

## **Regional Organizations and Domestic Policy Reform: The EU and NAFTA's Impact on Turkish and Mexican Economic Reforms**

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### **Abstract**

Much has been made of the impact of regional organizations such as the European Union on democratic and market reforms in the candidate and associated countries. Less attention has been paid; however, to the fate of reforms once the agreement is signed, and conditionality of the regional bloc is weakened. This paper explores when and how reforms adopted under conditionality become durable and effective. I argue that the durability of reforms depend on the emergence of a pro-reform domestic constituency, and the ability of international organizations to provide a socializing environment for the reforming country's officials. I test this argument with case studies on competition law reforms in Mexico and Turkey. These two countries adopted competition laws in the early 1990s as a condition for entering into trade agreements with the United States and the European Union. The impact of conditionality weakened once the agreements were signed; however, the emergence of a pro-competition domestic constituency, and the support and guidance of other international organizations such as the OECD have assured that the reforms become durable and effective, and thus contribute to the regulatory capacity of the two states.

**Keywords:** conditionality, regional organizations, EU, NAFTA, competition law

## **I. Introduction**

Most countries lining up to join or to sign trade or association agreements with the European Union (EU) have swiftly adopted economic and political reforms to comply with the conditions imposed by the EU. Conditionality has arguably been one of the most important of the EU's foreign policy tools, through which it has influenced not only its neighborhood but also increasingly regions far away (Grabbe 2006). There is now substantial evidence that regional organizations and trade agreements influence policies in signatory states in areas as diverse as human rights, democracy, economic reforms, and labor and environmental regulations (Bruszt and McDermott 2012; Hafner-Burton 2005; Pevehouse 2002). They do so by offering incentives in exchange for reforms and thus manipulating policymakers' cost-benefit calculations, and/or socializing officials in the target countries through repeated interactions.

Once the target country signs the admission, trade or association agreement, however, there is concern that it may reverse the newly-enacted reforms under pressure from domestic actors whose interests are hurt by them, or fail to enforce them for lack of political will or administrative capacity, in effect leaving the reforms as "empty shells" (Dimitrova 2010). Extant research on reforms in the new member states of the EU has found that there is significant variation in the degree to which reforms are followed through or abandoned afterwards, with the overall balance on the positive (Bruszt 2015; Sedelmeier 2008; Vachudova 2014). Post-agreement dynamics, however, differ in countries that have less institutionalized relations with the EU or other regional blocs. Monitoring mechanisms, if they are in place, may be weak. There may also be fewer opportunities for policymakers in the target states to socialize with their peers in the regional bloc, because a trade agreement hardly generates the same type of day-to-day interaction that a regional bloc generates for its members. Thus, there is a risk that reforms adopted under conditionality may be reversed or remain unenforced.

In this paper, I explore the conditions under which reforms adopted under conditionality of trade agreements become durable and effectively enforced. I first discuss the problems associated with weak post-agreement conditionality, that is, a situation in which post-agreement dynamics between the regional bloc and the target state fail to provide the incentives or the socialization opportunities required to sustain the reforms. I then examine how some countries are able to sustain reforms under weak conditionality, differentiating between the survival and the effectiveness of reforms. I argue that weak conditionality is not a recipe for reversal or non-implementation of reforms in the target countries. The emergence of a domestic constituency supportive of reforms, and the impact of international organizations other than the regional bloc imposing the condition can help the country sustain domestic reforms and implement them effectively.

In order to empirically examine the plausibility of these arguments, I explore the impact of the North American Free Trade Agreement (NAFTA) on Mexican economic reforms, and the EU-Turkey Customs Union's impact on Turkish reforms. The specific focus is on reforms that led to the adoption of competition laws in Mexico and Turkey, in 1992 and 1994 respectively, as a condition of these agreements. After the agreements were signed, reformers in these countries found themselves in an environment of weak conditionality, because there was little in the form of institutionalized, detailed monitoring of reforms in this area, and few opportunities to meaningfully socialize the reformers in the context of the agreements. Nonetheless, no backsliding occurred in competition law reforms. I argue that reforms survived in both cases not due to continued engagement with the EU and NAFTA, but thanks to the emergence of a pro-reform domestic constituency and the support of international organizations and networks such as the Organization for Economic Cooperation and Development (OECD), and the International Competition Network (ICN). Furthermore, I argue that the strength of the domestic constituency in support of competition law influences the extent to which the competition regimes of these countries have become effective. The domestic constituency in favor of reforms has been stronger in Turkey, which has meant that the Turkish competition regime has become more effective in regulating competition in the market, with some backsliding in recent years. In Mexico, a pro-competition domestic constituency emerged later, and thus while the law on the books survived, its effective implementation has happened gradually and more recently.

