

REGIONAL TRADE AGREEMENTS AND COMPETITION POLICY. CASE STUDY: EU, ASEAN AND NAFTA

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Abstract: *The large number of regional trade agreements notified to the World Trade Organization (WTO) significantly influenced the flow of world trade. By April 2014 there had been notified 583 regional trade agreements to the WTO, of which only 379 are in force. The objective of this paper is to highlight the importance of regional trade agreements in world trade, especially the importance of establishing a regional competition policy in these agreements. The research methodology used is the analysis of legislation governing preferential trade agreements at the level of WTO, the collection and interpretation of statistical data provided by the WTO Secretariat, the case study, namely the study of literature. The paper is structured in three parts. The first part of the paper examines the basic laws based on which regional trade agreements are notified to the WTO and the evolution of these agreements in the period 1958-2013. The second part of the paper is devoted to the analysis of competition policy in regional trade agreements. In this part of the paper, to highlight the patterns of competition policy adopted under these agreements was analyzed by three case studies of competition policy in the EU, ASEAN and NAFTA. The three case studies have revealed that the three preferential trade agreements present regional competition policies with varying degrees of integration. The most complex form of competition policy is found in the European Union, because we are talking about a centralized model of competition policy. ASEAN presents a partially decentralized model, while NAFTA scrolls with a decentralized model of competition policy. The last part of the paper presents the characteristics of the four models of competition policy identified in the preferential trade agreements in force. It should be emphasized that if the initial preferential trade agreements have not put a great emphasis on the rules of competition policy, practice has shown the importance of competition policy at the regional level and there is now considerable progress in this regard.*

Keywords: regional trade agreements; competition policy; case study

JEL classification: F15; K20

1. Regional trade agreements

World Trade Organization (WTO) defines regional trade agreements as "reciprocal trade agreements between two or more partners, which include free trade areas and customs unions." (http://www.wto.org/english/tratop_e/region_e/rtta_pta_e.htm)

Regional trade agreements take the form: free trade areas, customs unions, common markets, economic integration agreements and partial scope agreements.

The free trade area can be defined as an agreement between two or more states through which tariff and non-tariff barriers between Member States are eliminated and against third parties, each state sets its own import tariff policy.

The customs union can be defined as the area in which there are no tariff and non-tariff barriers between members and against third parties the state members shall apply a common customs tariff. We can speak of complete or incomplete customs union according to the sectors covered by the reduction of customs duties between members. The Organisation for Economic Co-operation and Development defines the common market as a customs union, which also provides free movement of factors of production, namely the free movement of people and capital (<http://stats.oecd.org/glossary/detail.asp?ID=3129>)

The economic integration agreements take the form of economic and / or monetary unions. Economic unions stipulate the Member States' harmonization of the national economic legislation and the monetary union requires in addition to the economic union the adoption of a single currency. An example of this is the euro.

Partial scope agreements are agreements that cover only some of the products.

The five forms of regional integration referred to above are ideal types, but in practice we find combinations of these types.

We must look at regional trade agreements through the benefits created worldwide. Currently over half of world trade is covered by regional trade agreements. The members of these agreements should not be necessarily in the same region and the Member States may have different degrees of development. In the literature, the most common idea is that regionalism complements multilateralism.

1.1. Legislative issues

Analyzing only the WTO principles, we would be tempted to believe that regional trade agreements are contrary to these principles, mainly to the Most Favoured Nation Clause. Yet, regional trade agreements are allowed under certain conditions clearly specified by WTO rules. Regional trade agreements are notified under the WTO: Article XXIV of the General Agreement on Tariffs and Trade (GATT), Article V of the General Agreement on Trade in Services (GATS) and Paragraph 2 (c) called Enabling Clause of the Decision issued on November 28, 1979, entitled *Differential and more favourable treatment reciprocity and fuller participation of developing countries*.

