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**FROM GLOBALISATION TO REGIONALISATION – Contribution from UNCTAD**

**- Session I -**

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This contribution is submitted by UNCTAD under Session I of the Global Forum on Competition to be held on 7-8 December 2023.

More documentation related to this discussion can be found at: [oe.cd/fgtr](https://oe.cd/fgtr).

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## *From Globalisation to Regionalisation*

### *- Contribution from UNCTAD\* –*

#### 1. Introduction

1. “Globalization refers to the growing interdependence of the world’s economies, ...brought about by cross-border trade in goods and services, technology, and flows of investment, people, and information.” Trade connections have resulted in building economic partnerships to facilitate these movements over many centuries<sup>1</sup>.

2. The UNCTAD Trade and Development Report (TDR) 2022 categorises regionalism as shallow or deep based on the Regional Trade agreements (RTAs) that merely concern the removal of tariff barriers, including partial scope agreements. The TDR states that, *deep regionalism, means establishing far-reaching RTAs that go beyond trade liberalization, to include trade of services, investments, competition, and public procurement, whilst also taking on some features of a common market and focusing on regulatory issues* (Kang 2016, p. 250)<sup>2</sup>

3. The growth of international trade from the mid-nineties (rising from about US\$4.7 trillion in 1995 to US\$25 trillion in 2022) until 2019 coincided with a significant fall in extreme poverty as a percentage of the population until 2019<sup>3</sup>. The proliferation of RTAs also increased at an unprecedented rate during the last three decades. From 2005 to 2019, global trade under RTAs increased from approximately 28 per cent to around 45 per cent, remaining constant afterwards. However, most RTAs are concluded by high-income and upper middle-income countries, while Least-Developed Countries and other low-income countries represent a small share of RTAs. According to UNCTAD research, RTAs facilitate integration strategies and made trade more resilient during crisis such as the COVID-19 pandemic, contributing to pursue development goals<sup>4</sup>.

4. Regional Integration has been in the agenda of many countries around the world aimed at pulling together various nations in one block to create synergies of economic, social, and political aspects to boost development and general welfare of their respective populations. The European Union is the most advanced example which has yielded positive results in enhancing development across the 27 member states through establishing a single market with free movements of goods and services, free movement of people and capital, competition rules, harmonization and uniformization of laws, single currency for most Member States. Countries in Africa, Latin America, Asia, and the Caribbean have made efforts towards regional integration to various degrees.

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\* Note from UNCTAD – United Nations Conference on Trade and Development

<sup>1</sup> <https://www.ppie.com/microsites/globalization/what-is-globalization>.

<sup>2</sup> [https://unctad.org/system/files/official-document/tdr2022\\_ch4\\_en.pdf](https://unctad.org/system/files/official-document/tdr2022_ch4_en.pdf).

<sup>3</sup> Trade and Development Board 70th session: Item 8 Conference Room Paper (June 2023).

<sup>4</sup> “Trade Agreements and Trade Resilience During COVID-19 Pandemic” - UNCTAD Research Paper No. 70

(UNCTAD/SER.RP/2021/13), by Alessandro Nicita and Mesut Saygili, October 2021.

5. Other regional communities can draw lessons from the economic integration of the European Union. In the European case, very diverse economies have come together to form a very comprehensive and deep example of integration, lifting countries to some level commensurate with the community vision. The Association of Southeast Asian Nations (ASEAN)<sup>5</sup> countries' integration success is a useful lesson too in terms of inclusiveness and regional linkages which are inward looking in providing flexibilities and support for less developed countries Cambodia, Lao PDR, Malaysia, and Viet Nam, while at the same time gaining competitiveness and connectedness to the outside world. While this model still has some challenges, progress has been achieved and development recorded in these countries.

6. The United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices<sup>6</sup> (“the UN Set of Principles and Rules on Competition” or “the UN Set”), was adopted by the United Nations General Assembly resolution 35/63, 5 December 1980<sup>7</sup>, and remains the only internationally agreed instrument, recognizing the contribution of competition law and policy for development and encompassing a development dimension. Its section E on “Principles and Rules for States at National, Regional and Subregional level” recommends the consideration of competition law and policy at regional level (points 1 and 7) through the exchange of information and mutual assistance.

7. International trade and competition have been very closely linked throughout the process of liberalization launched under the General Agreement on Trade and Tariffs (GATT)<sup>8</sup> and expanded by the World Trade Organization (WTO) since 1995. Trade and competition share the common goal of achieving consumer welfare through an efficient use of resources, through the elimination of public barriers in the case of trade, and of private conducts (anticompetitive practices) in the case of competition. Their complementarity led to discussions on the interaction between trade and competition within the WTO since 1997 to 2004<sup>9</sup>.

8. There has been a constant trend of including competition provisions in regional trade agreements (RTAs) demonstrating the intersection between competition law and policy and trade liberalization. As of 2019 and according to papers submitted by François-Charles Lapr v te and by Robert D. Anderson, William E. Kovacic and others to the OECD Global Forum on Competition<sup>10</sup>, from the 296 RTAs notified to the WTO *around 80% included chapters and/or provisions on competition policy (55%) or less detailed provisions recognizing the importance of competition policy for trade (21%)*.