The Turkish and Mexican reform processes are chosen for comparison because the economic, political and social backgrounds of these two countries, and the conditions under which they launched reforms are similar, allowing us to control for these factors and focus on variation in the conditionality relationship and its consequences. The cross-regional comparison helps tease out how conditionality functions in different regional contexts and its limitations, and it allows us to extend the vast literature on EU conditionality to different regional agreements around the world.

Nonetheless, the cases differ in terms of post-agreement conditionality, to the extent that Turkey's ongoing bid for membership generates incentives for reform durability. The EU formally declared Turkey a candidate for membership in 1999 and opened membership negotiations with Turkey in 2005. Membership negotiations generate incentives for Turkish policymakers and economic actors to ensure that the Turkish competition law is in line with the EU's, since competition is one of the thirty-five negotiation chapters where alignment with EU law is required. The credibility of membership prospects in the Turkish case is highly questionable, however. Objections of member states such as Cyprus, France and Austria derailed membership negotiations almost as soon as they were launched (CITE), and over the years the negotiations have diluted to

such an extent that EU conditionality has become negligible as a motivation for domestic reforms. Policymakers have lacked incentives to carry out costly reforms (CITE), including within the competition chapter, such as regulating state aids. For these reasons, I argue that membership conditionality is not sufficient to explain the durability of Turkish competition law reforms, except maybe in the early 2000s when membership prospects seemed most credible. The case study discusses further whether membership conditionality can be an alternative explanation to the argument proposed here.

Another issue with the case selection is that competition law reforms in Mexico and Turkey are both cases of reforms that endured under weak conditionality, thus the two cases do not provide sufficient variation to rigorously test the arguments proposed here. For this reason, the paper and the case studies do not claim to test the arguments, but rather aim at examining *how* these countries have sustained reforms under weak conditionality, providing insights into how domestic politics and international agreements interacted to influence domestic reform processes. The two case studies rely on a broad range of sources of empirical evidence. I use primary sources such as face-to-face and phone interviews with experts and officials of national competition agencies and international organizations, reports of the two competition agencies and international organizations, as well as secondary literature on the reform processes in the two countries.

The paper contributes to the literature on the impact of international and regional organizations on domestic politics in a number of ways. Membership conditionality—especially that of the EU—has been an important catalyst of economic and political reforms in developing countries, and has arguably contributed to improving human rights, democracy, rule of law, good governance, and regulatory capacities of the target states. But reforms frequently prove fragile: backsliding, partial and fake compliance are ubiquitous (Dimitrova 2010; Noutcheva 2009). By examining why post-agreement environment is open to backsliding, and how some reforms nonetheless become durable and effective, this paper advances our understanding of membership conditionality and its limitations, and how to overcome them.

The issue is not just of academic interest. An increasing number of regional organizations and trade agreements engage in promoting human rights, democratic and market reforms, and even state-building (Bieber 2011; Closa Montero, Palestini Céspedes, and Castillo Ortiz 2016; Keil 2013; Legler and Tieku 2010). However, serious doubts have been raised about the effectiveness of such efforts. The paper contributes to policy debates on domestic and international conditions under which such efforts can be more effective.

The rest of the paper is organized as follows. The second section reviews the literature on conditionality and its impact on domestic reforms. The third section identifies the factors that

contribute to the likelihood of reform backsliding or non-enforcement in the post-agreement phase, and explains how a pro-reform domestic constituency and international organizations can help sustain reforms under these conditions. The fourth section presents the two case studies on competition law reforms in Mexico and Turkey under the conditionality of NAFTA and EU-Turkey Customs Union Agreement, and the fifth section concludes.

## **II. Conditionality and Domestic Reforms**

Conditionality has been at the center of academic and policy debates since it has come to be used frequently and increasingly controversially by international financial organizations such as the International Monetary Fund (IMF) and the World Bank in the post-World War II period. Two types of conditionality can be identified. The first type concerns making the disbursement of financial resources—such as IMF or World Bank loans to governments—conditional on reforms (Babb and Carruthers 2008, 13). The second type is membership conditionality, by which "groups of countries use the prospect of membership in international organizations to leverage particular policies" (Ibid. 2008, 24).

