

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Trade and Competition issues: experiences at the regional level

Competition Provisions in Regional Trade Agreements: How to Assure Development Gains

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FOREWORD

In recent years, regional trade agreements have been proliferating among and between developed and developing countries. Currently there are around 300 bilateral and regional agreements, of which more than 100 contain commitments on competition policies with implications at both regional and national level. To date, little is known about the impact and role of such regional initiatives and there is growing awareness among developing countries, including the least developed countries (LDCs), of their special needs in this area.

Along with many other UNCTAD research and technical cooperation activities over more than three decades in the competition policy field, this publication is a contribution to address these needs and implement UNCTAD's mandate. UNCTAD was mandated in Paragraph 104 of the *São Paulo Consensus* to "further strengthen analytical work and capacity building activities to assist developing countries on issues related to competition law and policies, including at a regional level". In response to this strengthened mandate, the publication covers a wide range of regional experience that should lead to a better understanding of competition provisions in RTAs for trade and competition policy makers and authorities that implement such policies. With its focus on regional trade agreements, this book complements last year's publication "*Competition, Competitiveness and Development: Lessons from Developing Countries*", which was launched at UNCTAD XI.

The chapters collected in this publication shed light on the competition provisions found in different types of RTAs in order to support and guide policy makers on the negotiation and implementation of regional and bilateral agreements with respect to competition policies. The publication makes a number of policy recommendations and identifies institutional arrangements needed to promote synergies between trade and competition at regional level. A fundamental message to be derived from the empirical findings and policy experiences presented in the publication is that competition provisions at regional level can act as a major complement to the current efforts to develop an open, rule-based, predictable, non-discriminatory trading system, with a fair distribution of benefits for all developing countries.

In recognition of the relevance of this fundamental message, this publication is being launched at UNCTAD's *Fifth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices* in Turkey, November 2005. It is my hope that it will raise awareness and enhance expertise among public policy officials, private sector stakeholders, consumer organizations and civil society in general about the crucial importance of competition law and policy cooperation at national, regional and multilateral levels for creating competitive enterprises in developing countries.

I would like to take this opportunity to thank the International Development Research Centre (IDRC) for its invaluable support in carrying out this research project.

A handwritten signature in dark ink, appearing to read 'S. Panitchpakdi', written in a cursive style.

Supachai Panitchpakdi
Secretary-General of
UNCTAD

EXECUTIVE SUMMARY

Lakshmi Puri

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UNCTAD

During the last decade, national, regional and international initiatives aimed at promoting competition policy have proliferated. In particular, of the around 300 bilateral and regional trade agreements (RTAs) in force or in negotiation, over 100 include competition-policy related provisions. About 80% of the over 100 have been negotiated in the last decade and are part of a trend for 'deeper' RTAs which often include articles for liberalizing trade in services, investment, labour and other trade-related provisions. Interestingly, developing countries negotiate about as many RTAs among themselves ('South-South' RTAs) as with developed countries ('North-South' RTAs), and about 65% of the South-South RTAs completed since 1995 contain provisions related to competition policy.

In this connection, important questions come to mind. What are the reasons for including competition law and policy provisions in RTAs? What are the main types of such provisions? Are countries receiving any special and differential (S&D) treatment from a trading partner that is more developed? Can developing countries reasonably expect to benefit from effective provisions in sensitive sectors? How costly is it to implement a RTA's competition provisions? What has been the experience of competition agencies of developing countries with RTAs?

Answers to these questions and others are summarized below by drawing on the 13 chapters of this publication, which have been written by competition practitioners or academics that focus on developing country concerns. The chapters are divided into two parts: Part 1 contains cross-regional analyses, and; Part 2 contains region- or sector-specific experiences.

RTA competition provisions exist for several reasons

Competition provisions in RTAs have many objectives. Nearly all RTAs with competition provisions state that such provisions are needed so that the benefits of trade and investment liberalization are not compromised by cross-border anti-competitive practices. The full benefits of free trade can be enjoyed only if state-constructed trade barriers are not substituted by other forms of private restrictive practices (such as for instance market-sharing or price-fixing agreements).

A second reason for including competition issues in RTAs was to create region-wide competition policies and institutions that seek greater levels of integration including, in the limit, forming common markets or economic and political unions. RTAs characterized by a higher level of trade integration are more likely to contain competition provisions. If parties to an RTA are seeking an integrated common market (such as the EU), then anti-competitive practices must not replace government restrictive schemes within the integrated market for the initiative to bear fruit.

Also with the opening of domestic markets to foreign competition, countries become susceptible to anti-competitive practices originating outside their national border. These include: cross-border competition concerns, international cartels, and mergers and acquisitions (M&A) that risk monopolizing or creating dominant power in the internal market. The latter may arise from both cross-border M&A and M&A within one country (usually in the developed world) which consequently combines their subsidiaries in another

Figure 1 The spectrum of RTA competition provisions



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