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<sup>5</sup> It was established on 8 August 1967 gathering Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam - <https://asean.org/>.

<sup>6</sup> <https://unctad.org/topic/competition-and-consumer-protection/the-united-nations-set-of-principles-on-competition>.

<sup>7</sup> A/RES/35/63.

<sup>8</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm).

<sup>9</sup> [https://www.wto.org/english/tratop\\_e/comp\\_e/comp\\_e.htm](https://www.wto.org/english/tratop_e/comp_e/comp_e.htm).

<sup>10</sup> Competition policy within the context of Free Trade Agreements - Paper by François-Charles Lapr v te (DAF/COMP/GF(2019)5, 17 October 2019); and Competition policy, Trade and the global economy: an overview of existing WTO elements, commitments in Regional Trade Agreements, some current challenges and issues for reflection - Paper by Robert D. Anderson, William E. Kovacic, Anna Caroline M ller and Nadezhda Sporysheva (DAF/COMP/GF(2019)11, 5 November 2019).

9. Although the number of RTAs has increased since then as 361 agreements have been notified to date, covering all regions despite the largest number of European countries, according to the World Trade Organization Regional Trade Agreements database<sup>11</sup>, one can conclude that most RTAs elected competition law and policy as an issue of common interest at regional level.

10. Competition policy provisions are included in many of the regional agreements establishing regional economic organizations in developing countries including the Andean Community (CAN), Caribbean Community (CARICOM), Southern Common Market (MERCOSUR) in Southern America, Central American Economic Integration (SIECA) in the Caribbean region, Eurasian Economic Union (EEU) in Eurasian region, and the African Continental Free Trade Area (AfCFTA), Economic and Monetary Community OF Central Africa (CEMAC), Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), Economic Community of West African States (ECOWAS), Southern African Development Community (SADC) and West African Economic and Monetary Union (WAEMU) in the African region. Considerable effort has been put towards establishing competition institutions at most of these regional agreements.

11. Regional competition law and policy frameworks include regional economic treaties or agreements including competition provisions, which are listed above, and bilateral or multilateral cooperation agreements between national competition authorities in the same region. Examples of the latter type are the African Competition Forum (AFC)<sup>12</sup>, the recent Arab Competition Network, the European Competition Network (ECN)<sup>13</sup>, the agreement between competition authorities in Central and Eastern Europe<sup>14</sup>, the agreement between competition authorities in Nordic countries<sup>15</sup>, the Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities (MMAC)<sup>16</sup>.

12. Turning to Africa, Member States of the African Union (AU) signed the African Continental Free Trade Agreement, establishing a free trade area of African countries in March 2019.<sup>17</sup> *“This act by African Governments marked a momentous milestone for regional integration”* (D. Luke and J. MacLeod) in Africa like no other. It strongly indicated commitment by policy makers and African leaders to regional integration. This act pushes the nations of Africa to start looking inward and to examine the potential hidden in this huge market of 1.2 billion people and a GDP of over \$2.5 trillion.<sup>18</sup> As part of the AfCFTA, competition policy is one of the issues comprising phase II negotiations and a competition protocol has been drafted and approved by the AU Council of Ministers in

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<sup>11</sup> <https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>.

<sup>12</sup> <https://www.compcom.co.za/african-competition-forum/>.

<sup>13</sup> [https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network\\_en](https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network_en).

<sup>14</sup> Czech Republic, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Slovakia, and Ukraine. Please see: [https://uokik.gov.pl/memorandum\\_on\\_regional\\_cooperation.php](https://uokik.gov.pl/memorandum_on_regional_cooperation.php).

<sup>15</sup> Denmark, Faeroe Islands, Finland, Greenland, Iceland, Norway, and Sweden. Please see: <https://konkurransetilsynet.no/norwegian-competition-authority/cooperation-with-other-organisations/?lang=en>.

<sup>16</sup> Memorandum of Understanding among the Australian Competition and Consumer Commission; the Competition Bureau of the Government of Canada; the New Zealand Commerce Commission; the United Kingdom Competition and Markets Authority; the United States Department of Justice; and the United States Federal Trade Commission.

<sup>17</sup> <https://au.int/en/treaties/agreement-establishing-african-continental-free-trade-area>.

<sup>18</sup> <https://www.uneca.org/assessing-regional-integration-africa-aria-ix>.

February 2023 to ensure that cross border anticompetitive practices do not negate the gains which could accrue from regional integration.

13. As indicated above, competition policy is one of the policies required to support regional integration among others such as investment, intellectual property rights and e-commerce. The dynamics of regionalism tend to generate economies of agglomeration. Together, these forces can bring cumulative benefits that can help boost productivity growth, but also encourage a higher degree of market concentration over time that allows firms to further boost their profits. This may create market distortion that defeats the purpose of integration. The AfCFTA competition protocol was drafted to deal with such market distortions that may lead to anticompetitive practices such as cartelization, abuse of dominance and anticompetitive mergers and acquisitions.

