Cooperation on Competition Policy in Latin American and Caribbean Bilateral Trade Agreements

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Summary

Until now, the extensive literature dealing with competition policy and trade agreements has referred mainly to integration agreements or their development at a plurilateral or multilateral level. Within this context, this paper aims to explore the impact that the growth of bilateral trade agreements —particularly FTAs— has on international cooperation regarding competition policies. It also considers whether these agreements are complementary to plurilateral and multilateral efforts to establish international coordination and cooperation on competition. These issues are inseparable given the generalized and growing economic openness and the changes in producer organizations and their international expansion, which create new competitive conditions.

In a bid to address the above-mentioned issues, Section I presents an overview of the trade agreements established within the region since the beginning of the 1990s and highlights the interdependence of negotiating processes at various levels. It then examines competition policy in free trade agreements and other cooperation mechanisms. Section II, which contains the central issue of this paper, considers competition policy in bilateral free trade agreements in the region, and identifies the most common approaches or models. Lastly, Section III presents a recapitulation of these experiences and suggest evaluate their potential costs and benefits for countries in the region.

I. Introduction

Under the new multilateral system (the World Trade Organization (WTO), which emerged from the Uruguay Round), the countries of the region launched trade agreements of various levels —bilateral, sub-regional and plurilateral— in the 1990s. These initiatives came as a complement to unilateral liberalization since the mid 1980s.[1] At an initial stage, countries took part in intra-regional agreements, Economic Complementation Agreement ECA/Latin American Integration Association (LAIA), and from the mid-1990s they began signing FTAs, which were much more ambitious than the former and in which non-regional partners also took part. Presently, there are close to 40 trade agreements in the region, and over half of those are FTAs. Chile and Mexico can attest to this experience, being two important poles in a growing network of bilateral and plurilateral agreements ("spaghetti bowl").

FTAs include more precise norms than their predecessors in regard to trade in goods, and further liberalization in regard to services and investment. Likewise, these agreements give great importance to establishing rules on more general issues related to, or affecting, trade, such as intellectual property, technical standards, government procurement or competition policy. Thus, FTAs become commitments that are "WTO plus" and include more precise mechanisms regarding dispute settlement, however, they do not include instruments that relate to the asymmetric conditions of the countries involved.

The emergence of bilateral agreements coincides with steps taken by sub-regional agreements —Andean Community (CAN), MERCOSUR, Central American Common Market (CACM), and CARICOM— to widen gradually their integration schemes. Likewise, with an important demand in negotiating efforts, the Free Trade Area of the Americas (FTAA) process has been a learning process for some countries in the region and, to some extent, has helped to channel recent bilateral agreements. Two recent phenomena, the strengthening of South-South relations and the scope of integrated trade and cooperation (e.g. through the Economic Partnership Agreement (EPA)), seem to establish a re-routing of the international integration strategy for developing countries.[2]

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1 ECLAC, 1994, 1995 and 2004; Devlin and Ffrench-Davis, 1999.

2 UNCTAD, 2004; Kuwayama, 2004; Gutiérrez, 2003 and Aoki, 2004.

Trade liberalization and the strengthening of integration among countries through trade agreements define conditions for competition that are much more demanding on their economies and on markets in which they interact. Nevertheless, the benefits of trade liberalization can be undermined by anticompetitive practices that affect the local economy. Foreign direct investment (FDI) flows and liberalization processes, together with the trend towards concentration and the intensification of transborder economic activity, place greater demands on competition policy.[3] Therefore, a greater level of international cooperation is needed for the establishment and application of rules in this area.

Thus, it is easy to understand why Mexico and Chile, which are the countries of the region most actively engaged in international integration strategies, are also the most active in competition policy cooperation. These nations are also among those with an extensive history of competition policy. Therefore, the attention given to this issue during the last decade has gone hand in hand with the proliferation and strengthening of trade agreements in the region, which is a phenomenon that is also observed at an international level.

At the multilateral level there is no comprehensive set of rules governing competition policy, hence the growing tendency to incorporate provisions on this issue in bilateral, sub-regional, and hemispheric negotiations and agreements which constitute WTO-plus disciplines.[4] The Cancun Conference of September 2003 did not reach the needed consensus in terms of the work programme set out in Doha to launch the beginning of negotiations on this issue (OMC, 2001a and 2003).

One of the main difficulties in the construction of international regulations is the fact that competition policies have been relatively scarce in developing countries. Those that exist are of recent development. Indeed, in 1990, only five nations in this region had competition laws. At present, 12 of the 33 countries of the region possess such laws, while eight —not including Caribbean nations— are at the drafting stage and a greater number have sectoral and constitutional laws or other relevant provisions (see FTAA, 2002a).[5] Likewise, those countries with previously existing legislation introduced reforms in their regulatory and competition setups around the year 2000. Thus, there was a generalized need to establish policies in this area within the framework of reforms applied by these countries during the last decade, especially those designed to liberalize their economies.

A. Cooperation on Competition Policy and Regional Trade Agreements

The strengthening of integration schemes geared to the creation of common markets has highlighted the urgent need in the late 1990s, to formulate and develop competition systems. The only regulations that exist are those under MERCOSUR-1996, CAN-1991 and CARICOM-1997,[6]

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[3] The main concerns are the increase in mergers and acquisitions and the presence of international cartels for goods of interest for developing countries. See WTO 1997; UNCTAD, 1999; OECD, 2001.

[4] Specific or sectoral WTO agreements contain only a few provisions regarding competition, especially in services, antidumping, subsidies and intellectual property. The development of global multilateral rules has been the subject of debate since the Singapore Conference, 1996.

[5] For analysis and systematization in this regard, refer to Moguillansky and Silva, 2004; Celani and Stanley, 2003.

[6] For further information on competition policy under these agreement and under NAFTA, see Tavares y Tineo, 1999; Tavares and others, 2001; UNCTAD, 2003; and FTAA, 2002 b and 2003 a. In CACM, there is no regional competition system or institution, even though provisions of the Guatemala Protocol 1993 (ex article 25) and later resolutions refer to the need to promote a free competition mechanism at a

under different schemes geared to policy harmonization, supra-national rules or cooperation among national authorities. The level of application and implementation of the rules of these agreements has been low.

Another model that considers a competition policy without a supra-national character oriented towards achieving the goals of the free trade area is the North American Free Trade Area (NAFTA) (1992). This agreement centres its attention on carrying out national laws, cooperation among authorities and the convergence of laws. The level of cooperation foreseen is less intense than that of other extra-regional experiences; however, there are relevant arrangements regarding transparency, monopolies and State enterprises; likewise, there is greater emphasis on reducing uncertainties for investment.

It is important to point out that work on competition in the aforementioned trading blocs has helped to strengthen the relevant institutions in some of the member countries; and the regional rules eventually enable to afford situations that involve countries that do not have independent rules regarding competition.