Article XXIV of GATT was completed in 1994 and covers trade with goods. According to this article regional trade agreements are permitted in the WTO only if two conditions are met simultaneously: between the Member States Agreement tariff and non-tariff barriers for all major sectors will be reduced or eliminated and concomitantly with the elimination of trade barriers between the Member States the increase of tariff and non-tariff barriers to third parties is not allowed.

Article V of the General Agreement on Trade in Services (GATS) is called *Economic Integration* and it regulates regional trade agreements governing services for both developed countries and the developing ones. Of course, these agreements are permitted only if we speak of substantial sector coverage and discriminatory measures are removed. (General Agreement on Trade in Services, 1994)

Partial scope agreements are governed by the Enabling Clause of Decision *Differential and more treatment reciprocity and fuller participation of developing countries* issued in 1979, specifically in Paragraph 4 (a).

For a preferential trade agreement to operate legally several steps are required. When some states wish to conclude a preferential trade agreement, before starting the negotiations the states shall notify the WTO Secretariat of their intention. The next very important step is notification. Notification of preferential trade agreements is based on the legislation mentioned previously. It should be noted that when a preferential trade agreement covers both trade with goods and the trade with services two notifications are required to carry out. Subsequently, under the Transparency Mechanism the preferential trade agreements notified are carefully monitored at the WTO level.

1.2. Evolution

Over time, the preferential trade agreements have had an interesting evolution. Until April 2014 583 regional trade agreements were notified to the WTO, but now there are in force only 379 such agreements.

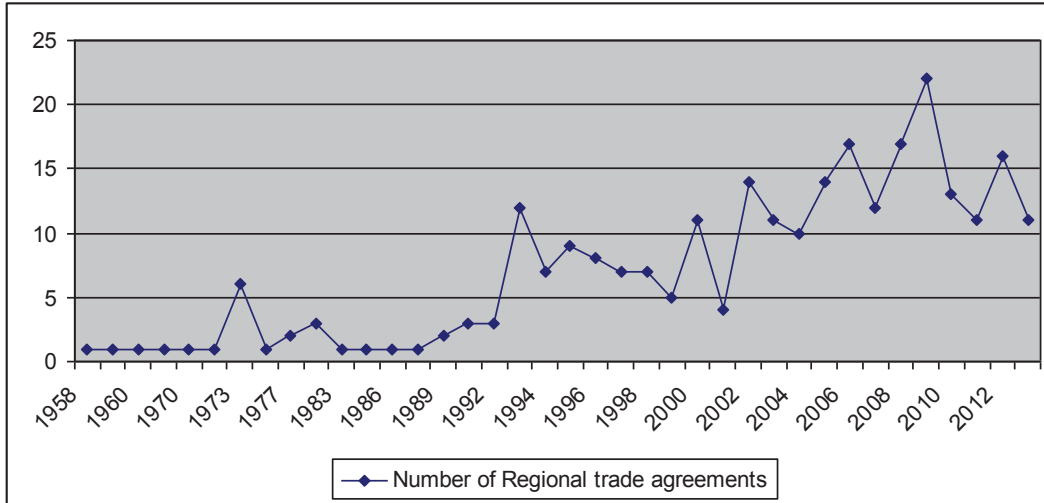


Figure 1: The evolution of regional trade agreements notified to the WTO during the period 1958-2013

Source: made by the author based on the WTO data, available on-line: <http://rtais.wto.org/UI/PublicPreDefRepByEIF.aspx>

Looking at Figure 1 it can be seen that during 1958-1993 the number of trade agreements notified to the WTO was low, yet after 1993 these agreements have enjoyed a real proliferation. In the analyzed period, the peak year was 2009 when 22 preferential trade agreements were notified to the WTO.

