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Competition Provisions in Regional Trade Agreements

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COMPETITION PROVISIONS IN REGIONAL TRADE AGREEMENTS

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ABSTRACT

Regional Trade Agreements (RTAs) have grown dramatically in number and importance since the early 1990s and they increasingly include chapters and provisions encompassing competition issues. This study provides a taxonomy of the types of competition-related provisions contained in selected RTAs. It distinguishes different types of provisions addressing cooperation and coordination among competition agencies, as well as provisions directly addressing anticompetitive behaviour. It further contains information on dispute settlement, provisions concerning special and differential treatment and competition-specific clauses regarding non-discrimination, transparency, due-process, trade remedies and the exlusion of antidumping. The study also assesses the role and scope of competition provisions and distinguishes two families of agreements: those containing substantive provisions addressing anticompetitive behaviour and those focusing more on co-ordination and co-operation.

Keywords: trade, competition, regionalism, regional trade agreements, RTA, anti-competitive, monopoly.

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EXECUTIVE SUMMARY

Regional Trade Agreements (RTAs) have grown dramatically in number and importance since the early-1990's and they increasingly include chapters and provisions encompassing competition issues. This paper is the first instalment of a project commissioned by the OECD Joint Group on Trade and Competition (JGTC) to undertake further research on this phenomenon including:

a) a taxonomy of the types of competition provisions in selected RTAs.

b) an initial assessment of the role and scope of the competition provisions in these selected RTAs; and

c) learning from countries' practical experiences with respect to the implementation of these provisions.

While this paper focuses on points a) and b), a further instalment of this project will focus on point c), providing a series of case studies on the practical experience of trading partners with competition-related provisions in RTAs.

Section I describes the proliferation of Regional Trade Agreements since the 1990s and puts the growing significance of these RTAs into the broader context of international trade.

Section II consists of a matrix of the RTAs that were collected and analysed. A table sets out the types of competition-related provisions commonly found in these agreements. It distinguishes different types of provisions addressing cooperation and coordination among competition agencies, as well as provisions directly addressing anticompetitive behaviour. It further contains information on different types of dispute settlement provisions as well as on provisions concerning special and differential treatment. Finally it provides information on competition-specific clauses regarding non-discrimination, transparency, due-process as well as on trade remedies and the exclusion of antidumping.

Section III describes the main findings obtained from the comparison of the various competition provisions in the categories of the matrix. It analyzes the range of the provisions that were found in each category and gives examples of special or noteworthy provisions.

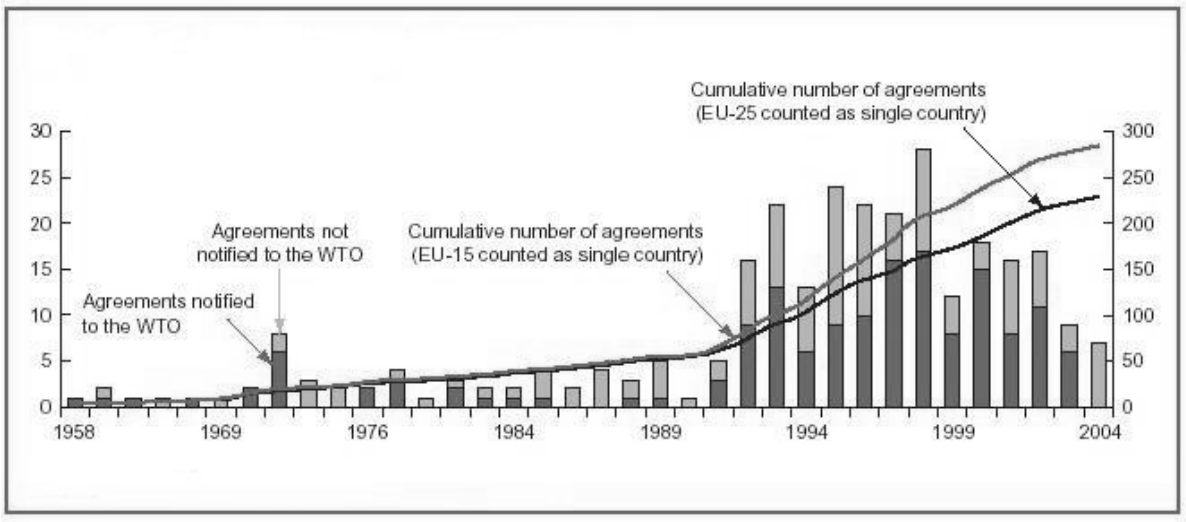
Section IV, finally, highlights a few general observations. The paper basically distinguishes between two "families" of agreements, one type of provision that occurs mainly in the ambit of agreements concluded by the EC and another type of provision that is rather typical for RTA's concluded with a North American counterpart. Most of the agreements containing substantive provisions addressing anticompetitive behaviour have been concluded by the EC or among non-EC European countries in (South)-Eastern Europe. On the other hand, agreements that focus more on coordination and cooperation provisions have been concluded in the Americas, or involve a North- or South American party.

COMPETITION PROVISIONS IN REGIONAL TRADE AGREEMENTS

I. Introduction

1. Regional Trade Agreements (RTAs) have grown dramatically in number and importance since the early-1990's (see Figure 1). In the last ten years, almost 200 RTAs have been notified to the WTO. Thirty-three new agreements have been notified in 2004 alone, and 20 more in the first six months of 2005[1]. This steady growth of regional trade agreements is not expected to slow down in the near future: taking into account RTAs currently under negotiation or not yet ratified, the number of notified RTAs into force is expected to grow from 139 (July 2005) to 300 in 2008[2].

Figure 1. RTAs notified and not notified to the GATT/WTO 1958-2004



Source : World Bank, *Global Economic Prospects 2005*, p. 29, relying on WTO data and WTO staff

2. A recent World Bank report[3] estimates that over 40% of world trade now utilises preferential trading arrangements of some sort. As the Consultative Board to the WTO Director-General points out in a report on the Future of the WTO, MFN is no longer the rule but almost an exception[4].

3. Recent "regional" trade agreements are no longer necessarily geographically contiguous. Many are bilateral; many are cross-regional. They can be between individual countries, one country and a group of countries or between blocs of countries.[5]

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1 A complete list of RTAs notified to the GATT/WTO under GATT Article XXIV, GATS Article V, and the Enabling clause can be found at www.wto.org/english/tratop_e/region_e/region_e.htm.

2 J. A. Crawford and R. Fiorentino (2005), "The Changing Landscape of Regional Trade Agreements", WTO Discussion Paper, No. 8, WTO, Geneva, p. 3. The figure of 139 agreements is obtained by eliminating double counting of notifications of Economic Integration Agreements under GATS Article V.

3 World Bank (2005), *Global Economic Prospects 2005*, World Bank, Washington DC, p. 27.

4 Consultative Board to the Director-General Supachai Panitchpakdi (2004), *The Future of the WTO: Addressing Institutional Challenges in the New Millennium ("Sutherland Report")*, WTO, Geneva, p. 19.

4. RTAs increasingly include chapters and provisions encompassing competition issues. Despite many WTO Members' reluctance to negotiate a competition-related agreement within the auspices of the WTO[6], competition is nevertheless considered relevant for RTAs by many such countries.

5. In view of this phenomenon, further research and analysis on the role that co-operation on competition law and policy plays in these agreements is warranted. The OECD Joint Group on Trade and Competition (JGTC), at its meeting on 15 October 2004, discussed a scoping paper [COM/DAF/TD(2004)59] and authorised analysis along the following lines:

a) create a taxonomy to collect and classify existing agreements and the type of competition provisions they contain;

b) analyse the role and purpose that competition law and policy plays in such RTAs; and

c) learn from countries' practical experiences with these competition-related provisions in RTAs, including implementation, record of enforcement and dispute settlement.

