


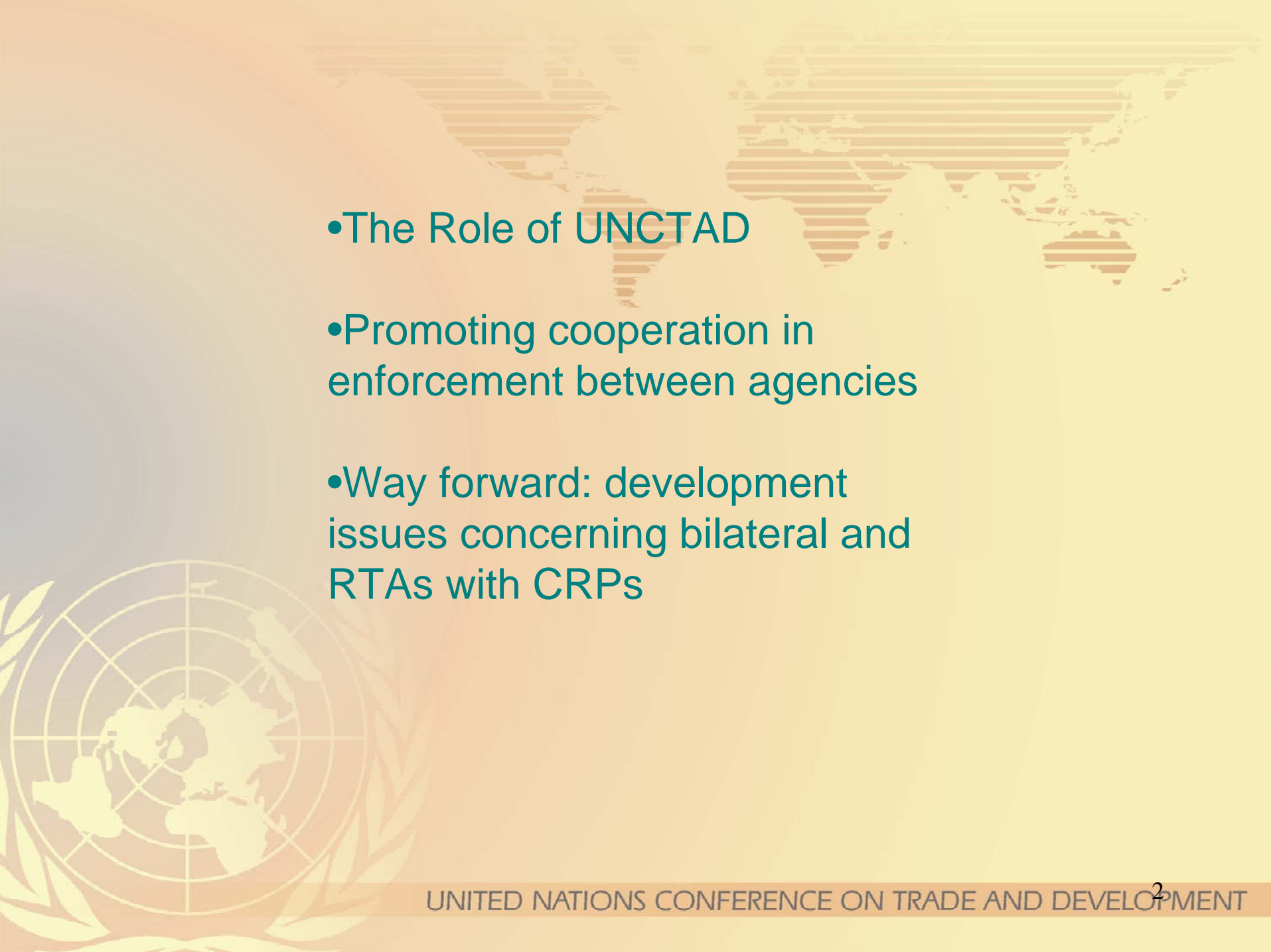


**“Competition Provisions in RTAs:
Assuring development outcomes through cooperation,
research and assistance”**

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Competition Workshop
TRALAC – UNCTAD
with the support of IDRC
Cape Town, 4 October 2006