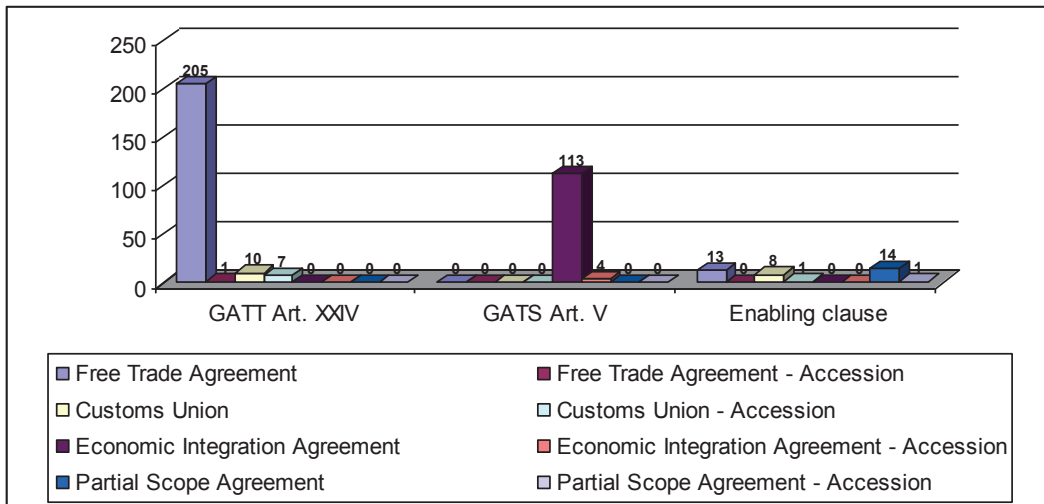


Figure 2: Number of regional trade agreements in force until April 2014 depending on the type of agreement and notification

Source: made by the author based on WTO data, available on-line: <http://rtais.wto.org/UI/publicsummarytable.aspx>

Figure 2 outlines the types of preferential trade agreements notified to the WTO and which are in force until April 2014. Free trade zones are predominant, counting 206 agreements, followed by economic integration agreements, counting 113 agreements.

2. Competition policy at the level of regional trade agreements

The benefits of regional trade agreements can be fully realized only if fair competition is instituted in the relevant market. The need of introducing regional competition rules at the regional level was notified, even if, initially it was thought that national competition laws of the Member States are sufficient. In this sense it can be seen that more and more regional trade agreements have introduced regional competition policy. One of the arguments that are in favor of introducing a regional competition policy in regional trade agreements concerns the possibility to sanction the anti-competitive behavior of certain companies which could adversely affect the intra-regional trade. Also, in the case of regional trade agreements concluded between states with different degrees of development a regional competition policy comes mostly in support of less developed countries. (Botta, 2011:3)

At the WTO level the possibility of introducing specific global competition rules targeting the competition had been raised, but the matter was still delayed and ultimately it has never materialized.

In the following we discuss how to manage the implementation of competition rules in some regional trade agreements, namely: EU, ASEAN and NAFTA.

2.1. Case study: EU

Currently the European Union a preferential trade agreement, concluded between 28 countries, namely to the WTO this agreement is notified as customs union and an economic integration agreement.

In the literature, the European Union is recognized for the competition policy, which is characterized by complex legislation and clear procedures. El-Agra (2007) identifies three fundamental pillars on which the competition policy at the European level is based: the cartel prohibition, prohibition of abuse of dominant position and mergers authorization.

The European Commission deals with the establishment of competition rules at the European level through Directorate General for Competition. The national laws of the Member States are harmonized in the field of competition and the national competition authorities cooperate with the European Commission.

The competition issues affecting only the national territory of the Member States are covered by the National Competition Authorities, while those that could threaten the domestic market are covered by the European Commission.

A preoccupation regarding the competition policy at the European level is noted in the early stage of signing the preferential trade agreement, namely the Treaty of Rome of 1957. Currently, the competition policy at the European level is regulated by Articles 101-109 of the Treaty on European Union (Treaty on the Functioning of the European Union). The cartel is governed by Article 101, abuse of dominant position under Article 102 and Articles 107-109 regulate the state aids.