6. This paper is the first instalment of this project. It focuses on above points (a) and (b). Following this Introduction, **Section II** consists of a table (Table 1, Part I and II at the end of the document) with the agreements that were collected and analysed. The Table sets out the types of competition-related provisions commonly found in these agreements. It then explains the classification system used to set up the taxonomy appearing in the table. **Section III** describes the main findings obtained in comparing provisions of the RTAs. Finally, **Section IV** highlights a few observations about the different "families" of agreements.

7. Since this part of the JGTC's work programme is to ascertain the development aspects of trade and competition, the scope of the research has been extended to South-South agreements with competition-related provisions.

II. Taxonomy of competition-related provisions in 86 regional trading agreements

8. The 86 agreements studied include those which were notified to the WTO Secretariat from 2001 to July 2005. Some earlier agreements, as well as some non-notified agreements, were also included, by reason of the relevance of their competition provisions, their importance to trade, or because they involve groups of developing countries. Because there are more than 200 regional trading agreements currently in force, the Table is not exhaustive. It is hoped nonetheless that the Table both covers the recent agreements and gives a fair sampling of the range of competition-related provisions in RTAs.

9. This section explains the rationale for placing checkmarks in the various cells of the Table. The checkmarks are then used to ascertain the main findings appearing in Section 3 below. Thus, this section focuses on the competition provision categories (identified in the column headings) for analysing the agreements.

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5 Because these agreements have outgrown the "regional" definition, some prefer to use the term preferential trade agreements. However, this paper continues to use the term regional trade agreements to avoid confusion with other trade preference schemes or arrangements.

6 On 31 July 2004, the WTO Council decided that trade and competition would not form part of the Work Programme and no work towards negotiations for this issue would take place within the WTO during the Doha Round. Decision adopted by the General Council on August 1 2004, WT/L/579.

Categories of competition provisions employed in the study

10. The following categories have been employed in the analysis of the different competition provisions:

a) *Adopting, maintaining and applying competition measures*: This is a broad category. A check mark indicates that the agreement contains specific provisions on the adoption of certain measures or general, sometimes merely clauses stating the parties' intention to adopt competition-related provisions.[7]

b) Coordination and cooperation provisions:

- *General co-operation provision:* Columns 2 to 7 distinguish different types of coordination and cooperation between national entities in the field of competition law. This column on general cooperation provisions has a broad scope. The purpose of this column is to capture cooperation provisions that do not fall within one of the more specific categories of columns 3 to 7.

- *Notification*: Agreements, which require a party to notify another party with respect to enforcement actions, have a checkmark appearing in this column. In some cases these provisions establish specific requirements on notification.

- *Exchange of information*: This column covers provisions that establish a mechanism for the exchange of information between the parties. This includes provisions specifying certain types of information to be shared as well as clauses providing for exchange of information in general.

- *Consultation on competition policy / enforcement*: Agreements which provide that the parties shall hold consultations with respect to competition policy in general or in particular with respect to enforcement appear in this column. Consultations in the present context are a means of enforcement coordination. The purpose of such consultation is to ensure effective enforcement rather than settling disputes between the parties. Therefore such consultations are to be distinguished from consultations in the ambit of dispute settlement.

- *Negative comity*: Where this column is checked in the table, the respective agreement provides that a party will consider information that may affect important interests of another party in its enforcement activities.

- *Positive comity*: Positive comity means that one party to an agreement can request the other party to take enforcement action.

c) *Provisions addressing anti-competitive behaviour*:

- *Anticompetitive agreements*: This category encompasses provisions that prohibit or restrict a wide variety of anticompetitive practices. This includes horizontal as well as vertical restraints. The provisions reflected by checkmarks in this column may be explicit prohibitions of very specific practices such as price fixing, bid rigging, sharing or dividing markets etc. or they may simply address arrangements with anticompetitive effects in general.

7 . As described in Section 3 below, the term "measures" can encompass a wide array of actions to be taken by the parties.

Some RTAs checked in this column may go as far as declaring that such anticompetitive arrangements are incompatible with the RTA in question. Other listed RTAs are less explicit. Some may only have a general mandate that the parties shall adopt measures to proscribe anticompetitive arrangements, while others may include specific examples of anticompetitive practices that are to be proscribed.

- *Abuse of dominance / monopolisation*: RTAs prohibiting the abuse of dominance are marked in this column. As in the prior column, such provisions may either explicitly proscribe the abuse of dominance or require Parties to adopt laws that proscribe the abuse of dominance. Furthermore, provisions concerning monopolies have been checked in this column.

- *State aid / subsidies*: This column captures RTAs containing restrictions on state aid that distort or threaten to distort competition or regulation of subsidies.

- *Anti-competitive mergers*: Checkmarks in this column appear when RTAs call on the parties to pay special attention to anti-competitive mergers. This, however, does not necessarily imply that these agreements provide for a mandatory merger regime.

- *State enterprises / state monopolies*: RTAs that contain specific regulations on state enterprises or state monopolies are checked in this column. Such regulations may simply clarify that competition provisions are applicable to state enterprises, just as they are for private enterprises. On the other hand, they may also provide certain exceptions for state enterprises or state monopolies.

d) *Competition-specific provisions concerning non-discrimination, due process, transparency*: These three categories only take up competition-specific provisions on non-discrimination, due process or transparency. Such provisions are usually located in the chapter on competition and contain language on the specific meaning of non-discrimination, due process or transparency for the field of competition law.

e) *Exclusion of antidumping*: In some RTAs the parties have agreed not to apply anti-dumping measures in relation between them. Such provisions may either stand alone or they may be part of the broader decision to do away with all trade remedies (anti-dumping, countervailing duties, safeguards) in the relationship between the parties.

f) *Recourse to trade measures*: In contrast to the prior category some agreements explicitly provide for the application of trade defence mechanisms with respect to competition policy under certain circumstances. These provisions allow the parties to have recourse to trade measures when a trading partner is not in compliance with the agreement. In most of the agreements that appear with a check in this column there is a specific reference to the RTA-specific safeguard mechanism in the competition chapter.

g) *Dispute settlement*: For the analysis of dispute settlement with respect to controversies arising from the application of competition provisions it is appropriate to distinguish three different subcategories: (i) the exclusion of competition provisions from the general dispute settlement mechanism in the RTA; (ii) consultation; and (iii) arbitration. Many agreements include dispute settlement procedures to address the controversies that could arise between the parties. However, in some cases such specific mechanisms do not apply to the competition provisions of the agreement. These exclusions reveal differences about the enforceability of the different subject areas covered in the agreement. Another subcategory in the ambit of dispute settlement is consultation. As opposed to consultation in the area of cooperation and coordination, these

consultations serve as a means of resolving conflicts between the parties. Finally, there is a separate subcategory for arbitration provisions in the agreements. In any case it should be noted that dispute settlement provisions are not competition-specific but usually apply to the entire agreement.

h) *Flexibility and progressivity (special and differential treatment*): In this area it is appropriate to distinguish three subcategories that are especially relevant in the ambit of competition policy. These are flexibility of commitments; technical assistance and capacity building; and transition periods. The column of flexibility of commitments includes non-reciprocal provisions in general and especially exemptions and exceptions. However, not all agreements that exclude a certain sector from competition policy appear in this column. For example, an agreement between two countries mutually excluding the agriculture sector from competition policy would not be checked in this column. Only exceptions that reflect non-reciprocity will appear in this column. The same is true for transition periods. In addition, transformation periods for the time of the implementation of new rules are not automatically considered to be special and differential treatment. As regards technical assistance only competition-specific provisions on technical assistance have justified a checkmark appearing in this column; agreements containing only a general technical assistance provision are not taken into account here.