A key debate on membership conditionality revolves around whether membership or candidacy to international and regional organizations motivates reforms. A number of quantitative studies provide evidence that regional agreements, under certain conditions, have a significant positive impact on their member states in areas such as promotion of human rights and democracy (Hafner-Burton 2005; Pevehouse 2002). The literature on European Union membership conditionality similarly addresses the extent to which prospects for accession, or association or trade agreements with the EU motivate reforms in the candidate and associated countries. Schimmelfennig & Sedelmeier (2005) argue that candidate countries' adoption of the EU's rules and norms varies with the degree to which the EU can extend rewards in exchange for reforms. Credible membership prospects combined with benefits expected from membership allow policymakers to downplay concerns over the bureaucratic and political costs of domestic reforms (Bauer, Knill, and Pitschel 2007, 410). Where the promise of membership is not credible, policymakers become hesitant to adopt reforms that incur major costs, and may instead resort to selective reforms that serve their own political interests (Cengiz and Hoffmann 2013; Noutcheva and Aydin-Düzgit 2012). Other scholars emphasize the socializing effects of the EU on the member states, membership candidates, as well as other regions of the world (Börzel and Risse 2000; Checkel 2005; Kelley 2004; Lavenex 2014). According to these authors, the EU helps sustain policy reforms through socialization to the extent that it can generate regular, close interactions for policymakers and officials of the target countries with their peers in the EU and the member states.

A similar, if more limited, body of research has developed around the impact of NAFTA on domestic reforms in Mexico in areas as diverse as labor and environmental regulations and economic policies (Aspinwall 2013; Bruszt and McDermott 2012; Clarkson 2002; Duina 2013). As a trade agreement that has a high level of precision and that generates a high level of obligation for its members (Abbott 2000), NAFTA has exerted pressure for domestic reforms on Mexico, the member with lower regulatory standards, similar to those exerted by the EU on the candidate and associated countries (Aspinwall 2009, 2013; Bruszt and McDermott 2012). Research on NAFTA-ization, similar to the literature on Europeanization in the candidate countries, finds that the impact of the agreement has been uneven across sectors depending on the goals and characteristics of the agreement in different sectors (scope, depth, independence from the national level, degree of citizen access), as well as domestic factors (professionalization and technical capacity of bureaucracy, and the involvement of domestic non-state actors) (Aspinwall 2013).

### **III. How weak conditionality can be superseded**

This paper builds on research on Europeanization and NAFTA-ization, and explores the impact that regional blocs have on domestic reforms. There is plenty of evidence to suggest that membership conditionality is a trigger of reforms in countries that seek membership to a regional bloc (Schimmelfennig and Sedelmeier 2005). After the membership, association or trade agreement is signed; however, reforms may lose momentum because the regional bloc for the most part loses its ability to impose costs or to withhold benefits if the reforms are reversed (Sedelmeier 2008). This is the condition that I refer to in this paper as weak post-agreement conditionality.

In the case of the EU, a number of authors have highlighted the difficulty of sustaining reforms, in particular in areas that are not part of the EU *acquis communautaire* (Bruszt 2015; Kelley 2006; Meyer-Sahling 2011). However, for the most part, some type of monitoring and sanctioning (and/or assistance) mechanism is in place for the new members of the EU. Moreover, peer pressure and socialization become stronger after accession, which ensures the continuity of the reform process (Levitz and Pop-Eleches 2010). Such mechanisms are much weaker for countries that have less institutionalized relationships with the EU, for instance, those in trade or association agreements with the EU, or those such as Turkey where membership is officially on the table, but is far from reach.

Weak post-agreement conditionality is a theoretical possibility, but not a given. If a regional bloc maintains effective monitoring and sanctioning mechanisms to detect and penalize breaches of the agreement, then reformers in the target country continue to face the same type of costs with respect to non-compliance as they did during the negotiations leading up to the agreement. For

instance, the EU has monitored post-agreement compliance, and has sanctioned breaches of reforms related to the *acquis communautaire* in Central and Eastern European countries by initiating infringement proceedings and referring the member state to the European Court of Justice in cases where a new member breaches EU law (Meyer-Sahling 2011). The United States sanctions breaches of the human rights condition of its trade preference program for African countries, Africa Growth and Opportunity Act, by denying countries eligibility for the program's benefits (Schneidman and Meltzer 2015). According to Hafner-Burton (2005), when a trade bloc relies on hard conditionality—where obtaining benefits from the agreement is conditional on continued compliance—it can effectively change the behavior of the target country, such as with respect to human rights provisions of trade agreements.

Trade or association agreements, however, do not always rely on hard conditionality. I argue that two factors underlie the "weakness" of weak conditionality. First, the regional bloc or trade agreement might not have adequate mechanisms to monitor and sanction compliance with all the reforms adopted as conditions of the agreement. For instance, a growing number of trade agreements commit states to observe certain human rights, but not all have mechanisms in place for monitoring compliance and sanctioning breaches (Hafner-Burton 2005). Environmental and labor rights side agreements of NAFTA, and some of its provisions (such as Chapter XV on competition policy) are not subject to the dispute resolution mechanism of the Agreement. The point is that a trade agreement may require certain conditions to be fulfilled before the agreement is signed, yet may not have the adequate mechanisms to monitor compliance in that area after the agreement is signed. Even if monitoring mechanisms exist, sanctions for non-compliance may be weak or inadequate. For instance, being expelled from the African Growth and Opportunity Act for failing to meet human rights conditions was not a severe sanction for Burundi, because trade with the United States was of minor importance for the country's economy (Kelley 2015).