At the level of European Union, the competition policy occupied and occupies an important place, which is why the procedures applied to anti-competitive practices have been improved constantly and the effectiveness of this policy is reflected in particular by the results of the competition authorities.

2.2. Case study: ASEAN

The Association of Southeast Asian Nations (ASEAN) is a preferential trade agreement notified to the WTO in 1992, as a free trade zone. ASEAN consists of ten members: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

At the ASEAN only in 2007 it was decided to create the ASEAN Experts Group on Competition (AEGC). AEGC is regarded as a regional forum for discussion and cooperation in the field of competition. This forum aims that by 2015 competition policy is regulated in all 10 Member States. The main objective of AEGC was to promote a competitive market. In order to maintain fair competition in the ASEAN market, the following measures have been proposed

(<http://www.aseancompetition.org/aegc/about-asean-experts-group-competition-aegc>): introduction of competition policy in all Member States by 2015; creation of a network of institutions to serve as a forum for the coordination of competition policies; and creation of a guide on directory lines of competition policy implementation at the regional level.

Given the desire to implement a competition policy in the ASEAN the following were adopted: the ASEAN Regional Guidelines on Competition Policy and the Handbook on Competition Policy and Law in ASEAN, both launched in 2010.

The regulations on competition policy in ASEAN address three issues: anti-competitive practices, abuse of dominance and monopoly and anti-competitive mergers. (ASEAN Secretariat, 2013:8)

Even if the need for a regional policy in the field of competition was realized later in the ASEAN, the progress in this field is obvious. Indonesia, Singapore, Thailand and Vietnam have now a well-established competition policy, with comprehensive laws and vigilant competition authorities. In Malaysia, the competition policy has been operating since 2012 and currently the competitive policies of the following states are in the process of construction: Brunei Darussalam, Cambodia, Lao PDR, Myanmar and Philippines.

2.3. Case study: NAFTA

NAFTA, North American Free Trade Agreement has been notified to the WTO as a free trade area and an economic integration agreement. NAFTA members are the U.S.A, Canada and Mexico.

NAFTA included in the agreement provisions regarding competition. Chapter 15 of the agreement entitled *Competition Policy, Monopolies and State Enterprises* is dedicated to this area. Articles 1501-1505 delineate the aspects of competition. At the NAFTA level, competition is considered in two aspects: anti-competitive practices and state enterprises. It should be noted that the agreement provides also the operation of a Working Group on Trade and Competition, governed by Article 1504 of the Agreement. By agreement, NAFTA Member States committed to introduce or maintain measures against anti-competitive practices and cooperation in this field between Member States should be permanently. In other words, NAFTA reinforces, yet it does not replace national competition policies in the Member States.

Regarding the coordination of competition at the level of NAFTA, the USA has developed bilateral cooperation relationships with both Mexico and Canada. This cooperation aims to promote the cooperation and coordination of national competition authorities to avoid conflicts that may arise between the parties, and when they appear different interests between the Member States they can be harmonized.

Regarding the cooperation and coordination of competition policies at the level of NAFTA two limitations can be noticed. The first is that the state is not obliged to provide information if this is considered confidential and the second limitation consists in the fact that a Member State is not obliged to act contrary to the national legislation in force and it is not required to amend that particular legislation. (Directorate for Financial and Enterprise Affairs Competition Committee, 2013: 5)

So we can see that at the level of NAFTA there is no supranational institution to deal with competition policy, and the maintenance in the market of a healthy competitive environment is achieved through the cooperation of competition authorities of the three Member States.

3. Conclusions

With the proliferation of regional trade agreements in the WTO it has been noted that to fully reap the benefits created by such an agreement it is necessary to include in these agreements rules aimed at regional competition policy.

Depending on the depth of regional trade agreement Dawar and Holmes (2011) identify four types of regional competition policy models: centralized, partially centralized, partially decentralized and decentralized. The characteristics of these models can be analyzed in Table 1.