III. Overview of the competition provisions in the analysed agreements

Parties involved

11. Out of the 86 agreements analysed, 59 (68%) are between developing or emerging economies (South-South). Only 4 agreements (5%) are between developed countries (North-North), while the remaining 23 (27%) are between developed and developing countries or emerging economies (North-South).

Trade is the overriding principle

12. While some agreements have more explicit language than others, in most of the analysed agreements the parties emphasise that anti-competitive practices can undermine the trade objectives of the agreement. As such, parties express that measures adopted to combat anti-competitive behaviour will enhance the trade objectives of the agreement. Some examples of such provisions include:

- EFTA-Mexico: "… to ensure that the gains from trade liberalisation are not offset by the erection of private, anti-competitive barriers… The Parties agree that anticompetitive business conduct can hinder the fulfilment of the objectives of this Agreement… The Parties undertake to apply their respective competition laws so as to avoid that the benefits of this Agreement may be undermined or nullified by anticompetitive business conduct."

- EC-style: "The following [anti-competitive practices] are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the parties."

- NAFTA: "… adopt or maintain measures to proscribe anticompetitive business conduct and take appropriate action with respect thereto, recognizing that such measures will enhance the fulfilment of the objectives of this Agreement."

Adoption of measures

13. Language in the analysed agreements varies with respect to the types of actions that the parties undertake to address anti-competitive behaviour. Some agreements broadly define that parties will adopt "measures" without providing further detail. Other agreements have specific actions and obligations for the parties, such as creating competition agencies or specialised enforcement bodies and the enactment and/or enforcement of competition laws or rules. Many agreements between European States establish a "Joint Committee" composed of representatives of the Contracting Parties. For example, in the Free Trade Agreement between Bosnia Herzegovina and Croatia, the parties established a committee which oversees the implementation of the agreement. This committee is not a body exclusively in charge of competition policy but has a general mandate which also covers competition matters.

14. In some cases these laws or rules may be domestic while in other cases they may contain supranational elements. One of the most ambitious regulations in this respect can be found in the CARICOM agreement. According to Article 170 the Community shall establish appropriate norms and institutional agreements to prohibit and penalise anti-competitive business conduct. Article 171 of the same agreement establishes a Competition Commission with the mandate to monitor, investigate and detect anticompetitive behaviour of enterprises. Other examples of enforcement at supranational level are the Andean Community, the MERCOSUR, the CEMAC (UEAC), and the WAEMU/UEMOA.

Co-operation

15. Some agreements have very general co-operation clauses which broadly state (without going into further detail) that the parties recognise the value of co-operation in competition-related issues, such as notification, consultation, and exchange of information. Other agreements go further and establish detailed co-operation mechanisms for each one of these elements (e.g. Japan-Mexico, Chile-Korea, or the recently signed Trans-Pacific Strategic Economic Partnership).

16. One of the most recurrent co-operation provisions provides for exchanging information. However, in several cases, mainly the Eastern Europe agreements, co-operation is limited to information concerning state aid. In many cases there are certain exceptions for the exchange of confidential information. Among the least recurrent provisions are those concerning comity obligations.

Anti-competitive behaviour/practices

17. All the analysed RTAs generally refer to anti-competitive behaviour or practices. However, there are varying degrees of content and scope in these provisions. At one end of the spectrum are RTAs that have very broad and non-binding language which does not define what types of practice are considered anti-competitive (e.g. Chile-Central America, New Zealand-Singapore, Japan-Mexico).[8] At the other end of the spectrum, there are RTAs that go as far as mandating the parties to prohibit very specific types of practices within their jurisdiction (e.g. CARICOM). Most agreements fall in between these two extremes.[9] The following observations can be made regarding the different categories of anti-competitive behaviour and practices:

8. In some cases this can be explained because the agreement refers the parties to the application of their own domestic law (e.g. Japan-Mexico) or because one of the parties does not actually have a competition law (e.g. New Zealand-Singapore)

9. For the purposes of this exercise, to earn a checkmark in the Table, the agreement must at the minimum refer to anti-competitive arrangements as opposed to just making a broad reference to anti-competitive behaviour in general without further description or definition.

Anti-competitive agreements

18. While some provisions simply make a reference to anti-competitive agreements in general, others actually define, categorise and give examples of particular types of anti-competitive agreements and practices. The EC-Jordan Agreement, for example, declares all agreements between undertakings […] that have as their object the restriction, prevention or distortion of competition as incompatible with the agreement. On the other hand, the Canada – Costa Rica Free Trade Agreement explicitly lists the following anticompetitive practices: price fixing, bid rigging, output restrictions, quotas etc. However, these provisions also vary in the degree they establish binding provisions. The provision in the EC-Jordan agreement clearly declares anticompetitive practices incompatible with the agreement, while in the case of the Canada – Costa Rica Free Trade Agreement, the agreement calls upon the parties to enact domestic legislation prohibiting anticompetitive practices.

Monopolisation / abuse of a dominant position

19. Depending on the particular legal background of the parties, some agreements have language that refers to abuse of a dominant position and others make reference to regulation of monopolies. In a few agreements, this type of provision is not found in the competition chapter but rather in other chapters and is therefore limited in its scope of application. For example, in the agreements involving a Latin American party, such a provision is frequently found in the telecommunication chapter, while in the Japan-Singapore agreement it is found in the services chapter[10]. As with the description of anti-competitive agreements, some provisions are more detailed than others.

Anti-competitive mergers

20. A small number of agreements[11] have provisions that refer to anti-competitive mergers. With the exception of the EEA, the references to mergers are not detailed, and form part of a more general provision which mentions anti-competitive mergers as part of the practices or conduct the parties seek to prevent, eliminate or curtail.

State aid / subsidies

21. As with monopolisation and abuse of a dominant position, references to state aid or subsidies also seem to depend on the legal background of the parties to the agreement. Furthermore, state aid provisions are usually found within the context of competition provisions (especially in the EC-style agreements) whereas subsidy provisions may be elsewhere in the agreement. In fact, competition-related provisions dealing with state aid and subsidies are mostly found in the EC-style agreements and in regional ecomic integration organisations, such as the Andean Community, CARICOM, CEMAC (UEAC), COMESA, WAEMU/UEMOA, and in some of the CIS agreements.

State monopolies and state enterprises

22. The majority of the analysed agreements contain provisions which refer to the way in which State Monopolies and State Enterprises shall be treated. Most provisions require that these types of enterprises

10 . Provisions on monopolies and exclusive service suppliers are often found in the services chapter of agreements not explicitly addressing competition policy, by reference to GATS Article VIII (e.g. CARICOM-Dominican Republic, India-Singapore CECA, Jordan-Singapore [not yet into force]).

11. Australia-Singapore, Australia-Thailand, Canada-Costa Rica, EC-Mexico, EFTA-Mexico, European Economic Area, and Korea-Singapore (not yet into force).

don't discriminate between nationals of the contracting parties or otherwise behave in an anti-competitive manner.