In addition to weak monitoring and sanctioning mechanisms, a relationship characterized by weak conditionality may lack the socialization and learning opportunities that membership generates. Membership in the EU incorporates officials and policymakers of the new member states into a kind of regional "epistemic community" (Haas 1992), through which they interact with their foreign counterparts regularly over long periods of time. Such an environment is conducive to socialization, as a result of which actors may begin acting in accordance with the expectations of the regional bloc to maximise their status or reputation (Johnston 2001, 500), or may even "adopt the interests, or even possibly the identity of the community of which they are part" and begin taking the norms of the community for granted (Checkel 2005, 804). Both types of socialization

result in reinforcing domestic reform processes. When regular and frequent interactions are absent, however, no such socialization takes place.

Despite difficulties in monitoring and sanctioning commitments, and fewer opportunities for socialization once the agreement is signed, some reforms adopted as conditions of regional agreements are sustained and some additionally are effectively enforced. I argue that two factors help explain the durability and effectiveness of reforms adopted under conditionality: the emergence of a pro-reform constituency in the domestic arena, and the continued support of international organizations beyond the regional bloc that imposed the original conditionality. While both factors contribute to the survival of reforms, a domestic constituency supportive of reforms is crucial for reforms to be implemented effectively.

During the negotiation of the agreement, the effect of domestic political forces are muted due to the strength of external pressures for reform; however, once these pressures subside, domestic politics, in particular the struggle between the supporters and the opponents of reforms takes a center stage (Dimitrova 2010). Domestic interest groups may be potential catalysts or obstacles to reform depending on how reforms influence their interests. For instance, highly organized business associations with intense interests may try to reverse or block the enforcement of economic reforms. Non-governmental organizations and pro-reform parts of the state bureaucracy may help sustain and strengthen reforms (Dimitrova and Buzogány 2014; Dimitrova 2010; Spendzharova and Vachudova 2012). A pro-reform constituency may be active in the country before the external conditionality is imposed, but may be too weak to motivate change in the absence of conditionality. It may also emerge during the negotiations leading up to the agreement, thanks to interests triggered by the negotiations. It may also gradually emerge once the policy is in place. Such a pro-reform domestic constituency, I argue, increases awareness of how the reforms benefit the society, and galvanise support for the policy. The existence of such a domestic constituency helps the reforms to be internalized, and thus might help the reforms not only to become durable but also effective. Such internalization or "local ownership" has been identified as a key factor in the effectiveness of legal transplants and reforms adopted as a consequence of conditionality (Johnson and Wasty 1993, Svetiev and Wang 2016).

The external context beyond the regional bloc that imposed conditionality also becomes much more important in the post-agreement phase. In particular, if the policy reform concerns an area in which there is an international consensus, there may be multiple international actors devoted to supporting the reform. International and regional organizations, transnational regulatory networks, and networks of non-governmental organizations may step in and help sustain reforms in the target country by providing technical assistance and guidance during the implementation stage.

They promote the “international standards” to which recent reformers may aspire to reach, and thus strengthen the domestic political elites in favour of reforms (Linos 2013). Finally, the meetings, forums, and conferences of international and regional organizations and transnational networks become opportunities for the socialization of policymakers and officials of the target country. Through such socialization, they become subject to peer pressures to conform to international norms in that policy area (Johnston 2001). Gradually they may assume the identities and interests of this community in which they participate regularly (Checkel 2005).

Domestic and international factors may reinforce one another in helping sustain reforms. International organizations frequently provide funds for domestic NGOs for projects that may help support reforms. They fund research and educational projects to help demonstrate the benefits of reforms for the society, which may not be immediately clear or well known in the society. International actors may also increase the legitimacy of domestic pro-reform actors in the society, as their support reflects that the reforms follow an international standard, which Linos has shown to matter to voters (2013). Finally, international organizations may help strengthen the hand of the pro-reform coalition in legislative negotiations, if opponents of reform seek to make legislative changes, or introduce exceptions to the implementation of reforms. Domestic pro-reform actors, for their part, are important allies for external actors, because they domesticate the international norm for implementation in the local context, and help monitor its effective enforcement.

#### **IV. Competition Law Reforms under Conditionality**

Competition (antitrust) laws are aimed at protecting competition in the marketplace. They typically include prohibitions against cartels and abuses of dominant position, and provide for review of mergers for their potential anticompetitive effects. From the adoption of the first competition laws in Canada (1889) and the United States (1890) until after World War II, only a handful of countries had competition laws. After World War II, competition laws spread gradually, to West Germany and Japan under the influence of the United States, and then to other parts of the world. In the last 30 years competition laws have spread much more widely and rapidly, with currently more than 130 countries having such laws on the books.

