

***Implementing competition provisions in RTAs:
Lessons from UNCTAD research and technical assistance***

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UNITED NATIONS CONFERENCE
ON TRADE AND DEVELOPMENT

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Layout of the presentation

- I. The national dimension of competition law and policies**
- II. Implementing competition-related provisions (CRPs) in Regional Trade Agreements (RTAs). UNCTAD Project on Trade and Competition Issues: regional experiences**
- III. New issues in the context of the EPA negotiations (competition)**

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The national dimension of Competition Law and Policy

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Some remarks about competition

Anti-competitive practices affecting development

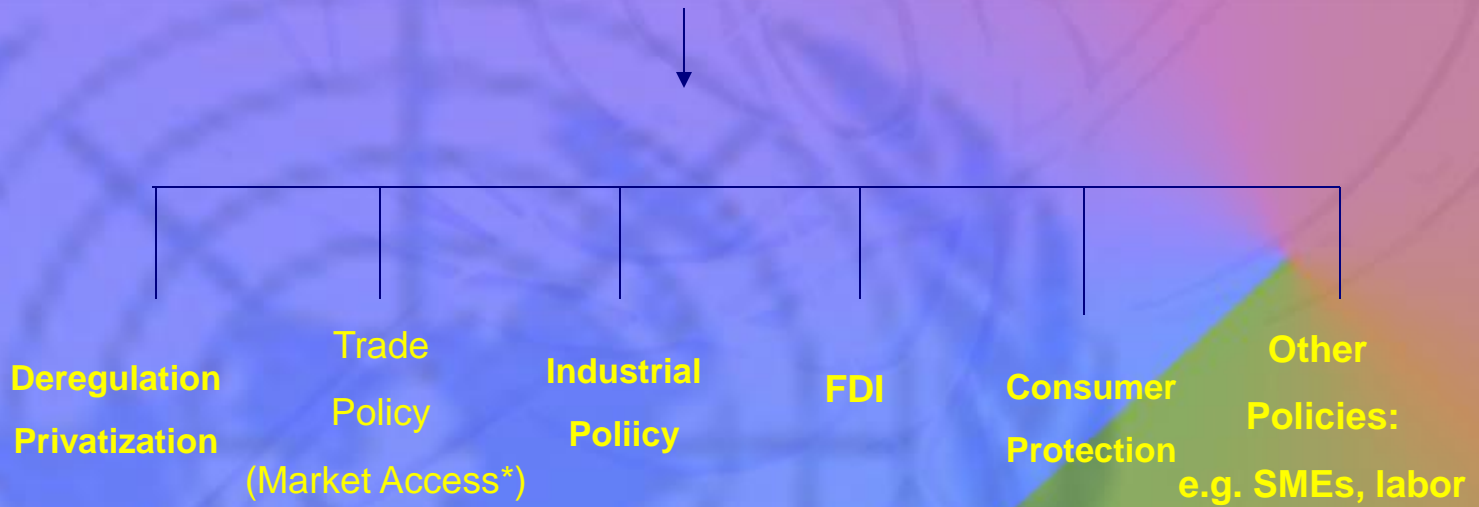
- Trade as an engine of Growth and Development
 - Practices affecting trade affect development
 - Anti-competitive practices affect
 - Efficient allocation of resources
 - Level of prices
 - Quality & choice for consumers
 - Innovation and R&D efforts
 - Increase employment opportunities and wages
- ⇒ Not only final consumers are adversely affected, but also **ENTERPRISES** using anti-competitive output as intermediate inputs

All these show that...

- ✓ Without a national law and competition authority there is not much the harmed country can do
- ✓ Even with a competition authority, bilateral and international cooperation is necessary
- ✓ Regional competition rules can potentially reinforce the bargaining position of developing economies challenging anticompetitive practices of international corporations.

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Competition is linked to other government Policies



All policies are linked to:

**Competition Policy and
Sectoral regulations**

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Difficulties in implementing CLP in a developing country-setting

- ✓ many jurisdictions experience great difficulties in effectively implementing CLP.
- ✓ large size of the informal sector,
- ✓ small size of the market,
- ✓ high barriers to entry,
- ✓ the legacy effects of state-owned enterprises and rushed privatization,
- ✓ lack of competition culture,
- ✓ capacity constraints
- ✓ severe political economy problems

RTAs aim at increasing efficiencies and development by:

- ✓ **Promoting economies of scale**
- ✓ **Creating a larger market free of trade barriers**
- ✓ **Creating a more competitive setting**

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**Competition provisions: key for the success of SMEs,
consumers and the more vulnerable sectors of the society**

Competition Provisions in RTAs:

- ✓ **Follow the logic that trade needs to be freed from enterprise-level distortions**
- ✓ **May contain a commitment for both parties to adopt (and enforce) competition legislation**
- ✓ **May provide for Special & Differential Treatment (S&D): safeguards interests of less-developed partners, exceptions to key sectors, transitional time periods, technical assistance**
 - ✓ **For developing countries: non-reciprocal S&D**
- ✓ **Exchange of information subject to confidentiality rules**

Competition at regional level may involve:

- ✓ **Common Supranational Competition Authority**
- ✓ **Harmonization of competition laws**
- ✓ **A prohibition of cartels involving more than one member-country**
- ✓ **Control of abuse of dominance**
- ✓ **Region-wide merger control**

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



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**IMPLEMENTING COMPETITION PROVISIONS IN
REGIONAL TRADE AGREEMENTS:
Lessons from UNCTAD research**

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Which RTAs containing CRPs are we referring to?

