

International Competition Law and Regional Trade Agreements

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1 Introduction

The subject of this analysis examines at least three sub-subjects which have to be addressed distinctively in order to pay due consideration to the general topic at hand:

- There is first the question of what is meant by the concept of International Competition Law. Does such an area of law actually exist? Is it perhaps in the making or is it only a pipe dream of academics always on the search for new eye or ear catching concepts? Directly associated with all these aspects is not only the great issue of whether such an "International Competition Law" – whatever its final content – can really be created but more importantly whether such a set of norms would really be useful.
- There is, of course, the subject of regional integration which has managed to remain significant for decades. It is continuously changing its face, and it is still associated with numerous unresolved questions both for lawyers as for economists. To make this subject even more complex, various forms of re-

gional integration do not only change their nature over time but they vary furthermore geographically at any given moment in time¹.

- Finally, all these considerations have to be related to the general subject of this meeting, the integration in Asia and in Europe. Again, this sub-subject opens a flurry of further, more-detailed questions which shall at least be hinted at below.

On the whole it will be shown that a particular answer has to be given to the question as to what role competition policy must play in regional integration programmes.

2 On the Way to an International Competition Law: a Road to go Further or a Road to Nowhere?

In the last years one could get the impression that the ever expanding International Economic Law has touched upon one of the last "white spots" on the legal landscape: International Competition Law. Furthermore, the impression was that what is unregulated at present has to be regulated for the future as if there would be a natural law according to which law regulations have to cover all potential social - and in particular, economic - behaviour (See, for example, KENTSCHER, 1994, pp. 281ss.; BRITTAN, and VAN MIERT, 1996, pp. 454-457; IMMENGA, 1997, pp. 107-120; BASEDOW, 1998; VON MEIBORN, and GEIGER, 2000, pp. 261-266; MEESSEN, 2000, pp. 5-16.).

In the meantime doubts abound, and the more studies undertaken to carve out the main traits of a future international competition law, the more the complexity of the issue as a whole becomes evident.

In the past any thought of creating international competition law has always been overshadowed by the efforts to establish and further expand an international trade policy that would be conducive to a welfare enhancing system of international economic relations (On this distinction see, for example, the masterly writing by the late Professor HUDEC, 2003, pp. 1045-1079). In other words, trade policy ranked first while competition law lagged far behind (On the relationship between competition policy and trade policy see, for example, TREBILCOCK, 1996, pp. 72-106; HOEKMAN, 1997, pp. 383-406). Why this difference? First of all, governmental trade restrictions are more immediate. They constitute the logic

¹ This author has treated the subject of regional integration in various publications such as "Regionale Integrationszonen und GATT - Die Neuerungen der Uruguay-Runde", in: 25 *Recht der Internationalen Wirtschaft* 1993, p. 657ss.; "Wirtschaftlicher Regionalismus - Koordination und Wettbewerb der Integrationszonen", in: 19 *Integration* 4/1996, p. 224-235; "Neue Freihandelszonen in Asien und Amerika als Herausforderung für Europa", in: 43 *Wirtschaftspolitische Blätter* 2/1996, p. 184-195; "Regional Integration According to Article XXIV GATT - Between Law and Politics", in: 7 *Max Planck Yearbook of United Nations Law* 2003, p. 219-260.