Non-discrimination

23. All the agreements have general non-discrimination clauses in the context of the agreement but only a few have competition-specific non-discrimination provisions in the sense that the parties are required to apply their competition laws and policies in a non-discriminatory manner. However, when making specific reference to state enterprises, as mentioned above, most agreements provide that these enterprises shall provide non-discriminatory treatment.

Due process

24. Relatively few agreements[12] have competition-related due process provisions; those that do generally address rights to fair and equitable judicial or quasi-judicial processes, to be notified of the proceedings, etc.

Transparency

25. As with non-discrimination, most of the competition-related transparency provisions are limited in their scope of application. In these cases, they mainly apply to regulations addressing state aid. Hence, not all of these provisions fall within the traditional definition of transparency in the sense that it is used in trade agreements more generally (i.e. to make all laws and decisions publicly available).

Limitation or elimination of anti-dumping measures

26. Only a handful of agreements have provisions which aim to exclude or eliminate the application of anti-dumping measures and investigations between the parties. Particular attention should be placed on the ANZCERTA and EFTA-Singapore agreement because in these cases the elimination of anti-dumping measures between the parties is specifically linked to applying the competition provisions.

Application of trade measures

27. Many agreements contain provisions regarding trade defence mechanisms such as safeguards, antidumping measures and countervailing duties. Very few agreements have excluded the application of antidumping measures. In those cases the parties have usually maintained a provision allowing application of safeguards in cases of serious prejudice to the interest of a party or material injury to its domestic industry. Only in two cases (Canada–Chile, ANZCERTA) have countries eliminated both, the recourse to antidumping and to safeguard measures simultaneously.

Dispute settlement

28. With regard to the resolution of conflicts, the analysed agreements map out different routes. The spectrum of dispute settlement mechanisms encountered in the present RTAs is very broad. For the purpose of this study, however, it is useful to distinguish the following main categories of dispute settlement procedures:

12. Specifically: Andean Community, Australia-Singapore, Australia-Thailand, Autralia-US, Canada-Costa Rica, CARICOM, Chile-US, Japan-Mexico, Singapore-US, and Transpacific SEP (not yet into force).

- Provisions that exclude competition provisions from the general dispute settlement mechanism in the RTA.

- Provisions that establish a specific consultation mechanism with regard to all matters arising under the agreement including competition provisions

- Provisions that establish arbitration procedures with regard to all matters arising under the agreement including competition provisions.

29. Dispute settlement provisions, when applicable to competition chapters, generally are not specific to competition provisions, but rather apply to the entire agreement.

Exclusion of competition-related matters from the agreement-specific dispute settlement mechanism

30. Most of the analysed agreements establish some kind of mechanism for resolving disputes. Some of the agreements provide for a fairly elaborate dispute settlement system; other agreements merely require consultations before applying trade measures. While dispute settlement provisions usually apply for all matters arising under the respective agreement, competition-related provisions are excluded from dispute resolution in some cases. For example, Chapter III of the EC–Chile Free Trade Agreement, which provides for a dispute settlement system including consultation and arbitration mechanisms, does not apply in competition-related matters. The exclusion of competition provisions from dispute settlement can also be extended to investor-state arbitration for agreements with an investment chapter.

31. Less frequently, parties exclude the general dispute resolution system for disputes involving competition provisions while at the same time adopting specific dispute resolution provisions for the competition area. For example, matters arising from the application of competition provisions under the Canada-Costa Rica Free Trade Agreement are not subject to the general dispute settlement system of this Agreement. Nonetheless, there is a special consultation mechanism for competition-related disputes.

Consultations

32. Some agreements set up a specific consultation mechanism for disputes arising from the application of the agreement. The consultation may apply for any issue arising under the treaty. In some agreements consultations are mandatory before applying trade measures.

33. The consultation provisions vary widely. Some agreements, especially the EC-style agreements, merely state that parties are obliged to consult with each other before applying safeguards. Other agreements specify the requirements and procedures for consultation. In the Chile – Central America agreement, the parties must provide not only for consultations but also for good offices, conciliation or mediation.

34. It is important to distinguish consultations in the context of dispute resolution from consultations in the ambit of co-operation. Many agreements establish consultation requirements and procedures for national competition authorities with regard to investigation and enforcement of competition law. In that context, national competition authorities of the parties to an agreement are to consult with each other specifically on measures they are planning to take in a specific case. On the other hand, consultations in the ambit of dispute settlement are a means of resolving disputes between the parties to the agreement about matters arising from the application of the agreement.

35. Sometimes this distinction is not very clear in the language of the agreements. As a general rule, however, the regulations providing for consultations in the sense of dispute settlement tend to use broader

language than the clauses dealing with cooperative consultations. Furthermore, consultation clauses in the area of dispute settlement address the parties to the agreement in general, while consultation clauses in the cooperative sense tend to address specifically the competition authorities.

Arbitration

36. Some agreements go beyond establishing consultation requirements by allowing for arbitration. While arbitration is a less formal means of dispute settlement than adjudication, it permits the parties to obtain an enforceable award, a result that cannot be guaranteed through consultations. Some regional economic cooperation organisations go even further and provide for judicial adjudication through an international or supranational court. For these agreements a checkmark appears in the arbitration column of the Table with a further explanatory footnote.[13]

37. In general, arbitration occurs in EC-style and EFTA-style agreements rather than in North American-style agreements. Arbitration clauses in the analysed agreements are rather similar. Parties usually agree on the method of appointing arbitrators; however they tend not to make determinations regarding the rules of procedure by which the arbitration shall be governed. An exception in this respect is the agreement between Central America and Chile, which provides more detailed arbitration provisions.

Flexibility and progressivity

38. This section of the table provides an assessment of the provisions that allow special and differential treatment (SDT) for developing countries with respect to competition policy. As regards terminology, provisions allowing SDT are generally referred to as provisions of flexibility and progressivity in the ambit of competition policy.[14]

39. Out of the six different categories of provisions allowing SDT, provisions addressing flexibility of commitments and provisions regarding technical assistance prove to be most relevant. Thus, the assessment of flexibility and progressivity in competition provisions in the RTAs analysed focuses on these categories.

Flexibility or non-reciprocity

40. Very few agreements contain provisions allowing flexibility of commitments in the sense of SDT. In assessing the agreements it should be kept in mind, that an imbalance in commitments is not necessarily an indication of SDT. Some agreements allow all parties to the agreement to exclude certain sectors (e.g. agriculture and fisheries) from the application of competition disciplines. Such exceptions do not therefore necessarily and automatically reflect flexibility and progressivity in favour of developing

13 . As noted above, a checkmark in this column indicates that the competition chapter is not excluded from this mechanism which applies to the agreement in general and not exclusively to the competition provisions.

14 . The structure of the assessment of these provisions focuses on three of the sub categories taken from the six-fold typology of special and differential treatment provisions originally derived by the WTO Secretariat:

(i) provisions aimed at increasing trade opportunities of developing country members,

(ii) provisions under which WTO Members should safeguard the interests of developing country members

(iii) flexibility of commitments, of action, and use of policy instruments,

(iv) transitional time instruments

(v) technical assistance

(vi) provisions relating to least developed countries

countries. Only agreements in which the developed country makes commitments on a non-reciprocal basis are taken into account here. An example would be the Euro-Med agreement between the EC and Morocco, which provides that "any state aid granted by Morocco shall be assessed taking into account the fact that Morocco shall be regarded as an area identical to those areas of the Community described in Article 92(3)(a) of the Treaty establishing the European Community."