14. Competition policy fits in promoting regional integration, as indicated, the main objective of competition policy is to prevent and remove distortions of competition resulting from the actions of private companies or state enterprises, thus enabling markets to function more effectively.<sup>19</sup>

15. The Africa Competition Authorities' experience has shown that competition law enforcement has busted cartels, abuse of dominance has been corrected, and many mergers have been evaluated over time.<sup>20</sup> The competition protocol covers these core areas of competition law enforcement. Studies by ACF show that cartels are prevalent in the region (cement, fertilizer, bread, etc.). Cross-border mergers are also prevalent according to COMESA case law. At the Regional Economic Organizations' level enforcement work is happening to various degrees by regional competition Authorities such as COMESA, WAEMU, EAC, ECOWAS, CEMAC.

16. In a general sense, policy coordination on related issues to competition such as intellectual property, public procurement and e-commerce will be important moving forward. In e-commerce and digital markets, the challenges of access to the internet and the strength of using mobile technology in Africa should be considered.

## 2. The role of UNCTAD in this context

17. UNCTAD 15<sup>th</sup> Ministerial Conference declaration, the Bridgetown Covenant (TD/541/Add.2) underlines the importance of regional integration:

18. “63. Regional economic integration is an important driver for building productive capacities and achieving structural transformation for sustained development. Through integration of value chains and use of respective comparative advantages, regional economic groupings continue to boost trade, investment and economic growth and strengthen economic integration among their members, as well as facilitate economic diversification and integration into the global economy”; and

19. “104. Regional cooperation has proven to be of vital importance to advance cooperation in functional areas, with the hope of greater integration. Interregional forums and mechanisms have also served as important means of strengthening cooperation and promoting greater understanding. Greater interaction between regional integration

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<sup>19</sup> [https://unctad.org/system/files/official-document/ccpb\\_AFWeb\\_%20African\\_Reg\\_Integ.Gachui.pdf](https://unctad.org/system/files/official-document/ccpb_AFWeb_%20African_Reg_Integ.Gachui.pdf).

<sup>20</sup> <https://unctad.org/publication/african-continental-free-trade-area-phase-ii-negotiations-space-competition-protocol>.

processes and groups and the United Nations and its various processes is beneficial, including through dialogue, experience sharing and consensus-building.”

20. International cooperation between competition authorities is more easily initiated at the regional level compared with at the global level, given that countries in the same region may have similar backgrounds and legal frameworks, common interests, mutual areas of benefit and better understanding of each other’s needs, which are prerequisites for effective cooperation<sup>21</sup>.

21. Benefits of regional frameworks especially for developing countries could be summarized as contributing to effective and efficient competition law enforcement through joint actions; to promoting convergence and filling the gaps of national competition frameworks; to reducing human and financial resource constraints; and to providing technical cooperation and capacity-building within each region.

22. UNCTAD has been and will remain as a key supporter and collaborator on competition and consumer protection policies to member States’ developing countries at national, regional, and continental level, interacting with all established institutions.

23. Referring to the ongoing implementation of the AfCFTA competition protocol, very ambitious and extremely relevant due to its continental dimension and its high-level objectives, UNCTAD participated as an observer in the Competition Committee meetings which negotiated the competition protocol, from October 2021 to its adoption at the initial stages of the competition protocol negotiations. Concurrently, UNCTAD has been collaborating with the AfCFTA Secretariat to organize capacity-building training workshops on competition policy for its Member States since October 2021. The events were aimed to build capacities of competition experts and negotiators in the areas of competition policies and regulations and their relationship to the negotiations of the Competition Policy Protocol of the AfCFTA.

24. After the adoption of the competition protocol in February 2023, another capacity building workshop on competition policy was held for the ECCAS Region in Gabon and an upcoming workshop will be held for the COMESA region at the end of 2023.

25. Finally, UNCTAD will continue offering technical assistance and capacity building to the AfCFTA to strengthen of capacities and future implementation of the Protocol, working with Regional Economic

26. Communities (RECs), which the AfCFTA Agreement acknowledges as “*building blocks towards the establishment of the African Continental Free Trade Area (AfCFTA)*.”<sup>22</sup>

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<sup>21</sup> UNCTAD’s survey, as well as other reports by international organizations, have shown that the lack of mutual trust and understanding are major obstacles for international cooperation. Please see “Obstacles to International Cooperation in Specific Cases”, available at: [https://unctad.org/system/files/non-official-document/ciclp17th\\_UNCTAD\\_rep\\_en.pdf](https://unctad.org/system/files/non-official-document/ciclp17th_UNCTAD_rep_en.pdf). Please see also “International cooperation in competition law enforcement: Is regional cooperation the best option for developing countries?” Foreword by Teresa Moreira, Head of Competition and Consumer Policies Branch, UNCTAD, in Concurrences N° 3-2021, Competition Law Review - [www.concurrences.com](http://www.concurrences.com).

<sup>22</sup> [https://au.int/sites/default/files/treaties/36437-treaty-consolidated\\_text\\_on\\_cfta\\_-\\_en.pdf](https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf); See Preamble, page 2 of the AfCFTA Agreement.