At the hemispheric level, it should be noted that a chapter on competition policy (with a number of pending options) has been included in the FTAA negotiation process, which started in 1998 (FTAA, 2003 b). This chapter addresses concerns that are also present at WTO, such as basic principles and cooperation mechanisms; in a number of articles, significant changes have been made to take into account substantive issues as well as procedures with respect to this policy. The institutional and legislative challenges are important within this framework, since a number of countries do not have laws on competition; however, this challenge will also depend on the basic common "floor" set up within the new architecture of the FTAA announced in Miami in 2003.

The FTAA process has feedback with the work done in other plurilateral (APEC and OECD) and multilateral (WTO, UNCTAD, ICN) forums, through analysis and debates in which countries are participating more and more actively. Moreover, it should be made clear that while WTO and FTAA lead to binding agreements for participating countries, in other forums, the aim is to establish principles, guidelines or recommendations to which those nations could adhere on a voluntary basis (OECD, 2002; UNCTAD, 2003; Vautier, 2002).

The countries of the region, which have signed bilateral FTAs since the mid-1990s, most of which include competition policy components —have renewed their interest in such policies. They stand to benefit from the fact that most of these agreements have been established with countries with a higher level of development and which have a long history, hence knowledge and experience, of competition systems. Likewise, this phenomenon, which is dealt with in detail in the next section, underscores the urgency for institution building in these countries.

A number of the agreements mentioned also include international cooperation on competition, designed to counter anti-competitive practices, both domestically and internationally, within the context of liberalization and integration. They all provide for a general exchange of information and experiences, as well as conceptual discussions. However, more ambitious agreements deal with substantive rules and cooperation mechanisms, even though the majority aim to strengthen already existing laws.

national and regional level (SIECA, 2000). At the last meeting of the MERCOSUR-CMC, July 7-8 2004, a cooperation understanding was reached among competition authorities.

Another sort of cooperation applies to the resolution of actual cases, or to laws, where there is a commitment by the competition authorities from the countries of a bilateral agreement.[7] In the region there are nine agreements of this kind, some of which are related with, or derived from an FTA-type commercial agreement (table 1).

Mexican and Chilean agreements, unlike those signed by Brazil, have established cooperation for the application of competition laws as a complement to the FTA signed with one of its partners. In other words, the cooperation component, which is set out in a very preliminary manner in these agreements, is actually developed. One of the main results of the formal agreements has been to stimulate informal cooperation, which is systematic and widespread, with discussion of approaches and sharing of information on cases with common elements.[8]

TABLE 1
COOPERATION AGREEMENTS FOR THE APPLICATION OF COMPETITION LAWS

Country	Counterpart	Year of signing	PRECEEDING	Main aspects[a]
Brazil	USA	1999		Notification, positive courtesy
	Portugal*	1999		Few descriptions of activities
	Russia	2001	*	S/i
	Argentina	2003	MERCOSUR, 1991	Notification, exchange of information and aspects of positive and negative comity
Mexico[b]	USA	2000	NAFTA, 1992	Notification, coordination of similar issues, positive and negative comity, Cooperation in application
	Canada	2001	NAFTA, 1992	Similar to Mexico-USA
	Chile	2004	FTA 1998	Similar to previous Mexican agreements
Chile	Canada**	2001	FTA, 1996	Notification, prevention of conflicts and confidentiality
	Costa Rica**	2003	FTA with CACM, 1999	Exchange of information and collaboration. (There will be annexes with specific instruments)

Source: Free Trade Area of the Americas (FTAA) *Inventario de los acuerdos, tratados y otros arreglos sobre políticas de competencia existentes en el hemisferio occidental* (FTAA.ngpc/inf/03/Rev.2), 22 March 2002; official web sites of Organisation for Economic Co-operation and Development (OECD), Federal Commission of Competition CFC-Mexico, CB-Canada, *Fiscalía Nacional Económica de Chile* (FNE); Claudio Considera and Cleveland Teixeira, "Brazil's Recent Experience in International Cooperation" [on line] Artigos <http://www.fazenda.gov.br/portaldaconcorrencia/>, 2002.

*Protocol; **Memorandum of understanding

a The more emphasized aspects are presented from each respective agreement.

b Negotiations are also underway with Brazil and the country is participating in a working group on this issue in FTA negotiations with Japan, also with Argentina and Uruguay (OECD, 2004).

On the other hand, chapters dealing with competition in trade agreements tend to contain more substantive rules rather than rules of procedure for cooperation owing to their objectives of

[7] This has been a voluntary instrument, which, until now, has been used basically by developed economies. It is a form of cooperation which relies on instruments such as exchange of information, request for investigation or notification and consultations regarding actions that could affect parties, exchange of professionals and coordination during investigation of anticompetitive practices, assistance and exchange of information, among others (WTO, 1997, 2002; OECD, 2002; UNCTAD, 2003).

[8] Evaluation of the United States–Brazil experience can be found in: Considera and Teixeira, 2002; and in Tavares, M. 2002; and information on Mexico-United States cooperation in FTAA, 2003a.

market integration (UNCTAD, 2003). In terms of regional experience, the content of FTA chapters dealing with competition is quite diverse as regards scope, approaches and agreed commitments, as will be seen in the following section.

II. Competition Policy in Bilateral Trade Agreements

A. General Issues

The analysis of competition conditions and policy in bilateral agreements —FTAs— must go beyond the chapter on competition in order to reflect fully the importance attached by countries to these issues in trade agreements. The scope of this analysis will be more limited in view of the interdependent and cross-cutting character of competition policy, which is set out in a series of reforms in coordination with other national policies and regulations.[9] However, the chapters address in a comprehensive manner participating countries' concerns that some anti-competitive practices might hinder the effects of liberalization and make economic functions less efficient. Likewise, these chapters seek to ensure —through mutual commitments and cooperation— that national policies deal with these objectives and develop enforcement mechanisms.

Certain provisions of the agreements are not addressed in this paper.[10] [11] Among them, the treatment of unfair practices in international trade, regulatory issues, service provisions, especially telecommunications, and intellectual property rights. Likewise, agreements limited to specific entities or those put forward with the sole intention of developing competition provisions are not considered. For example, the chapter on state trading enterprises of the trilateral agreement, G3, is not taken into account. The ECA signed on December 2003 by MERCOSUR

[9] The role of "advocacy" set out by competition policy thus has relevance for the creation for pre-conditions that will allow an efficient functioning of competition and for the coherence with other policies (Cernat and Holmes in Brusick and others 2004).

[10] Unfair practices derived from dumping practices or subsidies are normally dealt within all agreements under specific chapters in order to cover practices of firms or governments that hinder competition in another country (see Tavares and others, 2001; Schmidt and others, 2002). Some agreements contain competition provisions even though there is no specific chapter dedicated to this policy (ex. Mexico-Nicaragua for telecommunications).