Technical assistance

41. Several agreements contain bilateral or reciprocal technical assistance clauses as opposed to special assistance from a developed party to a developing party. Additionally, some agreements have a generic technical assistance clause but it does not specifically address competition-related technical assistance. Competition-specific provisions on technical assistance can be found in the Canada-Costa Rica, Chile-EC, Chile-Korea, EC-South Africa, EC-Mexico, Japan-Mexico, and Japan-Singapore agreements.

Transition periods

42. Many agreements have transition periods (e.g. to implement rules foreseen over a given period of time) which apply to all parties and cannot be considered SDT since the objective is not to grant special treatment to the developing country party.

IV. General observations

43. The analysis of competition provisions as set out in the Table allows drawing some preliminary and general observations. A first general observation is that RTAs take different approaches as to substantive competition rules and setting up of mechanisms on competition-related matters. Thus it is notable that agreements which contain more provisions addressing anticompetitive behaviour (columns 8 – 12 in the Table) tend to have fewer provisions concerning coordination and cooperation between national competition entities (columns 2-7 in Part I of Table 1) and vice versa.

44. Most of the agreements containing provisions addressing anticompetitive behaviour have been concluded by the EC or among non-EC European countries in (South)-Eastern Europe. On the other hand, agreements that focus more on coordination and cooperation provisions have been concluded in the Americas (or involving a North- or South American party) and with some Asian countries. Therefore it is appropriate to distinguish two "families" of agreements, the EC-style agreements and the North American-style agreements. This distinction does not operate with clearly delineated categories but with rather flexible "families". Furthermore it should be noted, that the denominations EC-style and North American-style do not imply that the EC or a North American country are a member of every agreement in that category. It rather describes the agreement as oriented either towards cooperation or towards rather substantive rules. While this distinction is true for many of the analysed agreements it is not the case for all of the agreements in this study. There is overlap between these two "families", especially in cross-regional agreements such as Chile-Korea, EC-Chile, EC-Mexico, EFTA-Mexico, or Korea-Singapore. Nonetheless, this categorization can provide a useful structure for further analysis.

The EC-style agreements

45. Most of the EC-style agreements contain a provision which broadly declares all anticompetitive agreements between undertakings incompatible with the respective Free Trade Agreement. Most of the EC-style agreements also prohibit the abuse of a dominant position. In all these agreements, whether they are between the EC and a non-EC member or between two non-EC members, the language is very similar to Articles 81, 82, and 87 of the EC-Treaty. The Free Trade Agreement (Euro-Med Association Agreement) between the EC and Jordan, for example, provides as follows:

Article 53

1. The following are incompatible with the proper functioning of the Agreement, insofar as they may affect trade between the Community and Jordan:

a) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

b) abuse by one or more undertakings of a dominant position in the territories of the Community or Tunisia as a whole or in a substantial part thereof:

c) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

This agreement is a good example of the EC-family type of agreement. While Article 53 (1) contains strong language regarding anticompetitive agreements and abuse of a dominant position, there is only one very limited provision in this agreement (Article 53 (7)) regarding coordination and cooperation with regard to the exchange of information.

46. Other agreements signed by the EC, on the other hand, go into more details on cooperation provisions. The agreement with Algeria, for example, includes an Annex where notifications, exchange of informations, positive and negative comity and technical assistance are specifically regulated. The agreement with Chile also contains detailed rules on cooperation, but its general structure is quite different from other EC agreements.

47. Most of the "EC-Family" agreements contain a provision concerning the recourse to trade measures, especially safeguards in many cases. In this context the EC-style agreements usually prescribe consultations. Some of these agreements go even further, subjecting the competition provisions to the general arbitration mechanism of the respective agreements. This is especially the case with the Euro-Mediterranean Association Agreements (e.g. EC-Jordan, EC-Lebanon).

48. The EC-style approach has also been adopted in a number of agreements among countries in South Eastern Europe in the context of the Stability Pact. These agreements generally declare anticompetitive agreements and abuse of dominance incompatible with the functioning of the agreement, prohibit the granting of anti-competitive state assistance, provide for notification of state aids, and require state monopolies to operate in a non-discriminatory way. The adoption of more detailed rules is generally entrusted to a subsequent decision by the Joint Committee, and the agricultural sector is often subtracted to the application of the rules on undertakings and state aid.

49. Most of the Free Trade Agreements concluded by EFTA, which were analyzed, tend to show similarities to EC-style agreements, as far as competition provisions are concerned. They tend to cover the main elements of anticompetitive agreements and abuse of dominance while containing fewer provisions regarding cooperation and coordination between national entities. The language in EFTA agreements, however, is slightly different from the provisions quoted above.

50. This study includes five Free Trade Agreements in which EFTA is a party. Interestingly, in the agreements concluded between EFTA and European States and with Jordan there are no provisions on coordination and cooperation; on the other hand they contain provisions foreseeing regulation of the main elements of anticompetitive agreements and abuse of dominance. In contrast, the agreement between EFTA and Singapore contains coordination and cooperation provisions, yet it does not cover the main elements of anticompetitive agreements. The EFTA-Mexico agreement incorporates elements from both

families, covering the main elements of anticompetitive agreements on the one hand and providing for coordination and cooperation on the other hand. In doing so, however, this agreement does not reflect the lowest common denominator between the two families. On the contrary, the agreement contains some of the most advanced provisions of both groups. In the field of cooperation and coordination it goes as far as stipulating positive comity while obligates the parties to "give particular attention to anticompetitive mergers" in the area of core competition principles.

General features of North American agreements

51. For this part of the report three agreements where Canada is one of the parties (Canada-Chile, Canada-Costa Rica and NAFTA) and four agreements where the U.S. is one of the parties (Australia-U.S., Chile-U.S., Singapore-U.S. and NAFTA) were examined. Although these agreements are by no means identical, there are several common elements:

- They all contain provisions that require the parties to adopt "measures" to deal with anti-competitive behaviour. However, as discussed above, "measures" is a broad term that has different content in each agreement. In some agreements measures can imply the enactment, adoption, application and/or enforcement of competition laws and/or creation of competition authorities, while in other agreements these measures can be much less specific and demanding. To a large extent, this difference can be explained because not all parties have an equally advanced or developed competition regime; this is especially true of Singapore which, at the time of the agreement, did not even have a general competition law.

- They all contain co-operation provisions, including general co-operation, consultations and exchange of information. It should be noted that all but one (Singapore-U.S.) also have notification provisions. As mentioned above, this may be due to the fact that Singapore had not yet developed a competition law or regime.

- Likewise, all seven agreements have specific provisions concerning the treatment of certain conduct of state enterprises and/or state monopolies.

- Similarly, all these agreements have non-discrimination provisions, but in two cases non-discrimination is limited to the context of state enterprises and/or state monopolies.

- All agreements contain specific provisions which exclude the application of the general dispute settlement procedures contained in the agreements. However, as explained below, in the U.S. agreements this exclusion is partial.

52. Common elements to agreements where Canada is a Party include:

- A noteworthy element is that the Canada-Chile agreement contains provisions which almost mirror the type of provisions contained in NAFTA – but with an important difference. In the Canada-Chile agreement, the parties agreed to eliminate the use of anti-dumping measures between them. Although it is not directly a competition-related provision in the context of the agreement, the linkage between competition policy and anti-dumping measures was an issue addressed during the negotiations.