Africa

- CEMAC, UEMOA/WAEMU
- COMESA, EAC
- SACU, SADC

Asia

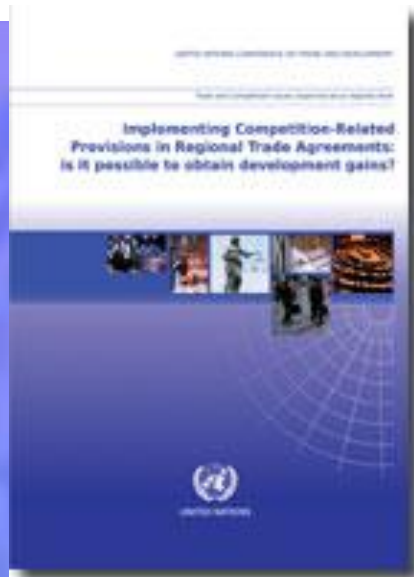
- ASEAN
- SAARC
- APEC

Latin America and the Caribbean

- MERCOSUR
- Andean Community
- CARICOM
- NAFTA (+ US & Canada)
- Latin American FTAs (US-Peru, US- Colombia, US- Chile)

Agreements with the EU

- EFTA
- Pre-accession agreements
- Euromed, EU-SA TDCA, EU-Mexico, EU-Chile, EU-Andean Community, EU-Central America (in preparation)
- Economic Partnership Agreements EPAs?



Publication of the dissemination phase

✓ **Current problems facing developing countries in implementing competition provisions in RTAs**

✓ **South-South agreements:**

✓ **Ensure that markets are not subject to abuses of power;**

North-South agreements:

✓ **Regional competition rules can potentially reinforce the bargaining position of developing economies challenging anti-competition practices at international level**

**Implementing Competition Provisions in RTAs:
is it possible to assure development gains?**

Agreements containing Competition Provisions involving the EU, cont'd

Agreements with non accession countries

Content of the Agreements:

- Main aim: to challenge anti-competitive practices and distortionary state aids that would be illegal under EU law

EU-South Africa(SA) TDCA (1999):

- Opportunities for securing market access in both directions.
- In merger cases in SA, *informal* cooperation has taken place, even though not covered by the TDCA.

EU-Mexico

- Large number of notification provisions, used predominantly by Mexico (31 as opposed to 1)

Euro-Med:

- More harmonization than EU-SA or EU-Mexico. Promise of end to use countervailing duties if EU State aid rules applied

Evolving characteristics of competition provisions in EU agreements

EU FTAs	Substance of competition policy				Reference to legislation				Technical cooperation
	Mergers & acquisitions	Abuse of dominant position	Concerted practices	Public (state-aid)	Mutual recognition of legislation	Sole reference to EU legislation	Ban on positive discrimination for commercial state monopolies	Ban on special an exclusive rights for (public) enterprises	
Algeria & Lebanon MED 1		✓	✓				✓	✓	
Israel MED 2		✓	✓	✓			✓	✓	
Morocco, Jordan, Palistinian authority & Tunisia MED 3		✓	✓	✓		✓	✓	✓	
South Africa		✓	✓	✓	✓				✓
Mexico	✓	✓	✓		✓				✓
Chile		✓	✓	✓	✓			✓	✓

How can cooperation strategies be deepened and widened?

Cooperation instruments

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

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Are developing countries able to adopt these instruments?

UNCTAD research on Implementing Competition Provisions in RTAs

Main findings and policy recommendations

- ✓ **Need to rationalize commitments relating to competition provisions**
- ✓ **Ensure coherence of competition (and other) provisions across agreements**
- ✓ **More effective competition law enforcement: key for increased co-operation**
 - ✓ **However, different legal and administrative systems and capacities: no “one size fits all”**



UNCTAD research on Implementing Competition Provisions in RTAs cont'd

- **Need for strengthened coordination between trade and competition negotiators**
- **Sharing experiences in regional and international for a, success/failure stories of different jurisdictions**
- **Competition chapters and competition principles**
- **Avoid past experience of signing agreements without tools for implementation**

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- Legal basis and mandate for negotiations
- Scope for negotiations
- Modalities for Cooperation
- Special and Differential Treatment
- Way forward

Tools for ACP negotiations (if competition law and policy is discussed)

- **Ensure coordination among trade and competition experts**
- **Negotiations should not conform to a template approach but should be flexible enough according to each country's priorities and degree of development in the field of CLP**

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