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- The Role of UNCTAD
 - Promoting cooperation in enforcement between agencies
 - Way forward: development issues concerning bilateral and RTAs with CRPs

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The Role of UNCTAD

Some elements to appreciate the graduality and flexibility in the implementation of Competition Law and Policy

*Flexibility in the implementation/
case by case analysis*

Competition Bill: consensus, consultations with the Legislative Authority, civil society, adoption of the Law.
Sensitizing at the level of economic actors (Competition culture).
Inventory of the Laws. Assessment of the socio-economic situation in each country

Design of the institution in charge of implementing the Law

Training officers in charge of implementing the Law

Law enforcement: investigations, analysis, data collection

Enforcement of sanctions and remedies

Cooperation on case solving
Adopting regional competition frameworks

Peer Review
Cooperation on competition provisions

Cooperation on Competition Provisions: advanced stage

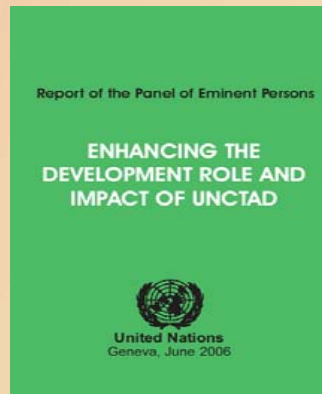
Competition and Consumer Protection work in UNCTAD:

Ensuring consistency among the three pillars

Consensus building
Research
Technical cooperation

UNCTAD's interactive and mutually reinforcing pillars of work consist of international consensus-building, research and policy analysis, and technical cooperation.

The dissemination phase aims at ensuring the interconnexion between these three pillars





UNCTAD research activities and technical cooperation

To support efforts of developing countries in the field of
CLP and Consumer Protection

Sao Paulo Consensus (UNCTAD XI), June 2004

- ✓ Help ensure that anti-competitive practices do not impede or negate the realization of the benefits that should arise from liberalization in globalized markets, in particular for developing countries and LDCs
- ✓ UNCTAD should 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.

UNCTAD mandates on Competition Law and Policies - Promoting regional competition law and policies -

Fifth UN Conference to Review all Aspects of the UN Set on Competition (Antalya, Turkey, november 2006)

launching of the publication

Intergovernmental Group on Experts on Competition Law and Policies – 31 October-2 November 2006

- International cooperation in investigating and prosecuting hard-core cartels affecting developing countries;
- Cooperation and dispute settlement mechanisms relating to competition policy in regional free trade agreements, taking into account issues of particular concern to small and developing countries