- The Canada-Costa Rica agreement also contains provisions which are similar to those in NAFTA. However, it seems that Canada and Costa Rica were both willing to undertake additional commitments and obligations, which is why this agreement goes deeper and further than the others. For example, concerning anticompetitive conduct or behaviour, Canada and Costa Rica

agreed to include specific types of anticompetitive agreements, practices and anti-competitive mergers in their definitions – whereas in other agreements only monopolisation and abuse of dominance are addressed. Additionally, the Canada-Costa Rica agreement also contains competition provisions concerning non-discrimination, transparency and due process. In the other agreements, the scope of the non-discrimination provision was limited to state monopolies / state enterprises, whereas in Canada-Costa Rica it is a clause of general application. Transparency is included but only concerning state aid/subsidies. Due process is a provision that is not found in the other Canadian agreements, as indeed it is rarely found in other RTAs, save the few exceptions mentioned in Section 3 of this document which include the three U.S. bilateral agreements. Finally, another provision contained in Canada-Costa Rica but not found in others is a competition-specific technical assistance clause.

53. Common elements to agreements where the U.S. is a Party:

- Similar to the Canadian agreements, most of the U.S. bilateral agreements tend to assimilate the type of provisions contained in NAFTA. However, the parties also undertook commitments and obligations which go beyond NAFTA.

- One specific difference in the U.S.-Singapore agreement not contained in other agreements is the absence of a notification clause in the context of competition-related cooperation.

- The U.S. agreements with specific competition chapters include provisions concerning non-discrimination, transparency and due process and unlike some of these provisions in the Canadian agreements, in the U.S. agreements these are not limited in their scope of application (e.g. concerning state enterprises).

54. Finally, the dispute settlement mechanism is only partially excluded in U.S. bilateral agreements since provisions concerning monopolies, state enterprises, and information requests are included.

Other agreements

55. Countries in Latin America have been particularly active in entering in bilateral and plurilateral free trade agreements. While agreements differ greatly among themselves, some general observations can be made.

56. Some earlier agreement (e.g. Colombia-Mexico-Venezuela and Mexico-Northern Triangle) do not include a specific chapter on competition, but address competition-related issues in the context of specific sectors (telecommunication services and, to a lesser extent, IPRs). The same approach can be found also in other agreements entered into force in the mid-1990s, and therefore not included in the table.

57. Other agreements (of which Central America-Chile and Central America-Panama fall in the reference period 2001-2005) do have a specific section on competition policy, but the scope of their provisions is limited. For example, in the Central America-Chile agreement, the section on competition contains some general cooperation provision and addresses only the issue of state monopolies, while some competition-related commitments are also addressed in the chapter on telecommunication services.

58. Finally, some more recent agreements include a fully-fledged chapter on competition policy (Chile-Korea, Chile-Mexico, Israel-Mexico, Japan-Mexico, Mexico-Uruguay). The observations made with regard to the North-American model (focus on cooperation, specific provisions on abuse of dominance and state monopolies, non-discrimination provisions and exclusion of competition from dispute settlement) are generally valid for these agreements as well, although each agreement presents particular

features. For example, the Japan-Mexico agreement does not address any specified anticompetitive behaviour, but provides for transparency, due process, and in an implementing agreement lays down detailed forms of cooperation, including negative and positive comity.

Regional economic integration organisations between developing countries

59. Some regional economic integration organisations between developing countries including competition provisions were briefly looked at and included in the table for reference purposes. These organisations are: the Andean Community, the CariCom, the MERCOSUR, the CEMAC, the COMESA, and the WAEMU. The institutional and legal complexity of these organisations goes beyond the general categorisation adopted here, and requires a more detailed analysis.

60. To this end, further research is included in Part II of the report on the Andean Community, MERCOSUR and COMESA (see Part II).

Table 1. Taxonomy of competition-related provisions in 86 regional trading agreements (Part I)

No.	Agreement	Adopting, maintaining and applying competition measures	Coordination and cooperation provisions						Provisions addressing anti-competitive behaviour:				
			General cooperation provision	Notification	Exchange of information	Consultations re competition policy / enforcement	Negative comity	Positive comity	Anticompetitive agreements	Abuse of Dominance / Monopolisation	State Aid / Subsidies	Anti-Competitive Mergers	State Enterprises / State Monopolies
1	Albania - Bosnia and Herzegovina				✓[1]				✓	✓	✓		✓
2	Albania - Bulgaria				✓				✓	✓	✓		✓
3	Albania - Croatia				✓[1]				✓	✓	✓		✓
4	Albania - Former Yugoslav Republic of Macedonia				✓				✓	✓	✓		✓
5	Albania - Moldova				✓[1]				✓	✓	✓		✓
6	Albania - Romania				✓[1]				✓	✓	✓		✓
7	Albania - Serbia and Montenegro				✓[1]				✓	✓	✓		✓
8	Albania - UNMIK (Kosovo)				✓[1]				✓	✓	✓		✓
9	Algeria - EC	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓
10	Andean Community	✓							✓	✓	✓		
11	ANZCERTA	✓		✓[1]		✓[1]			✓[5]		✓		
12	Armenia - Georgia	✓							✓	✓			
13	Armenia - Kazakhstan	✓							✓	✓			
14	Armenia - Kyrgyz Republic								✓	✓	✓		
15	Armenia - Moldova	✓							✓	✓			
16	Armenia - Russian Federation	✓							✓	✓	✓		
17	Armenia - Turkmenistan	✓							✓	✓			
18	Armenia - Ukraine	✓							✓	✓			
19	Australia - Singapore	✓	✓		✓	✓						✓	✓
20	Australia - Thailand	✓		✓	✓	✓			✓	✓		✓	

Table 1. Taxonomy of competition-related provisions in 86 regional trading agreements (Part I continued)

No.	Agreement	Adopting, maintaining and applying competition measures	Coordination and cooperation provisions						Provisions addressing anti-competitive behaviour:				
			General cooperation provision	Notification	Exchange of information	Consultations re competition policy / enforcement	Negative comity	Positive comity	Anticompetitive agreements	Abuse of Dominance / Monopolisation	State Aid / Subsidies	Anti-Competitive Mergers	State Enterprises / State Monopolies
21	Australia - U.S.	✓	✓	✓	✓	✓				✓[4]			✓
22	Azerbaijan - Georgia	✓							✓	✓			
23	Bosnia and Herzegovina - Bulgaria				✓[1]				✓	✓	✓		✓
24	Bosnia and Herzegovina - Croatia				✓[1]				✓	✓	✓		✓
25	Bosnia and Herzegovina - Former Yugoslav Republic of Macedonia				✓[1]				✓	✓	✓		✓
26	Bosnia and Herzegovina - Moldova				✓[1]				✓	✓	✓		✓
27	Bosnia and Herzegovina - Romania				✓[1]				✓	✓	✓		✓
28	Bosnia and Herzegovina - Serbia and Montenegro				✓[1]				✓	✓	✓		✓
29	Bosnia and Herzegovina - Turkey				✓[1]				✓	✓	✓		✓
30	Bulgaria - Israel				✓[1]				✓	✓	✓		✓
31	Bulgaria - Moldova				✓[1]				✓	✓	✓		✓
32	Bulgaria - Serbia and Montenegro				✓[1]				✓	✓	✓		✓
33	Canada - Chile	✓	✓	✓	✓	✓				✓			✓
34	Canada - Costa Rica	✓	✓	✓	✓	✓			✓	✓		✓	✓
35	CariCom	✓	✓	✓	✓	✓		✓	✓	✓	✓		✓
36	CEFTA	✓[1]			✓[1]				✓	✓	✓		✓
37	CEMAC (UEAC)	✓							✓	✓	✓		
38	Central America - Chile	✓[2]	✓							✓[2]			✓
39	Central America - Panama	✓[2]	✓							✓[2]			✓
40	Chile - EC	✓	✓	✓	✓	✓	✓		✓	✓[2]			✓