[11] The WTO TRIPS agreement refers especially to the granting of contractual licenses and the possibility that governments adopt measures to avoid anticompetitive practices in the potential abuse of intellectual property rights. The Mexico–Costa Rica FTA contains provisions to that end (Article 14-07).

and three countries of CAN, contains Title VI regarding restrictive practices on competition, whose only objective is to promote actions in the field.[12]

Thus, the following will refer to the 18 reciprocal bilateral agreements —basically FTAs—, which actually contain a specific chapter on competition policy (see annexes 1 and 2).[13] The term bilateral character is used for agreements with two partners, even if one of them is an integration bloc. These agreements involve 26 countries of the region —including 13 from CARICOM—, which have participated individually or within integration blocs, in arrangements with countries of the region and beyond. Many of these agreements (11) involve countries of the region with some developed partner or a very different geographical area, such as: Canada, United States, the European Union, EFTA, Israel, and Asian countries such as Japan, Republic of Korea and Taiwan Province of China.

The first agreements were signed in 1996; however, most are more recent with over half signed since 2000, and six as recently as 2003. Thus, it is too early to evaluate the benefits that may be derived from their implementation. The experience is concentrated basically in two countries of the region, Mexico and Chile, which are parties to 13 agreements, including a bilateral agreement between the two countries in 1998.[14] Other countries that have been active in terms of provisions referring to competition are Central American, Costa Rica and Panama.

The participants in these agreements present a mixed picture in terms of level of development, size of the economy and development of competition institutions. In many cases these agreements involve countries or blocs that do not have rules regarding competition, to the extent of having comprehensive laws and institutions dedicated to the defence of competition, as is the case in Central America and the Dominican Republic.[15]

The chapters analysed also vary significantly in terms of their content with respect to motivation, scope, components and levels of commitment, reflecting the varied characteristics of the agreement and of the countries taking part. Among them, the outreach of the agreement and its commitments, the size, economic structure and level of development of the countries, the history and intensity of economic/trade relations among them, and the maturity and proximity of the scope in competition institutionality. This diversity makes it much more difficult to make comparisons or to establish frameworks that could be interpreted as models for agreements on competition issues. Thus, the establishment of categories —or normative issues— corresponds to a proposal that steps should be taken to identify models for cooperation agreements.

B. Characteristics of the Agreements

For purposes of comparison, the provisions of the 18 selected agreements have been analysed under six main headings. These include objectives, principles and institutionality, scope and coverage, monopolies and State enterprises, cooperation and coordination, and dispute settlement (see annex 3).[16] These elements allow exploring the extent of the mutual commitment of countries

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[12] The MERCOSUR and Peru ECA, of August 2003, are expressed in these terms; the same applies to ECA Nº 36 from 1996, between MERCOSUR and Bolivia. The latter share a common title in referring to common unfair trade practices and competition restrictions.

[13] The Cotonou agreement between the EU and the ACP countries, which includes the Caribbean, has not been considered since it is a non-reciprocal setup, which includes competition provisions.

[14] Does not include the participation of Mexico in NAFTA, since it is a trilateral agreement, which is mentioned in the previous chapter of this paper.

[15] See Hernández and Schatan, 2002.

[16] Although these headings may not correspond to the titles of articles or sections in every chapter analysed, they will give an idea of the diversity and scope of the provisions.

regarding competition policy, in terms of improving their provisions and making their application procedures more efficient; they also reveal the depth of the desired cooperation on this issue.

A noticeable gap can de detected in the level of ambition in each agreement, which should place at a higher level those agreements between Chile–USA, Costa Rica–Canada and Mexico–EU. Other agreements refer to the intention of launching coordinated efforts on the issue, as in the case of the Mercosur–Chile agreement, 1996.

1. Objectives

An initial examination of the aforementioned agreements reveals two explicit or implicit objectives: to ensure that anti-competitive practices do not undermine the benefits of a treaty or rather help to further its objectives,[17] and to promote cooperation and coordination. The need to pursue efficiency and consumer welfare is spelled out only in a handful of cases, for example, only the agreement between Chile–Mercosur proposes the establishment of rules for consumer protection.

The specific objective of promoting cooperation and coordination is made explicit in over half of the agreements, which also recognize the importance of these functions. Various mechanisms have been adopted for their implementation in many agreements. This dimension, which will be referred to in greater detail in the section on cooperation (5), can be specially found in the agreements between the European blocs —European Union, EFTA— and Asian countries, as well as the agreements between Canada and Costa Rica.

Like integration agreements, bilateral agreements contain substantive rules and not only procedures regarding cooperation, as in the case of agreements between agencies. Only a few agreements state their purpose of making headway on common provisions, and this applies generally to small countries. This suggests that the majority of agreements give priority to the intention of maintaining the supremacy of national laws. In those cases oriented to common provisions, it is clearly spelled out that the objective is to begin joint efforts, for example, in the agreements between Chile-Mercosur, Central America-Panama and Costa Rica-CARICOM.

There are a few agreements, whose parties do not have any competition provisions, which can eventually act as a catalyst for domestic policy.[18] Countries or blocs in this situation are Dominican Republic, Central American and certain CARICOM countries.

Lastly, no agreement makes explicit the relationship between competition policy and trade remedies —antidumping rules and countervailing duties. This differs from integration agreements from outside the region, such as the Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), which renounces or prohibits the application of such measures.[19] Only a few (such as the Chile-Mexico agreement) set out the possibility of evaluating the relationship between trade and competition laws and policies in the free trade zone, in which the treatment of these measures can eventually be dealt with.

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[17] Strengthening the application of competition policy of the participating parties, especially in the free trade area, to avoid distortions that may affect trade, may pursue these objectives.

[18] An experience to consider in this respect is the Japan-Singapore agreement (JSEPA 2002), reached before Singapore had legislation on that issue. The evaluation made by both governments, after the first year, indicates that the system of notifications was already in place and that both motivated cooperation on competition (refer to MOFA-Japan website).

[19] See New Zealand (1997). In the cases of Chile-Canada and Chile-EFTA, where it was impossible to use antidumping mechanisms, the chapter on competition does not make explicit reference to the subject.

2. Principles and Institutionality

The principles of non-discrimination and transparency are a common feature of many multilateral trade agreements. Many issues at the multilateral level, which include judicial actions, also incorporate the principle of due process.[20] Close to one third of the agreements under analysis, generally the more recent ones (Costa Rica-Canada and Chile-USA), explicitly identify one or more of these principles. Only three agreements, involving Chile, point out the importance of adopting acceptable principles for the Parties at multilateral forums, such as WTO. In terms of transparency, some agreements show special concern for the public availability of the measures and the rationale for anticompetitive practices. It is argued that agreeing on making those principles explicit in competition policy in each country can help to legitimize competition policy.

In terms of specific institutions in the realm of competition policy, there are only a few agreements (for example, Costa Rica-Canada and Chile-USA) that establish prerequisites for autonomy or impartiality for establishing or maintaining competition authorities. At least one third of the agreements provide for the establishment of a body or advisory committee, which could either look at ways of implementing the cooperation commitments and capacity building or study the relationship between trade and competition policy. Likewise, some envisage the possibility of appointing officials to deal with such questions. The efficient application of these agreements calls for coordination between the negotiating organisms in each country and those responsible, at a technical level, for domestic policy.