There have been a number of attempts at international cooperation on competition law. The League of Nations in the interwar years, the Havana Charter of the failed International Trade Organization in the immediate aftermath of World War II, and more recently the World Trade Organization have sought to help states cooperate on aspects of competition law, but all three attempts failed (Gerber 2010). International cooperation is motivated by the desire to prevent firms from engaging in anticompetitive activity across borders, such as forming international cartels,

which national authorities have a difficult time detecting and sanctioning. In the absence of an international regime on competition, international organizations such as the OECD, the United Nations Conference on Trade and Development (UNCTAD) and the International Competition Network (a virtual transnational network of competition agencies) fill the void. These organizations seek voluntary harmonization among national competition regimes by establishing best practices and model laws, and by providing technical assistance to younger competition agencies. Further international cooperation happens through bilateral agreements on competition law, as well as through trade agreements that include competition provisions (Bradford and Büthe 2015; Petrie 2016).

In parallel to the global, regional and bilateral cooperation efforts, powerful states have pursued unilateral strategies to address anticompetitive conduct that takes place outside of their jurisdictions with effects on their markets. Competition authorities in the United States and the EU have claimed extraterritorial application of their competition laws under the effects doctrine to address such conduct (Griffin 1999, 160). However, legal and practical obstacles often cripple such extraterritorial action (Weinrauch 2004, 93). For this reason, the US competition authorities, the Department of Justice's Antitrust Division and the Federal Trade Commission, and the EU Commission's Competition Directorate-General have promoted the adoption and enforcement of competition laws in other countries (Doleys 2012). Frequently, the adoption of a national competition law is a condition for entering into trade agreements with the United States, and trade, association and accession agreements with the EU.

#### **A. NAFTA and Mexico's Competition Law**

After nearly fifty years of Import Substitution Industrialization Mexico embarked on a route towards free trade and domestic liberalization following the debt crisis of 1982. The Mexican government under Miguel de la Madrid (1982-1988) launched an ambitious program of economic reforms, initially focused on cutting down the government budget, eliminating subsidies, reducing public employees' wages, and radically devaluing the peso (Babb 2001, 179). By the mid-1980s, the government launched deeper institutional reforms such as privatization, deregulation and regulatory reform, and trade liberalization, which continued under the presidency of Carlos Salinas (1988-1994). The liberalizing reforms resulted in Mexico's entry into the General Agreement on Tariffs and Trade in 1986 (Babb 2001). In 1991, the Mexican administration announced that it would start negotiations with the US and Canada on a trade agreement, and the three countries signed the North American Free Trade Agreement in 1993 (Mayer 1998, 49-50).

The adoption of a competition law came on the agenda during the 1980s as part of broader institutional reforms. Officials from the Economic Deregulation Unit at the Secretary of Commerce and Industrial Development (SECOFI) became convinced of the necessity to adopt a competition law, which would function as an antidote to anticompetitive behavior among private and public firms (Avalos 2006, 10).<sup>1</sup> Progress in the negotiations with the United States and Canada on NAFTA gave an additional impetus, because NAFTA's Chapter XV committed the three countries to adopt national measures proscribing anti-competitive business conduct (Castañeda Gallardo 1996, 21). Opposition from business against the competition law remained muted, because business associations were involved with the negotiations, and were supportive of NAFTA in general (Schneider 2002, 106).

The process resulted in the adoption of the Federal Law on Economic Competition (Ley Federal de Competencia Económica, hereafter FLEC) in December 1992 in the Mexican Congress, and the establishment of the Federal Competition Commission (Comisión Federal de Competencia, hereafter FCC) in June 1993. The text of the FLEC reflects the US antitrust case law and economic thinking at the time of its adoption (ten Kate and Niels 2006, 718), while enforcement takes an EU-style administrative model.

In its early years, the FCC focused its efforts on institution building, raising public awareness of competition law and its benefits, and participating in the design of Mexico's privatization program (Castañeda Gallardo 1996, 24, 26). Some of its early investigations, such as those concerning Pemex, the state oil monopoly, benefited the consumers and thus raised awareness of the Commission's work (Rodríguez 1999, 135). However, there was a general sense in the government and the private sector that the FCC was weak and ineffective in dealing with dominant firms (OECD 1998, 30). For instance, competition in the telecommunications sector was limited by the dominant position of Telmex, the historic national telephone monopoly that became a private near-monopoly after its sale to Carlos Slim's Grupo Carso in the early 1990s, and FCC's efforts to deal with the firm's dominant position did not bear fruit. The FCC's mixed performance in its initial years was due to a number of reasons. Its investigative and sanctioning powers under the FLEC were inadequate; it lacked the financial and human resources to effectively enforce the law; and a number of its decisions were overturned by the district courts on procedural grounds.