Table 1. Taxonomy of competition-related provisions in 86 regional trading agreements (Part I continued)

No.	Agreement	Adopting, maintaining and applying competition measures	Coordination and cooperation provisions						Provisions addressing anti-competitive behaviour:				
			General cooperation provision	Notification	Exchange of information	Consultations re competition policy / enforcement	Negative comity	Positive comity	Anticompetitive agreements	Abuse of Dominance / Monopolisation	State Aid / Subsidies	Anti-Competitive Mergers	State Enterprises / State Monopolies
41	Chile - Korea	✓	✓	✓	✓	✓	✓		✓	✓			✓
42	Chile - Mexico	✓	✓	✓	✓	✓				✓			✓
43	Chile - U.S.	✓	✓	✓	✓	✓				✓[4]			✓
44	Chinese Taipei - Panama	✓	✓							✓[2]			✓
45	CIS								✓	✓	✓		
46	Colombia - Mexico - Venezuela									✓[2]			✓
47	COMESA	✓							✓		✓		
48	Croatia - EFTA								✓	✓	✓		✓
49	Croatia - Former Yugoslav Republic of Macedonia				✓[1]				✓	✓	✓		✓
50	Croatia - Moldova				✓[1]				✓	✓	✓		✓
51	Croatia - Serbia and Montenegro				✓[1]				✓	✓	✓		✓
52	Croatia - Turkey				✓				✓	✓	✓		
53	EC - South Africa	✓			✓		✓	✓	✓	✓	✓		
54	EC - Egypt	✓			✓[8]				✓	✓	✓		
55	EC - Jordan	✓			✓[8]				✓	✓	✓		✓
56	EC - Lebanon*	✓			✓[8]				✓	✓			
57	EC - Mexico	✓	✓	✓	✓[8]	✓	✓		✓	✓		✓	
58	EC - Morocco	✓			✓				✓	✓	✓		✓
59	EFTA								✓	✓			✓
60	EFTA - FYROM								✓	✓	✓		✓

Table 1. Taxonomy of competition-related provisions in 86 regional trading agreements (Part I continued)

No.	Agreement	Adopting, maintaining and applying competition measures	Coordination and cooperation provisions						Provisions addressing anti-competitive behaviour:				
			General cooperation provision	Notification	Exchange of information	Consultations re competition policy / enforcement	Negative comity	Positive comity	Anticompetitive agreements	Abuse of Dominance / Monopolisation	State Aid / Subsidies	Anti-Competitive Mergers	State Enterprises / State Monopolies
61	EFTA - Jordan								✓	✓	✓		✓
62	EFTA - Mexico	✓	✓	✓	✓	✓		✓	✓	✓		✓	
63	EFTA - Singapore				✓	✓			✓	✓			
64	European Economic Area	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
65	Former Yugoslav Republic of Macedonia - Moldova				✓[1]				✓	✓	✓		✓
66	Former Yugoslav Republic of Macedonia - Romania				✓[1]				✓	✓	✓		✓
67	Former Yugoslav Republic of Macedonia - Turkey				✓				✓	✓	✓		✓
68	Georgia - Kazakhstan	✓							✓	✓			
69	Georgia - Russian Federation								✓	✓	✓		
70	Georgia - Turkmenistan	✓							✓	✓			
71	Georgia - Ukraine	✓							✓	✓			
72	Israel - Mexico	✓	✓	✓	✓	✓							✓
73	Israel - Romania				✓[1]				✓	✓	✓		✓
74	Japan - Mexico	✓	✓	✓	✓	✓	✓	✓					
75	Japan - Singapore	✓	✓	✓[3, 5]	✓[3, 5]					✓[5]			
76	Korea - Singapore*	✓	✓			✓			✓	✓		✓	✓
77	MERCOSUR	✓	✓						✓	✓			
78	Mexico - Northern Triangle	✓[2]								✓[2]			
79	Mexico - Uruguay	✓	✓	✓	✓	✓				✓[2]			✓

Table 1. Taxonomy of competition-related provisions in 86 regional trading agreements (Part I continued)

No.	Agreement	Adopting, maintaining and applying competition measures	Coordination and cooperation provisions						Provisions addressing anti-competitive behaviour:				
			General cooperation provision	Notification	Exchange of information	Consultations re competition policy / enforcement	Negative comity	Positive comity	Anticompetitive agreements	Abuse of Dominance / Monopolisation	State Aid / Subsidies	Anti-Competitive Mergers	State Enterprises / State Monopolies
80	Moldova - Serbia and Montenegro				✓[1]				✓	✓	✓		✓
81	NAFTA	✓	✓	✓	✓	✓				✓[4]			✓
82	New Zealand - Singapore	✓	✓		✓	✓							
83	Romania - Serbia and Montenegro				✓[1]				✓	✓	✓		✓
84	Singapore - U.S.	✓	✓		✓	✓				✓[4]			✓
85	Trans-Pacific Strategic Economic Partnership*	✓	✓	✓	✓	✓			✓	✓			✓
86	WAEMU/UEMOA	✓							✓	✓	✓		

✓[1] Only with regard to state aid provisions

✓[2] Only with regard to telecommunications provisions

✓[3] Only with regard to telecommunications, electricity and gas sector (Implementing Agreement, Art. 22)

✓[4] Only with regard to state monopolies and/or state enterprises

✓[5] Only with regard to the services chapter

✓[6] These treaties go as far as establishing an independent court of justice with adjudicative powers

✓[7] In this treaty the exclusion of antidumping is not explicitly linked to competition policy

✓[8] Further decision by Association Council required

* Agreement not yet into force

Table 1. Taxonomy of competition-related provisions in 86 regional trading agreements (Part II)

No.	Agreement	Competition-specific provision for non-discrimination	Competition-specific provision for due process	Competition specific provision for transparency	Exclusion or elimination of antidumping	Recourse to trade measures	Dispute Settlement			Competition-specific provisions re Flexibility and Progressivity			
							Exclusion of RTA-specific DS	Consultation Mechanism	Arbitration	Flexibility of commitments (Non-reciprocity)	Technical assistance / Capacity Building	Exemptions and Exceptions	Transition Periods
1	Albania - Bosnia and Herzegovina	✓[4]		✓[1]		✓		✓					
2	Albania - Bulgaria	✓[4]		✓[1]		✓		✓					
3	Albania - Croatia	✓[4]		✓[1]		✓		✓					
4	Albania - Former Yugoslav Republic of Macedonia	✓[4]		✓[1]		✓		✓					
5	Albania - Moldova	✓[4]		✓[1]		✓		✓					
6	Albania - Romania	✓[4]		✓[1]		✓		✓					
7	Albania - Serbia and Montenegro	✓[4]		✓[1]		✓		✓					
8	Albania - UNMIK (Kosovo)	✓[4]		✓[1]		✓		✓					
9	Algeria - EC	✓[4]				✓		✓	✓		✓		
10	Andean Community	✓	✓	✓		✓			✓[6]				
11	ANZCERTA				✓			✓					
12	Armenia - Georgia							✓					
13	Armenia - Kazakhstan							✓					
14	Armenia - Kyrgyz Republic							✓					
15	Armenia - Moldova							✓					
16	Armenia - Russian Federation							✓					
17	Armenia - Turkmenistan							✓					
18	Armenia - Ukraine							✓					
19	Australia - Singapore	✓	✓	✓			✓						✓
20	Australia - Thailand	✓	✓	✓			✓						