Clearly, the relevant institutions are still in the initial stages of development. The scant mention of the possibility of recourse to some sort of dispute settlement mechanism, which will be referred subsequently (6), could be signalling something similar.

3. Scope of Application

Generally, the agreements analysed contain substantive general rules on anti-competitive practices for companies, with marginal reference to government actions, such as State grants.[21] In this respect, bilateral agreements differ from those established in sub regional blocs or in the experience between the European Union and other European countries (facing the recent growth of the bloc)(UNCTAD, 2003; WTO, 1997).

A few agreements clearly identify anti-competitive practices that will receive priority attention. Most are described in generic terms. These practices include collusion, abuse of dominant position, mergers and acquisitions.[22] On the other hand, the majority of agreements that do not identify these practices are also the agreements in which the chapter on competition policy is centred on, or gives priority to, monopolies and State enterprises. Most of these agreements grant exclusion over the regulation of monopolies to government entities that obtain goods or

[20] It is important to point out that all these principles are explored in the discussion on competition currently taking place in WTO. Non-discrimination in this framework normally contains two elements: national treatment and most favoured nation status (MFN); in which the principle of transparency is also included. Due process, for its part, has an important specificity in competition policy in relation to the enforcement of the law and related issues, such as the requests for investigation, the application of sanctions and the treatment of confidential information (OECD, 2003).

[21] The Mexico-European Union agreement proposes a more general notification on government measures affecting competition.

[22] The coordinated treatment for hard-core cartels is of great concern at the multilateral level, in view of their harmful results and impact on sectors of interest to developing countries (See UNCTAD, 2003; OECD, 2003).

services for official purposes or on a non-commercial basis. In this respect, only the Costa Rica-Canada agreement contains transparency and evaluation standards regarding exclusions.

4. Monopolies and State Enterprises[23]

Over half of the agreements under consideration contain rules regarding monopolies and State enterprises, under NAFTA approach, and only seven of them contain detailed rules on the subject.[24] Most of them authorize countries, subject to their laws, to designate monopolies or establish State enterprises, and to notify the other Party of the establishment of such entities when its interest could be affected. The supervision of such entities is aimed at ensuring that their functioning does not hinder the objectives of the agreement, that they act in accordance with trade regulations or that they do not use their monopolistic position to carry out anti-competitive practices. For some, the supervision should be carried out through rules, administrative supervision or other mechanisms, and should not affect public entities for non-commercial transactions.

Some NAFTA-style agreements state that monopolies and State enterprises, when engaging in trade actions, must not grant discriminatory treatment to investment or to goods and services of another Party. In many cases, it is specified that the restrictions placed on monopolies do not limit their ability to set prices in different geographical markets, as long as this differentiation is in keeping with normal commercial conditions in those markets.

The agreements that lay down the most substantial pre-requisites for these entities are also those, which include lax provisions regarding cooperation and coordination, placing, in some cases, greater emphasis on the application of national legislation. Many of them also provide for dispute settlement on the basis of clauses regarding rules on monopolies and State enterprises. It should be pointed out that many of these agreements also contain rules on monopolies in other sections of the agreement, such as services and more specifically, telecommunications.

5. Cooperation and Coordination

The agreements analysed vary considerably in terms of the detail or level of commitment in the area of cooperation and coordination for the application of competition policy and legislation. The main elements are: (i) notification of the activities on the application of laws; (ii) exchange of information to facilitate the effective application; (iii) consultations —and prevention of conflicts— when the important interests of a country are affected in another territory; and (iv) mutual technical cooperation. To a lesser extent, specific cases of coordination for the application of the law can be found.

Almost all agreements contain references to the notification of application activities, if they could affect the interest of their partners, if it is related to its application duties or if it concerns the designation of a monopoly or State enterprise. Normally, agreements recommend notification with a certain level of detail and in the initial stages of the process or situations in question. Some agreements (for example, Mexico-European Union and Chile-European Union) specify more precisely the type of situations that might require them: generally trans-border activities or activities with similar effects or the application of measures with extra-territorial effects.

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[23] In many of these agreements reference is made to "designated" monopolies in the sense that they may be established or authorized or their scope may be widened to cover an additional good or service.

[24] Reference is made to the agreements between Chile and the following: Canada, USA, Central America and Mexico; Mexico and the following: Israel and Uruguay; and Panama and the following: Taiwan Province of China and Central America.

Over half of the agreements establish commitments regarding exchange of information, mostly non-confidential, to facilitate the effective application of competition laws. Many contain some detail of the sort of suggested information; for example, the application of measures and corrective sanctions or monopolies, State enterprises or State grants. Many agreements stipulate that information is subject to national rules on confidentiality. Only in rare cases is there provision for the submission of confidential information to judicial bodies of the relevant country.

A considerable number of agreements contain a mechanism for consultations —in one case for conflict prevention. In some cases, the consultations are directed at the evaluation of the chapter application or the application of cases where important interests of a given country might be affected in the territory of another. Some agreements also provide for consultations regarding investigations and the effectiveness of measures to counter anti-competitive practices as well as the operation, execution, application and interpretation of the chapter. Likewise, some agreements call for the favourable and full consideration of the party who receives the consultations. Through the consultation mechanism some agreements come close to the principles of positive and negative comity, but only in four cases do they include one or both principles with a certain level of development. It should be pointed out that consultations can also develop the role of a prerequisite or alternative for dispute settlement, which is important when the majority of the agreements, explicitly or implicitly, do not include specific mechanisms to deal with controversies regarding competition policy.

The coordination in the application of the law for specific cases appears in four relatively recent agreements, which are those of the European Union with Mexico and Chile, and those of Chile with EFTA and the Republic of Korea. This is the main cooperation objective between competition agencies, which is to establish coordination through independent agreements or as a complement to free trade agreements (see table 1). Other coordination areas, especially those that go beyond the exchange of information, figure as important components of inter-agency agreements.

Mutual technical cooperation appears in some agreements solely as an item of interest and in others as a way to take advantage of the experiences and strengthened competition policy and law implementation. In one or two agreements mutual legal assistance is incorporated and only the Mexico-EU agreement presents a further level of detail of the type of activities that may be involved. It should be pointed out that at a multilateral level this cooperation component is part of the special and differential treatment, which caters for huge asymmetries in the area of competition institutions. In the presence of such asymmetries, less developed countries face challenges in their efforts to close the gap in regulatory development and access to information, as well as to obtain resources for the cooperative treatment of cases of international scope.[25]

In contrast to some integration agreements that provide for the creation of international and other supra-national authorities,[26] there are few bilateral agreements that specify any sort of institution for dealing with cooperation commitments within the framework of competition policy in the agreement. In half of the agreements analysed, the importance of cooperation and coordination is recognized —in some more explicitly in regard to the free trade zone— but they go into less detail in terms of the practical application of provisions.