Over time "the Commission has matured into a credible organization, viewed with respect both domestically and internationally" (OECD, 2004, 63). Legislative reforms in 2006 and 2011 strengthened the FCC's investigative powers and its autonomy from the executive branch, and raised the maximum level of fines it can impose. In the context of the reform agenda of President Peña Nieto's Pact for Mexico, constitutional amendments in 2013 reconstituted the FCC as an

autonomous body and renamed it Federal Commission for Economic Competition, whereas before it was attached to SECOFI. In 2014, a new competition law was passed, which strengthened the FCC even further. Thanks to legislative reforms and FCC's institutional learning, Mexico's competition regime has become one of the relative success stories in Latin America and among emerging economies. The Global Competition Review ranked the FCC with three stars in 2016—along with competition authorities of Austria, Finland, New Zealand and Sweden, among others—up from two stars in 2002, when it first entered the ranking (Global Competition Review 2002, 2016a).

The fact that Mexico's competition law, adopted under NAFTA conditionality, survived and gradually became effective is surprising. Domestic conditions such as a history of high state involvement in the economy, high economic concentration, and well-organized business interests make Mexico an unlikely case for a flourishing competition regime (Jordana 2010; Schneider 2002). Moreover, once signed, NAFTA's conditionality lost its effect as an external anchor for reform's durability. NAFTA required the signatory states to have national competition laws, but did not create mechanisms to monitor enforcement. Nor did it generate institutionalized opportunities for socialization among the officials of the three countries' competition agencies. It established a Working Group on Trade and Competition, which produced discussion papers addressing trade and competition issues in the NAFTA area, but the Working Group did not have a lasting impact on cooperation between the three countries because its work remained fairly limited. Moreover, NAFTA's Chapter XV explicitly excludes competition law from the dispute resolution mechanism, which means that any dispute concerning competition law among the parties to the Agreement has to be resolved under bilateral agreements (Lloyd and Vautier 1999, 103). This has reduced the opportunities for trilateral dialogue and problem solving.

How did the Mexican competition regime survive and thrive in the face of pushbacks from business interests and weak conditionality after the signing of NAFTA? My argument is that the emergence of a pro-reform domestic constituency, and the presence of a number of international organizations supportive of competition law reforms in Mexico explain how competition law was sustained and gradually strengthened. The domestic pro-reform coalition included the FCC, consumers and consumer associations, think tanks, lawyers and the bar association. This coalition was crucial to raising awareness of competition issues in public debates, and providing inputs for improvements in the country's competition regime. Internationally, organizations such as the OECD and the ICN have stepped in to support Mexican competition law reforms. While both the pro-reform domestic constituency and international organizations have been important for

preventing backsliding in competition law, the emergence and gradual strengthening of the pro-competition domestic constituency was crucial in the effectiveness of the law.

### ***Domestic and International Support for Reforms after NAFTA***

Domestically, a constituency in favor of competition law has gradually emerged in Mexico after the law was adopted in 1992. This constituency has included consumers and consumer associations, firms that were excluded from traditionally concentrated markets, competition lawyers and the bar association. Consumers benefit from a well-enforced competition regime because it may bring lower prices and greater choice. Mexico's highly concentrated economic structure has resulted in costly products and services for consumers, telecommunications and broadcasting being two well-known examples. Mexican consumers pay more for telephone and broadband internet services than consumers in other Latin American countries, and the services they receive are of lower quality (The Economist 2014).

Historically there were few consumer organizations in Mexico that could help channel the diffuse interests of consumers into a pro-competition reform coalition (OECD 2004, 71). That is changing gradually with the emergence of non-governmental organizations such as Observatel, a watchdog of reforms in the telecoms sector (Malkin 2014), the consumer organization group AI Consumidor A.C. (Harrison 2012), and Contraloría Ciudadana, which monitors public policies such as competition policy and the fight against corruption (Contraloría Ciudadana 2016). These non-governmental organizations raise awareness and help focus public attention to issues related to competition and competitiveness. The public agency in charge of consumer protection affairs, the Office of the Federal Prosecutor for the Consumer (PROFECO), has also played an important role in increasing the visibility of competition policy issues. Since 2005, the FCC and the PROFECO have an agreement that allows for communication and coordination between the agencies. PROFECO has aided the FCC in its enforcement efforts against collusion, by monitoring and providing information on prices such as in the tortilla sector.