Table 1: Models of competition policy applied in regional trade agreements

Model	Characteristics	Examples*
Centralized	Regional authority	EU COMESA Andean Pact
	Regional law	
	Regional enforcement	
Partially centralized	Regional authority	CARICOM ANZECERTA
	Regional law	
	Domestic enforcement	
Partially decentralized	No regional authority	ASEAN MERCOSUR
	Regional law	
	Domestic enforcement	
Decentralized	No regional authority	NAFTA SACU
	No regional law	
	Domestic law subject to harmonization criteria	

Source: adapted from: Dawar and Holmes (2011: 357)

*EU=European Union, COMESA=Common Market for Eastern and Southern Africa, CARICOM=Caribbean Community, ANZECERTA=Australia–New Zealand Closer Economic Relations Trade Agreement, ASEAN=Association of Southeast Asian Nations, MERCOSUR=Southern Cone Common Market, NAFTA= North American Free Trade Agreement, SACU=Southern African Customs Union

The most complex pattern of regional competition policy is the centralized pattern, at the opposite pole being the decentralized model. Given the three case studies presented in the paper, we can include EU in the centralized model, ASEAN in the partially decentralized model, and NAFTA in the decentralized model.

Even if there is no multilateral consensus regarding competition policy, we can notice that at the regional level there is considerable progress.

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References

- Dawar, K. and Holmes, P. (2011) 'Competition Policy' in Chauffour, J.P. and Maur J.C. (ed.) *Preferential Trade Agreement. Policies for Development*, Washington: The World Bank, pp. 356-358.
- El-Agrra, A. (2007), *The European Union: Economics and Policies*, Eighth edition, Cambridge: Cambridge University Press, pp. 247.
- Botta, M. (2011) 'The Role of Competition Policy in the Latin American Regional Integration: A Comparative Analysis of CARICOM, Andean Community and MERCOSUR', *IX Annual Conference of the Euro-Latin Study Network on Integration and Trade (ELSNIT). Revisiting Regionalism*, October, pp. 3. Available: <http://www10.iadb.org/intal/intalcdi/PE/2012/09801a05.pdf> [12 Apr 2014]
- ASEAN Secretariat (2013) *Handbook on Competition Policy and Law in ASEAN for Business 2013*, Jakarta: ASEAN Secretariat, pp. 8. Available: http://www.aseancompetition.org/files/documents/content/articles_publications/166-handbook-competition-policy-and-law-business-2013_1383601432.pdf [19 Apr 2014].
- Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union* (2010) Available: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2010:083:FULL&from=EN> [17 Apr 2014].
- Differential and more favourable treatment reciprocity and fuller participation of developing countries. Decision of 28 November 1979 (1979)*. Available: http://www.wto.org/english/docs_e/legal_e/enabling_e.pdf [18 Apr 2014]
- Directorate for Financial and Enterprise Affairs Competition Committee (2013), *Latin American Competition Forum. Session II: Regional Competition Agreements. Contribution from the United States*, pp. 5. Available: [http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=DAF/COMP/LACF\(2013\)18&docLanguage=En](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=DAF/COMP/LACF(2013)18&docLanguage=En) [17 Apr 2014]
- General Agreement on Trade in Services* (1994). Available: http://www.wto.org/english/docs_e/legal_e/26-gats.pdf [18 Apr 2014]
- The General Agreement on Tariffs and Trade* (1996). Available: <http://www.aseancompetition.org/aegc/about-asean-experts-group-competition-aegc> [17 Apr 2014]
- <https://www.nafta-sec-alena.org/Default.aspx?tabid=97&language=en-US> [19 Apr 2014].
- <http://stats.oecd.org/glossary/detail.asp?ID=3129> [17 Apr 2014].
- http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf [18 Apr 2014]
- http://www.wto.org/english/tratop_e/region_e/rta_pta_e.htm [18 Apr 2014].
- <http://rtais.wto.org/UI/PublicPreDefRepByEIF.aspx> [18 Apr 2014].

***SUB-SECTION: EU SUSTAINABLE ECONOMIC DEVELOPMENT AND
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