In general terms, the agreements that are more ambitious in terms of the creation of such institutions are those signed with the European Union and EFTA, as well as the Costa Rica-Canada and Chile-Korea agreements. The remainder, many of which follow the NAFTA model, pay less attention to cooperation, which explains the subsequent emergence of agreements

[25] Refer to presentations and documents from ECLAC-OAS, 2002.
[26] Refer to WTO, 1997 and UNCTAD, 2003.

between agencies and complementary agreements designed precisely to address this issue. This is the case of various agreements or memoranda established by Mexico, Chile and Costa Rica, the latter following the Chile-CACM FTA (see table 1). International experience reveals that participating countries in these agreements have been harmonizing their approach, and thus, they have a greater possibility of legislative convergence. (UNCTAD, 2003: p. 12 and 13).

6. Dispute Settlement

In this context, it should be pointed out that the application of a dispute settlement mechanism over a possible competition agreement has generated much debate at a multilateral level. The discussion and apprehension is due to the diversity of legal and administrative systems that play a role in the implementation of competition policy and laws in the countries.[27] Peer review and consultation has been presented at WTO as one of the alternatives or complementary methods to this mechanism (see OECD, 2003). Some of them can also be found at the regional level.

Half of the bilateral agreements examined make explicit reference to dispute settlement, in most cases in order to point out that the chapter on competition or the policies or laws on competition will not be subject to the procedures of the agreement. In many NAFTA-type agreements, only rules regarding monopolies and State trading enterprises are subject to such procedures. In two of these cases, there are explicit references aimed at preventing disputes between investors in connection with the chapter on competition. This is the case of the Mexico-Chile and Mexico-Uruguay FTAs.

Lastly, it should be pointed out that some other agreements establish more detailed rules on consultations and conflict prevention when dealing with situations that affect important interests of the partners. These provisions seem to be an alternative—or preparatory— response to dispute settlement mechanisms, which comes close to the international experience in European Union agreements.

C. Contents and Models?

The characterization given in the previous section helps to identify certain “types” or models, of cooperation agreements on the basis of their established components and approaches. This section proposes to continue along the same lines while at the same time carrying out a cross-cutting evaluation in order to integrate and highlight certain common features among the different issues covered in the agreements. With some reservations, given the great differences between the analyzed agreements, two main types of agreements may be identified, those designed for cooperation and those designed to strengthen legislation and its application (with particular emphasis on monopolies and State enterprises). A special category consists of those agreements with competition chapters that only establish a proposal for strengthening their institutions.

Seven agreements of the first type (those designed for cooperation) have been identified. They include those signed by Chile and Mexico with the European Union and EFTA, with Asian countries —Chile-Korea and Mexico-Japan— and the Costa Rica-Canada Agreement. Many of these agreements define explicitly the anti-competitive situations to be covered by them and more detailed commitments are established for one or more of the cooperation functions examined. Normally, such agreements do not include provisions for dispute settlement, and, when they do, it is to indicate that the agreement’s mechanisms do not apply to problems that may arise under the chapter.

[27] These apprehensions are due to the importance of the system for dispute settlement as a binding mechanism on acquired commitments made by participating countries.

Some examples of this type of agreement are:

- Costa Rica and Canada, countries with different levels of development and institutions, which included in the chapter on competition of their FTA (2001) a framework for the application of their competition laws and policies at a national and sub-regional level, as well as for cooperation and coordination between their authorities. This agreement sets out explicitly some important principles such as transparency, due process and non-discrimination (WTO, 2001b).[28]

- Mexico and the European Union, established a cooperation mechanism in the FTA signed in 2000, within the framework of their Association Agreement of 1997. This mechanism is similar to those described among agencies for the application of laws, even though it is part of the aforementioned trade agreement. Membership in the OECD was a relevant fact for the elaboration of commitments on competition policy in the FTA, since the activities in this body have helped to generate a climate of trust and understanding.[29]

These agreements, unlike the European Union or ANZCERTA integration agreements, do not explicitly seek to harmonize approaches in terms of their market integration objectives. However, they go beyond cooperation procedures contained in agreements on application of law, while the purpose of the latter is to prevent conflicts and ensure careful consideration of their respective vested interests. In the chapters on competition contained in trade agreements, one of the main purposes is to ensure that restrictions and distortions placed on competition do not diminish the benefits of the agreement or affect trade between the partners.

On the other hand, agreements of the second type, which give priority to compliance with their laws and grant special attention to the operating conditions of monopolies and State enterprises, are basically those agreements that follow a NAFTA model. These agreements involve one of the countries that are part in that agreement —Mexico with Israel, with Chile and with Uruguay; United States-Chile; and Canada-Chile—, also some Central American agreements with Chile and with Panama, as well as Panama-Taiwan Province of China. The objective is that monopolies and State enterprises should function in accordance with trade considerations (even pricing), and in such a way that they do not minimize the benefits of the agreements, contradict competition laws or grant discriminatory treatment to investment.

In order to ensure the fulfilment of the aforementioned conditions, countries are expected to establish control or supervision mechanisms. Dispute settlement is not normally applied to the fulfilment of domestic laws or policies, as in the case of rules relating to monopolies and State enterprises. The importance of cooperation and coordination is recognized for the application of the laws in the free trade area, but as a whole these agreements do not establish clear conditions and procedures on the subject. Thus, more recently, the signing of specific cooperation agreements between competition agencies has complemented some of these agreements.

The following are a few examples of this type of agreement:

- Chile and Canada: in 1996, these two parties signed the first agreement between a developing country and a country of NAFTA, since the entry into force of the latter in 1994. One factor that contributed to the relationship between the partners was their

[28] Also refer to presentation on this experience in ECLAC/OAS, 2002.

[29] This cooperation would recognize coincidences in substantial aspects of national laws and the appropriate protection of the rights of those involved in the procedures. The participation of both parties in relevant Committees and their adherence to 1995 OECD recommendations contribute to this mechanism (Apodaca, 2000).

common participation in APEC and FTAA.[30] This agreement pledged to eliminate antidumping duties in the free trade area and as was mentioned, in 2001, the two countries signed a memorandum of understanding for cooperation in the application of laws.

- Chile and United States: these two countries signed one of the more recent and far-reaching agreements between countries of the region. This agreement involves all aspects of bilateral trade relations (DIRECON, 2003). With respect to competition, it is more detailed than the Chile-Canada agreement, establishes some principles —especially transparency between the Parties— and incorporates consultation mechanisms.

The special category, mentioned at the beginning of this section, contains other agreements that basically establish the idea of strengthening the competition systems of the countries involved. These were signed at the beginning of the period under analysis (1996) and include as parties countries that do not have competition systems (Dominican Republic, Central America). The type of commitments established indicates that the signatories shall take steps to adopt rules designed to bring anticompetitive actions under control, shall coordinate efforts to develop methodological schemes for the treatment of cases or shall move forward towards the establishment of common rules.