Think tanks have also contributed to the public debate about competition and competitiveness in Mexico in the recent years. There is an increasing emphasis in public debates on the costs that dominant firms impose on consumers, innovation and productivity in Mexico. The influential think tank Mexican Institute for Competitiveness (Instituto Mexicano para la Competitividad) has contributed to this debate by emphasizing the importance of competitive domestic markets to increase Mexico's international competitiveness (Instituto Mexicano para la Competitividad 2013). The Research Centre for Development (Centro de Investigación para el Desarrollo- CIDAC) conducts research on competition law and policy, and offers opinions on

reform proposals (CIDAC 2014; Frías 2013). Individual lawyers and the bar association have also voiced concerns about the deficiencies of the system (Guerrero Rodriguez and Ramírez 2013). These actors have supported a pro-competition agenda in the public arena. Finally, domestic firms that have difficulty entering markets dominated by large players have been another source of support for the FCC. Such firms typically bring complaints to the agency, and challenge dominant firms' anticompetitive conduct in the courts, and thus generate pressures for enforcement. For instance, Avantel, a Mexican cellular provider, sued Telmex nine times for abuse of dominance (Guerrero, López-Calva, and Walton 2009, 129).

A number of international actors such as the OECD and the ICN have been additional sources of pressure and support for the improvement of the Mexican competition regime in the aftermath of the signing of NAFTA. The OECD Competition Division has worked closely with the FCC. Many of the recommendations of the 1998 OECD Report on *Regulatory Reform in Mexico* and the 2004 *Peer Review* of Mexican competition law and policy found their way into the legislative reform proposals (OECD 1998, 2004). These documents were crucial in the FCC's efforts to convince the legislators of the need for reforms that strengthened the Mexican competition law in 2006. The FCC commented in its submission to the OECD that

The OECD's peer review provided a neutral voice to the discussion by presenting a non-partisan analysis of the state of competition policy in Mexico and simply outlining best practices based on its experience in the area with OECD member countries. The Report was used and cited in communications with the legislature and federal public administration (OECD 2007, 34).

The OECD provided lengthy comments on the proposed reforms, and a letter summarizing OECD's opinion on the reforms, written by the head of the OECD Competition Division, was shared with the Mexican legislators during the legislative process (OECD 2007, 34). The 2011 reform likewise drew significantly on OECD peer review and follow-ups (OECD 2012, 35).

The International Competition Network (ICN), a virtual network of competition agencies established in 2001 (Coppola 2011), has also been an important source of expertise and influence for the Mexican competition regime. The ICN, a transnational regulatory network, was launched with the aim of contributing to voluntary cooperation and harmonization among national competition regimes. Mexico is an active participant in the ICN. The FCC led the Agency Effectiveness Working Group of the ICN for some years, and former head of the FCC, Eduardo Pérez Motta acted as the chairperson of the ICN from 2012 to 2013. Officials from the national competition agencies interact on a regular basis through the ICN. These interactions are relatively

isolated from political pressures and are focused exclusively on competition law, which helps foster socialization and mutual learning among the participants (Checkel 2005). Socialization and peer pressure in the OECD and the ICN have been catalysts of internal reforms of the FCC (Guerrero Rodriguez 2013, 433).

To summarize, the emergence of a domestic pro-reform coalition and the support of a number of international organizations have helped prevent backsliding in the Mexican competition regime after NAFTA. Domestically, groups that would potentially benefit from an effective competition regime, such as consumers and firms excluded from markets dominated by big players, have been supportive of competition law and the FCC. Think tanks, the bar association and competition lawyers have contributed to the public debate and raised awareness about competition law and competitiveness. These domestic actors have helped domesticate competition law in Mexico, and thus contributed to its effective implementation.

International organizations and transnational networks such as the OECD and the ICN have also been supportive: these organizations helped the socialization of FCC's officials by providing opportunities for regular, sustained interactions with their peers. They thus have created peer pressures for better enforcement, and motivated many internal reforms at the FCC. They have also been influential as neutral and credible external actors in domestic debates, as well as in FCC's negotiations with the legislature for reforms to the competition law. Policymakers have seen the recommendations of these organizations as the "international standard," and sought to keep Mexico up to these standards by not only maintaining the Mexican competition law, but also strengthening it over time. It is also important to note that these international organizations have worked with and reinforced the influence of the domestic pro-competition constituency by financially supporting some of the think tanks and NGOs such as the influential Mexican Institute for Competitiveness.

## **B. The EU-Turkey Customs Union and the Turkish Competition Law**

The Turkish economy started to liberalize in 1980 following the acute crisis of the Import Substitution Industrialization model pursued for most of the history of the Republic. The early phase of liberalization, supported by the IMF, constituted of deregulating the economy and reducing the state's role in it. This was followed in the 1990s by the establishment of regulatory institutions—including the Competition Authority—and trade liberalization (Öniş and Bakır 2007; Senses 2012).