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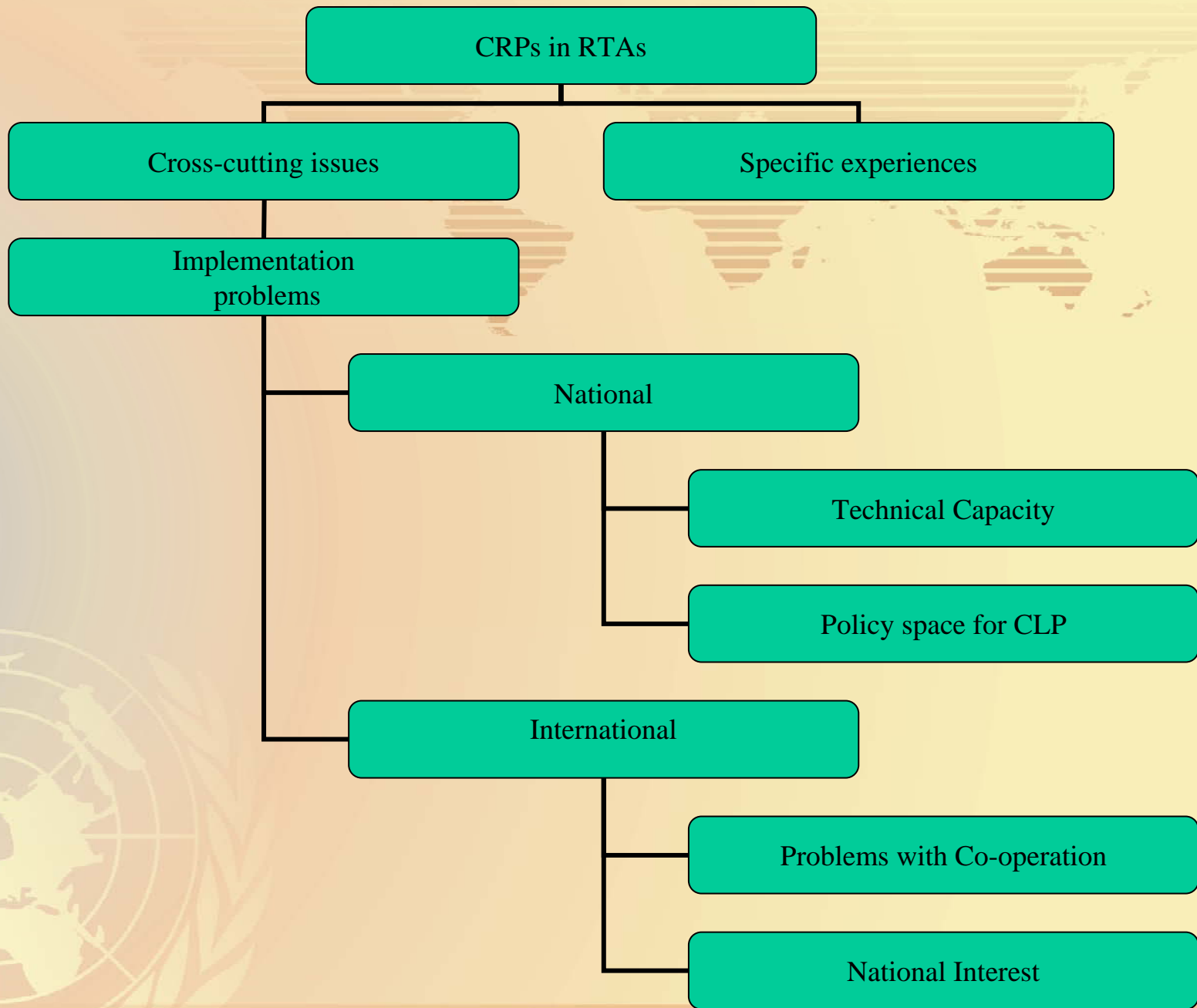
The UNCTAD IDRC Dissemination Phase

Competition Provisions in RTAs

Issues that merit further discussion (*dissemination phase*)

- RTAs have proliferated and sometimes, commitments overlap
- Burden and benefits of agreements: not always balanced
- If there is a lack of implementation of CRPs in RTAs, benefits are insufficiently clear and costs are high
 - Need to examine cross-cutting and specific experiences, national and international implementation problems
- **If stronger markets and inclusive growth are the key for economic development, need to examine:**
 - Economic and development impact of CLP and regional competition law and policies
 - What formulations of CLP are most friendly to poverty alleviation and efficient development?

Implementing Competition Provisions
in bilateral and RTAs



Competition Provisions in RTAs

Issues that merit further discussion (*dissemination phase*) cont'd

Questions related to the 'international' implications of competition provisions in RTAs include:

- In what ways, have competition provisions fostered cooperation between agencies on actual enforcement cases?
- What are the Pros and Cons of binding competition enforcement issues?
- What disputes have arisen on CLP between signatories of agreements? How were they solved?
- What is the relationship between cross-border mergers and acquisitions and implementation of CRPs in bilateral and RTAs?

Competition Provisions in RTAs

Issues that merit further discussion (*dissemination phase*) cont'd

Questions related to the 'National' implications of the implementation (or not) of agreements:

- To what extent have RTAs been used to bring forward the date of enactment of a competition law? How did the RTA existence or negotiation affect the political economy of competition law enactment and enforcement?
- In what ways, if at all, have competition provisions strengthened the deterrent effect of national laws?
- How can bilateral and RTAs contribute to strengthen the powers, budget and resources of competition agencies?