Lastly, it may be observed that a single country may establish different types or models of agreements, according to the participating partners. This fact tends to corroborate the idea that setting up of agreements responds to a number of factors, the most important being the characteristics and scope of the trade agreement of which it is part, the level of development of the parties, the relative level of maturity of their competition protection system and acquired prior experience in signing agreements. The identification of the most significant differences between different types of agreements is, on one hand, a learning process for countries that are not yet involved in them, and helps them to seek arrangements that best suit their particular interests.

[30] This agreement represented for Chile, in general terms, an opportunity for their negotiating teams to acquire a learning process due to the inclusion of disciplines not included in agreements within the ALADI framework, such as services, investment and others (Valdes, 1999). It was also an important fact for re-negotiating the agreement with Mexico in 1998 (the first was signed in 1991), with a similar structure, while including the Trade and Competition Committee with the purpose of studying and makes recommendations relating to competition and trade subjects in the free trade area.

III. Recapitulation and Prospects for Cooperation on Competition Policy

This paper has shown that since the 1990s, the countries of the region have worked intensively to introducing or perfecting competition policies and have participated in relevant international negotiations and agreements. The second task called for the definition of cooperation within an international framework. Such cooperation may be implemented at various levels: multilateral, hemispheric, sub regional or bilateral. There is a high degree of interdependence between these areas, as well as a derived cost from the participation in multiple forums and a learning process that provides feedback between levels and between different issues covered by these negotiations and agreements.

The bilateral agreements signed in recent years, in which Mexico and Chile have been leading figures, are further examples of the intensive efforts by countries of the region to conclude trade agreements that address the issue of competition.

An important point to note in this dynamic task is the heterogeneity of participating countries in terms of size, level of development or maturity of their competition systems; indeed, some participating countries do not even have competition laws or institutions. Nevertheless, in terms of competition policy, those countries with less development in a number of dimensions did not seem to benefit from any special and differential treatment (SDT).[31] Beyond the willingness of the countries themselves, this is a very difficult issue to deal with in coordinating competition policy, as has been seen in discussions on this issue in the FTAA and WTO (Silva, 2003).[32] Thus, the pertinence of SDT is open for discussion as well as the relevance of having longer periods or more flexible prerequisites for these countries to take part in such agreements. In this regard, the experience of economic partnership agreements (EPA), which introduce important cooperation commitments are interesting with respect to parties that show great disparities.

[31] The absence of SDT is also noted in a review carried out by the Latin American Integration Association (LAIA), 2003.

[32] In a general manner, SDT, as traditionally conceived, requires major innovations in agreements that contain provisions on domestic policy, which require institutional efforts in developing countries.

Another point is that one country may adopt different models for competition coordination, depending on its partners in the agreement. This has to do with the characteristics of the agreements as well as of the countries taking part. Clearly, some of these agreements have a more important cooperation component because the agreement itself develops within this type of commitment, in accordance with the objectives or the role that each party has in its international integration strategy. Some of this can be seen through complementary agreements between agencies that have appeared a few years after the signing of an FTA, whose chapter on competition only deals with cooperation in a limited way. Thus, it will be important to observe how coordination efforts evolve over time, given that many of these agreements are too recent for this exercise to be undertaken.

In order to pursue the analysis presented in this paper, future studies could consider regional experiences in light of the progress in bilateral cooperation at the international level. Based on the cases under consideration, these studies could be two-fold: on the one hand, to consider cooperation agreements —among agencies— for the application of laws; on the other, to consider trade agreements with rules regarding competition policy. Cooperation agreements can be studied basically in relation to already existing experience in developed nations.[33] On the other hand, the study of trade agreements should focus on those areas linked to competition dealt with in other chapters of the agreements, that is, it should involve a more comprehensive approach to the agreements.[34]

Some of these international experiences reveal that bilateral agreements for cooperation regarding competition have limitations, costs and benefits.[35] In terms of the limitations, it will be noted that this type of agreement is insufficient for facing up to the challenges of globalization, which implies a greater number of interdependencies that exist at a bilateral level. Until now, it has also been observed that bilateral agreements are effective between large countries because of the need for reciprocity and levelling of interests. In terms of costs, there should be a differentiation between negotiation and administration; in addition, there is a growing need for resources to implement cooperation, respond to requests and handle manage notifications and consultations. At advanced stages of the investigation process, it may also be difficult to coordinate enforcement measures.

Nevertheless, one of the main benefits of these agreements is their effect on capacity building and probably on the competition culture, especially when developing countries establish cooperation with more developed ones. They also establish a legal framework for cooperation and promote closer relations. There is also a potential learning process in the prevention of disputes and settlement of those that may arise as a result of transnational activities and may facilitate analytical convergence. These benefits can be obtained with greater ease and in less time than that required in a plurilateral or multilateral agreement.[36] In addition, the coordination exercise regarding competition potentially represents greater bargaining power, in sub regional, plurilateral or multilateral agreements.

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[33] See UNCTAD, 2003a; WTO, 1997 and 2002; and OECD, 2002.

[34] For this purpose, one could refer to agreements between countries of similar development —for example, members of ANZCERTA— or those countries with different levels of development, for example, between the European Union and neighbouring countries, the EPA negotiated by Japan and other Asian countries, and some recent agreements between the United States and countries outside the region. With the exception of the agreements considered in this paper, and the Singapore agreement, the United States has not incorporated competition chapters in agreements with other developing countries (see USTR web site).

[35] Much of this analysis is developed around agreements between agencies (see Balzarotti, 2000; OECD, 2002; United States, 1997 and 2002; Jenny, 2000).

[36] This is reflected in the lack of results in Cancun and the subsequent discussions within the WTO.

On a different note, it will be recalled that the discussions and negotiations at higher levels also contribute to the generation of bilateral agreements and capacity-building in countries that are just beginning to develop a competition policy. Reference was made in the previous section to the main forums, such as OECD and UNCTAD.[37] Nevertheless, there have also been contributions in terms of concepts and principles from bodies such as APEC, FTAA and WTO, in addition to progress in transparency and learning from common experiences and cooperation for institution-building that they normally incorporate.

The participation of countries of the region in a large number of bilateral trade agreements, including the competition policy component should not mask the potential costs and benefits referred to earlier. The heterogeneity of these countries poses an additional challenge in terms of harmonization. Moreover, there is the risk that the coordination of competition policy with other policy elements contained in these agreements, might discriminate against third countries.[38]

Lastly, the incorporation of competition policy in sub regional or integration agreements has had some impact in terms of strengthening national policies, however, the subregional level has been held back in the last years. Instead, this process has continued through bilateral cooperation agreements, which could help to form or strengthen the culture of competition in a more general sense. Moreover, it should come as no surprise that countries participating in such agreements should move forward in one way or another towards harmonization of their approaches and practices, thus, maximizing the possibilities of joining forces for the negotiation of more comprehensive agreements (FTAA and WTO).