Table 1. Taxonomy of competition-related provisions in 86 regional trading agreements (Part II continued)

No.	Agreement	Competition-specific provision for non-discrimination	Competition-specific provision for due process	Competition specific provision for transparency	Exclusion or elimination of antidumping	Recourse to trade measures	Dispute Settlement			Competition-specific provisions re Flexibility and Progressivity			
							Exclusion of RTA-specific DS	Consultation Mechanism	Arbitration	Flexibility of commitments (Non-reciprocity)	Technical assistance / Capacity Building	Exemptions and Exceptions	Transition Periods
21	Australia - U.S.	✓	✓	✓			partially						
22	Azerbaijan - Georgia							✓					
23	Bosnia and Herzegovina - Bulgaria	✓[4]		✓[1]		✓		✓					
24	Bosnia and Herzegovina - Croatia	✓[4]		✓[1]		✓		✓					
25	Bosnia and Herzegovina - Former Yugoslav Republic of Macedonia	✓[4]		✓[1]		✓		✓					
26	Bosnia and Herzegovina - Moldova	✓[4]		✓[1]		✓		✓					
27	Bosnia and Herzegovina - Romania	✓[4]		✓[1]		✓		✓					
28	Bosnia and Herzegovina - Serbia and Montenegro	✓[4]		✓[1]		✓		✓					
29	Bosnia and Herzegovina - Turkey	✓[4]		✓[1]		✓		✓					
30	Bulgaria - Israel	✓		✓[1]		✓		✓	✓				
31	Bulgaria - Moldova	✓[4]		✓[1]		✓		✓					
32	Bulgaria - Serbia and Montenegro	✓[4]		✓[1]		✓		✓					
33	Canada - Chile	✓[4]			✓[7]		✓						
34	Canada - Costa Rica	✓	✓	✓[1]			✓	✓			✓		
35	CariCom	✓	✓	✓				✓	✓[6]				
36	CEFTA	✓[4]		✓[1]		✓		✓					
37	CEMAC (UEAC)							✓	✓[6]				
38	Central America - Chile	✓[4]		✓[2]				✓	✓				
39	Central America - Panama	✓[4]		✓[2]				✓	✓				
40	Chile - EC			✓			✓				✓		

Table 1. Taxonomy of competition-related provisions in 86 regional trading agreements (Part II continued)

No.	Agreement	Competition-specific provision for non-discrimination	Competition-specific provision for due process	Competition specific provision for transparency	Exclusion or elimination of antidumping	Recourse to trade measures	Dispute Settlement			Competition-specific provisions re Flexibility and Progressivity			
							Exclusion of RTA-specific DS	Consultation Mechanism	Arbitration	Flexibility of commitments (Non-reciprocity)	Technical assistance / Capacity Building	Exemptions and Exceptions	Transition Periods
41	Chile - Korea			✓			✓				✓		
42	Chile - Mexico	✓[4]		✓[2]			✓						
43	Chile - U.S.	✓	✓	✓			partially	✓					
44	Chinese Taipei - Panama	✓[4]		✓[2]				✓	✓				
45	CIS							✓	✓				
46	Colombia - Mexico - Venezuela	✓[4]						✓	✓				
47	COMESA					✓[1]		✓	✓[6]				
48	Croatia - EFTA	✓[4]		✓[1]		✓		✓	✓				
49	Croatia - Former Yugoslav Republic of Macedonia	✓[4]		✓[1]		✓		✓					
50	Croatia - Moldova	✓[4]		✓[1]		✓		✓					
51	Croatia - Serbia and Montenegro	✓[4]		✓[1]		✓		✓					
52	Croatia - Turkey	✓[4]		✓[1]		✓		✓					
53	EC - South Africa			✓[1]		✓		✓	✓		✓		
54	EC - Egypt	✓[4]		✓[1]		✓		✓	✓				
55	EC - Jordan	✓[4]		✓[1]		✓		✓	✓				✓
56	EC - Lebanon*	✓[4]				✓		✓	✓				
57	EC - Mexico							✓	✓		✓		
58	EC - Morocco	✓[4]		✓[1]		✓		✓	✓	✓		✓	✓
59	EFTA	✓[4]			✓[7]	✓		✓	✓				
60	EFTA - FYROM	✓[4]		✓[1]		✓		✓	✓				

Table 1. Taxonomy of competition-related provisions in 86 regional trading agreements (Part II continued)

No.	Agreement	Competition-specific provision for non-discrimination	Competition-specific provision for due process	Competition specific provision for transparency	Exclusion or elimination of antidumping	Recourse to trade measures	Dispute Settlement			Competition-specific provisions re Flexibility and Progressivity			
							Exclusion of RTA-specific DS	Consultation Mechanism	Arbitration	Flexibility of commitments (Non-reciprocity)	Technical assistance / Capacity Building	Exemptions and Exceptions	Transition Periods
61	EFTA - Jordan	✓[4]		✓[1]		✓		✓	✓				✓
62	EFTA - Mexico						✓	✓					
63	EFTA - Singapore				✓		✓						
64	European Economic Area	✓[4]						✓					
65	Former Yugoslav Republic of Macedonia - Moldova	✓[4]		✓[1]		✓		✓					
66	Former Yugoslav Republic of Macedonia - Romania	✓[4]		✓[1]		✓		✓					
67	Former Yugoslav Republic of Macedonia - Turkey	✓[4]		✓[1]		✓		✓					
68	Georgia - Kazakhstan							✓					
69	Georgia - Russian Federation							✓					
70	Georgia - Turkmenistan							✓					
71	Georgia - Ukraine							✓					
72	Israel - Mexico	✓					✓						
73	Israel - Romania	✓[4]		✓[1]		✓		✓					
74	Japan - Mexico	✓	✓	✓			✓				✓		
75	Japan - Singapore						✓				✓		
76	Korea - Singapore*			✓			✓						
77	MERCOSUR							✓	✓				
78	Mexico - Northern Triangle			✓[2]				✓	✓				
79	Mexico - Uruguay	✓[4]		✓[2]			✓						

Table 1. Taxonomy of competition-related provisions in 86 regional trading agreements (Part II continued)

No.	Agreement	Competition-specific provision for non-discrimination	Competition-specific provision for due process	Competition specific provision for transparency	Exclusion or elimination of antidumping	Recourse to trade measures	Dispute Settlement			Competition-specific provisions re Flexibility and Progressivity			
							Exclusion of RTA-specific DS	Consultation Mechanism	Arbitration	Flexibility of commitments (Non-reciprocity)	Technical assistance / Capacity Building	Exemptions and Exceptions	Transition Periods
80	Moldova - Serbia and Montenegro	✓4		✓1		✓		✓					
81	NAFTA	✓4					✓						
82	New Zealand - Singapore	✓						✓	✓				
83	Romania - Serbia and Montenegro	✓4		✓1		✓		✓					
84	Singapore - U.S.	✓	✓	✓			partially					✓	
85	Trans-Pacific Strategic Economic Partnership*	✓	✓				✓						
86	WAEMU/UEMOA								✓6				

✓1 Only with regard to state aid provisions

✓2 Only with regard to telecommunications provisions

✓3 Only with regard to telecommunications, electricity and gas sector (Implementing Agreement, Art. 22)

✓4 Only with regard to state monopolies and/or state enterprises

✓5 Only with regard to the services chapter

✓6 These treaties go as far as establishing an independent court of justice with adjudicative powers

✓7 In this treaty the exclusion of antidumping is not explicitly linked to competition policy

✓8 Further decision by Association Council required

* Agreement not yet into force