**Promoting Co-operation in enforcement
between agencies**

International cooperation

Anti-competitive practices are increasingly cross-border while CLP enforcement stops at the borders:

- International cartels
(e.g. export and import cartels and bid-rigging)
- Vertical restraints by dominant firms
(e.g. prohibition of resale price maintenance)
- Mega Mergers and Acquisitions take place abroad, may be authorised there but often have anti-competitive effects in third countries

Types of Cooperation Agreements

a) Bilateral Agreements (FTAs, others)

- ✓ Provide experience to participate in wider schemes
- ✓ Easier enforcement
- ✓ Imbalance of interest if large and small economies involved
- ✓ May be a risk of inconsistencies and vy burden in case of proliferation of bilateral and regional agreements

b) Regional Integration

- ✓ Some involve common competition rules as a longer-term objective (COMESA, CARICOM, Andean Community)
- ✓ Others aim at cooperation in the field of competition (SACU)
- ✓ burdensome; may duplicate efforts

How can cooperation strategies be deepened and widened?

Cooperation instruments

- NOTIFICATION
- CONSULTATIONS
- COOPERATION FOR ENFORCEMENT THROUGH INFORMATION
- EXCHANGE OF INFORMATION
- NEGATIVE COMITY
 - (RESPECT FOR INTEREST OF THE COUNTERPARTY)
- POSITIVE COMITY
 - (REQUESTS FOR ENFORCEMENT ACTIONS OF THE COUNTERPARTY)
- TECHNICAL ASSISTANCE

Are developing countries able to adopt these instruments?


Some limitations of cooperation agreements*

- Soft law obligations:
 - provisions have been described as ‘vague and imprecise’
 - each party effectively interprets the extent of its obligations
 - unenforceable in law between the parties
 - no dispute settlement procedures
- Restrictions on exchange of confidential business information:
 - the arrangements do not require or permit any information exchange that would otherwise not be permissible
 - this appears to be the *chief limitation* on cooperation
 - The *definition* of confidential information, as well as its potential *use* were identified as areas which need further study

*(Marsden, 2006)

Questions for further research

- How much co-operation is going on under formal provisions and how much informally?
- Are there examples of cases where cooperation, if it had been provided, might also have made a difference?
- What were the impediments to co-operation?



**Way Forward:
Development Issues concerning
RTAs with CRPs**

CRPs in bilateral and RTAs: impact on economic development and social impact

✓ One must not to forget the priorities for developing countries and most particularly LDCs!

✓ Is there a possible positive social impact?

Contribution to economic welfare, increase of productive capacities and poverty alleviation

✓ What formulations of CLP are most friendly to poverty alleviation and efficient development?

✓ Role of a regional or national competition body in directly targeting issues of social concern: a quest for a long-lasting competition culture

✓ CLP uses exceptions and exemptions to yield to other policies (SMEs, affirmative action, culture preservation)

What about the informal market (60% of the population)?

CRPs in RTAs: impact on economic development and social issues **cont'd**

- ✓ Linking CLP provisions to the other regulation mandated by the RTA and to existing domestic regulation
- ✓ What is the optimal mix as well as the most appropriate sequencing of reforms?
- ✓ How is balancing of national CLP objectives actually performed when they conflict?
- ✓ Proper balance between sector regulators and competition authorities
- ✓ CLP as a complement to Industrial Policy

Specific topics that merit further research

✓ Tackling poverty alleviation with CLP and consumer protection:

- CLP and privatised schooling, schooling support services, competition in schooling
- CLP in Public Health: pricing and availability of pharmaceuticals
- Impact of FDI, competition, cross-border anti-competitive practices on food distribution and prices
- Consumers and Competition Policies: food security and income generation
- Consumer protection and financial services for the poor: new approaches to regulation
- Competition Law for sustainable development, and consumer protection for sustainable consumption.

Specific topics that merit further research

✓ Specific Challenges for implementing CLP and Consumer Protection in a developing country setting

- Addressing the legacy of pervasive state intervention, rushed privatization and deregulation, highly concentrated industries and cooperative relationships between producers.

- What is the impact of inequality and a large informal sector on appropriate developing country CLP and consumer protection?

- Applying CLP and consumer protection in a developing country setting

Local history, data shortages, human resource constraints and other considerations

- Regional strategies for improved knowledge sharing and competition and consumer protection advocacy

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Many thanks

For further information

UNCTAD outreach and dissemination team

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