economic law. Such as labor rights legislation, fight against genocide through trade sanctions, Implementing extraterritorial effect of financial supervision in the name of fighting against terrorism. Chapter 5 shows protective principle and extraterritorial effect of economic law. In international law, protective principle is applied to behavior that affect national security and material interests.

Finally, Conclusion points out that we need pay enough attention to extraterritoriality of economic law and international legal foundation again, in the meantime, make out look in the legislation of implementing extraterritorial effect in our country’s economic law boldly and legislative technique.

Key words: Economic law; Extraterritoriality; Jurisdiction

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