[37] Special reference is made to OECD recommendations on cooperation as well as to the efforts by UNCTAD to come up with a cooperation model. See also Vaira and Riviere, 1998.

[38] For example, in the case of substituting antidumping rules for competition policy, that would affect third countries quite differently (Heydon, 2002).

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Annexes

Bilateral Trade Agreements of LAC Countries that Contain a Chapter on Competition Policy

TABLE 1
LIST OF AGREEMENTS
(chronological order)

Year of signing and year of entry into force	SIGNATORY COUNTRIES/BLOCS	TYPE OF AGREEMENT AND COMPETITION REFERENCES
1996 - 1996	1. Chile – MERCOSUR	ECA/LAIA No. 35, Title VI
1996 – 1997	2. Chile – Canada	FTA, Chapter J.
1998 - 1999	3. Chile – Mexico	FTA, Chapter 14
1998 – 2001/2	4. Central America – Dominican R.	FTA, Chapter XV
1999 – 2002	5. Chile – CACM	FTA, Chapter 15
2000 – 2001	6. Mexico – EFTA	FTA, Chapter IV
2000 – 2000	7. Mexico – Israel	FTA, Chapter VIII
2000 - 2000	8. Mexico – EU	FTA, Títle IV[a]
2001 - 2002	9. Costa Rica – Canada	FTA, Chapter XI
2002 -	10. Central America – Panama	FTA, Chapter 15
2003 – 2003	11. Chile – EU	FTA, Títle VII
2003 – 2004	12. Chile – USA	FTA, Chapter 16
2003 -	13. Chile – EFTA	FTA, Chapter VI
2003 - 2004	14. Chile –Republic of Korea	FTA, Chapter 15
2003 - 2004	15. Panama – Taiwan Prov. of China	FTA, Chapter 15
2003 -	16. Mexico - Uruguay	FTA, Chapter XIV
2004 -	17. CARICOM – Costa Rica	FTA, Chapter XIV
2004	18. Mexico – Japan[b]	FTA, Chapter 12 and Implementation Agreement

Source: Free Trade Area of the Americas (FTAA) Inventario de los acuerdos, tratados y otros arreglos sobre políticas de competencia existentes en el hemisferio occidental (FTAA.ngpc/inf/03/Rev.2), 22 March 2002; official web site of Foreign Trade Information Service, Organization of American States (SICE-OAS) and web sites of national bodies dealing with competition or negotiations.

Notes: (a) Corresponds to Article 39 of Decision Nr. 2, year 2000 of the joint Council; and developed in annex XV. The content is on Article 11 of Global Association Agreement.

(b) Negotiation concluded in March and signed in September 2004. See web site of MOFA (http://www.mofa.go.jp/region/).

TABLE 2
MAP OF AGREEMENTS
(date of signing)

SIGNATORY COUNTRIES/BLOCS	CARICOM	Central America	Chile	MERCOSUR	Mexico	Panama	Dominican Republic
			INTRA REGIONAL				
CARICOM		C.Rica 2004					
Central America	C. Rica 2004		1999			2001	1998
Chile		1999		1996	1998		
MERCOSUR			1996		Uruguay 2003		
Mexico			1998	Uruguay 2003			
Panama		2001					
Dominican Republic		1998					
			OUTSIDE THE REGION				
Canada		C. Rica 2001	1996		a)		
EFTA			2003		2000		
European Union			2002		2000		
Israel					2000		
Japan					2004		
Republic of Korea			2003				
Taiwan Prov. of China						2003	
USA			2003		a)		
TOTAL	**1**	**5**	**8**	**2**	**6**	**2**	**1**

Source: Free Trade Area of the Americas (FTAA) *Inventario de los acuerdos, tratados y otros arreglos sobre políticas de competencia existentes en el hemisferio occidental* (FTAA.ngpc/inf/03/Rev.2), 22 March 2002; official web site of Foreign Trade Information Service, Organization of American States (SICE-OAS) and web sites of national bodies dealing with competition or negotiations.

Note: (a) Participation in trilateral agreement NAFTA (1992);

TABLE 3
CHAPTERS ON COMPETITION POLICY IN FREE TRADE AGREEMENTS SIGNED BY COUNTRIES OF LATIN AMERICA AND THE CARIBBEAN 1996-2004: MAIN COMPONENTS[a]

(In chronological order, based on the year of signing of the agreements)

Agreements / Issues – regulations[b]	Chile Merc	Chile Canada	Chile Mex	C. Am Dom. Rep.	Chile CACM	Mex EFTA	Mex Israel	Mex EU	C.Rica Canada	C. Am Pan	Chile EU	Chile USA	Chile EFTA	Chile Korea	Pan Taiwan	Mex Uru	C.Rica CARICOM	Mex Japan
OBJECTIVES																		
-***General***:																		
To ensure that the benefits of this Agreement are not impaired by anticompetitive trade practices.				√	√			√		√	√		√	√	√		√	
To devise measures for application of the law which help to promote the objectives of the Agreement.		√	√			√	√	√	√			√	√	√	√	√		√
-***Specifics***[c]																		
To develop competition policies in the free trade zone and seek common provisions	√			√	√					√							√	
To promote the effective application of rules on free competition within the free trade area.				√	√					√						√		
To promote cooperation and coordination among the Parties for the application of their laws.		√	√					√	√		√		√	√	√	√		√
PRINCIPLES AND INSTITUTIONAL FRAMEWORK[d]																		
Non-discriminatory measures and application							√		√			√	√					√
Equitable procedures for dealing with anti-competitive activities[e]									√			√	√					√
Transparency: Public availability of measures and justification for dealing with anticompetitive activities									√		√	√	√	√				√
Adopt principles acceptable to the Parties in multilateral forums (e.g. WTO)											√		√	√				

Agreements Issues – regulations[b]	Chile Merc	Chile Canada	Chile Mex	C. Am Dom. Rep.	Chile CACM	Mex EFTA	Mex Israel	Mex EU	C.Rica Canada	C. Am Pan	Chile EU	Chile USA	Chile EFTA	Chile Korea	Pan Taiwan	Mex Uru	C.Rica CARICOM	Mex Japan
Establishment of a competition (and trade) body or officials[f]			√	√		√		√							√			
With tasks such as the following: -Apply the provisions contained in the chapter				√				√					√					
-Ensure that consultations or other cooperation tasks are dealt with.									√				√	√				
COVERAGE																		
Identification of anticompetitive practices[g]						√		√	√		√			√				
-Exclusions and authorizations:[h] Non-supervision of government agencies that acquire goods or services for non-trade purposes		√	√		√		√			√		√			√	√		
MONOPOLIES AND STATE ENTERPRISES[i]																		
The designation of monopolies or State enterprises is not prohibited under national legislation		√	√		√		√			√	√	√		√	√	√		
Efforts to introduce conditions that minimize the cancellation or reduction of benefits		√	√				√			√		√			√	√		
Notification, when the designation may affect the interests (of persons) of the other Party		√	√				√			√		√			√	√		
Supervision: ensure that monopolies and State enterprises do not conduct activities incompatibles with the commitments undertaken under the Agreement[j]		√	√		√		√			√		√	√		√	√		
Other specific requirements:[k] -Act in accordance with trade considerations		√	√				√					√				√		
-In developing the trade function, grant non-		√	√		√					√		√			√	√		

Agreements Issues – regulations[b]	Chile Merc	Chile Canada	Chile Mex	C. Am Dom. Rep.	Chile CACM	Mex EFTA	Mex Israel	Mex EU	C.Rica Canada	C. Am Pan	Chile EU	Chile USA	Chile EFTA	Chile Korea	Pan Taiwan	Mex Uru	C.Rica CARICOM	Mex Japan
discriminatory treatment to the other Party's investment and goods and services																		
-Subject to competition rules[l]		√	√				√			√	√	√	√	√	√	√		
COOPERATION AND COORDINATION[m]																		
Importance of cooperation and coordination in the application of the law for the purposes of the Agreement		√	√			√	√		√			√	√		√	√		
Notification of activities for application of the law if its action can affect the other Party[n]						√	√	√*	√		√*	√	√*	√*	√			√*
-Specify situations that require notification[ñ]								√	√		√							√
Exchange of non-confidential information,[o]: in order to facilitate the effective application of laws		√	√			√	√	√	√		√	√	√	√	√			√
-Type of information: sanctions or corrective measures and their rationale, application processes etc.								√			√		√	√				
-Subject to rules of "confidentiality" applicable in each Party						√		√	√		√		√	√	√	√		√
-Submission of confidential information to the courts of justice in the respective country subject to confidentiality											√		√	√				√
Consultations[p] when the important interests of one Party are adversely affected in the territory of the other Party								√		√	√		√	√				√
-With respect to the operation, execution, application and interpretation of the Chapter, or measures and effectiveness		√	√			√	√		√							√		
-Favourable consideration of						√		√				√		√				

Agreements Issues – regulations[b]	Chile Merc	Chile Canada	Chile Mex	C. Am Dom. Rep.	Chile CACM	Mex EFTA	Mex Israel	Mex EU	C.Rica Canada	C. Am Pan	Chile EU	Chile USA	Chile EFTA	Chile Korea	Pan Taiwan	Mex Uru	C.Rica CARICOM	Mex Japan
the submissions or opinions by the receiving authority																		
-Principles of positive and/or negative comity[q]						√		√			√			√				√
Coordination in applying the law in specific cases does not prevent taking decisions independently.								√			√		√	√				√
Mutual technical cooperation for using experiences and reinforcing implementation of their competition policies and laws.[r]		√						√	√		√			√				√
Additional commitments geared towards the objectives of the Chapter may be made for the future	√								√	√							√	
SETTLEMENT OF DISPUTES[r]																		
-Inability to resort to the Agreement's system for settling disputes for matters arising under the Chapter.									√		√		√	√				
-Id. The above with respect to competition legislation and policies[s]		√	√				√					√				√		

Source: Elaborated by the author with information from: FTAA, 2002; SICE-OAS (web); web sites of national competition or negotiating bodies.

Notes:

(a) √: indicates that the relevant issue appears in the agreement. If it appears only in one or two agreements, it is indicated in the note. The dates and identification of chapters in each agreement are shown in Annex 2;

(b) The issues have been defined in this annex for analytical purposes, so that they do not necessarily correspond to the titles of sections in the agreements under consideration. In addition, the regulatory contents presented sum up basic ideas in the texts of the agreements, that is, they do not reproduce exactly the expressions contained therein;

(c) The purpose of establishing consumer protection rules is specified only in the case of Chile-MERCOSUR;

(d) The agreements between Chile and the United States and Chile and the Republic of Korea stipulate that autonomy shall not be infringed in policy definition or implementation;

(e) Some of the agreements referred to also provide for the availability of a domestic review or appeal process;

(f) The Chile-Mexico and Mexico-Uruguay agreements provide that officials shall report and make recommendations on trade and competition to treaty bodies. The agreements of Costa Rica-Canada and Chile-United States provide for the establishment of an impartial and independent competition authority responsible for applying the law;

(g) These practices include agreements/practices concluded between firms, abuse of dominant position, concentrations, mergers and acquisitions. In the case of Mexico-Israel, there is the possibility of adopting agreements for restricting competition subject to notification and minimization of effects that diminish competition;

(h) In the case of Costa Rica-Canada, it is specified that the exclusions must be transparent and are subject to a periodic assessment of their functionality in terms of general policy goals;

(i) Also enterprises that hold exclusive rights (cases of Chile-Korea and Chile-EFTA)

(j) Some agreements specify that supervision may take the form of regulatory control, administrative supervision or other mechanisms;

(k) The Chile-EFTA agreement also indicates that it is subject to the General Agreement on Tariffs and Trade (GATT) (A.XVII: State trading enterprises) and to the General Agreement on Trade in Services (GATS) (A.VIII: Monopolies and Exclusive Service Suppliers);

(l) In some cases, it is agreed that a monopoly position will not be used to carry out anticompetitive practices (or practices which have an adverse effect on the investment of the other Party);

(m) In some of the cases referred to, the notification, consultations and exchange of information do not carry qualifications or operating details;

(n) The agreements marked with a tick and asterisk (√*) specify the information required by the notified Party;

(ñ) Transborder activities with extraterritorial impact or measures. The Mexico-European Union agreement also includes other government measures with effects on competition;

(o) The Mexico-European Union agreement includes: mutual assistance for compiling information on their respective territories and the promotion of knowledge on their respective competition laws and policies. In the case of the Mexico-Japan Agreement, rules on confidential information are established. The Chile-European Union and Chile-United States agreements contemplate the provision of information requested on application, monopolies and State enterprises, State aid, exceptions (at any government level);

(p) Consultations may refer to anticompetitive practices or investigation processes. The Mexico-European Union agreement refers to the consideration of important interests of the other Party in the application of the law and the search for mutually acceptable solutions as “dispute prevention”;

(q) In some unspecified cases, reference is only made to consultations relating to the consideration of interests or the situation affecting the applicant country. The Mexico-EFTA agreement specifies that applications must be very specific and subjected to careful consideration;

(r) The Mexico-European Union agreement specifies the type of activities that may be included, for example, seminars, training, joint studies, facilitating access to information;

(s) The Costa Rica-Canada agreement provides for the referral of consultations, when there is no mutually satisfactory solution (see also “consultations”). The Chile-Mexico and Mexico-Uruguay agreements prohibit the submission of a dispute by an investor on any issue relating to competition legislation;

(t) In most of these cases, it may be inferred that provisions relating to monopolies and State enterprises would be subject to dispute settlement.