The 1963 Association Agreement between the EU and Turkey and the Additional Protocol of 1970 required Turkey to adopt the necessary measures to conform to the Treaty of Rome's competition provisions. There were a number of attempts throughout the 1970s and the 1980s to

pass legislation on competition (Turkish Competition Authority 2008, 1); however opposition from large businesses and lack of political will prevented the adoption of a competition law. In 1991, a political coalition of the centre-right and the social democrats came to power promising political and economic democratization, and competition law was considered an important component of this promise (Katircioglu 2010). The government set up a commission in the Ministry of Industry and Trade to prepare a draft. In the meantime, negotiations started on a Customs Union between Turkey and the EU in 1993, and the European Commission made it clear that the adoption of a competition law in line with the EU's was a key condition for an agreement. Conditionality of the Customs Union Agreement motivated the Turkish National Assembly to pass the competition bill drafted by the commission into law in December 1994. The Turkish Competition Authority (TCA) became operational in 1997, with a two-year delay, due to political bickering about appointments to the Authority's top posts.

The main groups that we would expect to mobilize against the competition law were large firms and business associations representing them, which indeed opposed the adoption of competition law and lobbied the drafters of the law, the relevant committees in the National Assembly and members of Parliament (Author's interviews, 2011 and 2012). However, open opposition by business interests remained relatively muted, because business groups were largely in favour of the Customs Unions Agreement, and divided over competition law (Ozel 2013, 747–48). The main association representing big business, the Turkish Industry and Business Association, was advocating a 'rule-based, formal, law-protected economic order' and the implementation of the Customs Union agreement (Bugra 1998, 535; Öniş and Türem 2002, 444). Some of its influential members were reluctant about competition law, but nonetheless accepted it as part of a broader package of reforms, and as a condition of the Customs Union (Ozel 2013, 747). Small and medium-sized enterprises, represented by the Union of Chambers of Commerce and Commodity Exchanges of Turkey, were in favour of competition law as well as the Customs Union (Ozel 2013, 7–8). The fragmentation of the business community and the attraction of the Customs Union for big businesses meant that the lawmakers could pass the law in 1994 without major opposition.

In the aftermath of the Customs Union agreement, Turkey maintained a close relationship with the European Union, which granted the country candidate status in 1999. Membership negotiations started in 2005, and are officially in progress. Given Turkey's ongoing commitment to EU membership, Turkish competition law reforms cannot be overturned without external costs. As part of Turkey's bid for membership, the European Commission annually publishes an evaluation of Turkey's progress in meeting the EU's criteria for accession, and in harmonizing its laws and policies with those of the European Union. The Commission's *Progress Reports* include a brief

evaluation of the TCA's performance during the year, and the degree of harmonization of the Turkish competition law with the EU's competition provisions.

However, neither Turkey's bid for membership nor the annual *Progress Reports* have served to help sustain competition policy in Turkey. Turkey's membership negotiations began to falter soon after their launch in 2005, which has significantly reduced the credibility of EU conditionality, to the extent that it has recently led some authors to talk about Turkey's de-Europeanisation (Aydin-Düzgit and Kaliber 2016). Moreover, the EU's main mechanism for monitoring the status of reforms adopted under conditionality, the *Progress Reports*, include only a brief—typically half a page—evaluation of the Turkish competition regime, and lack sanctions in the event of backsliding. Opportunities for Turkish officials to socialize with their counterparts in the EU have likewise been meagre (Author's Interviews 2011). Thus, Turkey has found itself in a situation characterized by weak conditionality in the aftermath of the Customs Union in terms of competition law.

In the absence of strong post-agreement monitoring mechanisms and socialization opportunities, and lack of support, if not hostility, from parts of the business community, competition law had little chance of thriving. Nonetheless, the Turkish competition law not only was sustained, but also flourished. Since its establishment in 1997, the TCA has made significant progress in establishing a viable antitrust regime in Turkey (OECD 2005). Gradually it has built a good reputation within and outside Turkey as an independent and effective institution (Atiyas 2012; Zenginobuz 2008). The Global Competition Review ranks the TCA with three stars, in the same category as various Western European competition agencies with greater resources and experience (Global Competition Review 2016b). The European Commission finds that the Competition Authority “maintains a satisfactory level of administrative and operational independence” (Commission of the European Communities 2015, 41). The OECD Peer Review Report says that “it has played an important role in moving the Turkish economy forward to greater reliance on competition-based and consumer-welfare oriented market mechanisms” and praises it as “one of Turkey's most effective and best administrative agencies” (OECD 2005, 63).

What accounts for the gradual strengthening of the Turkish competition regime? My argument is that a growing domestic pro-competition constituency, and international organizations such as the OECD and the ICN have been important in sustaining competition policy reforms in Turkey.

### ***Domestic and International Support for Reforms after the Customs Union***

A pro-competition constituency already existed in Turkey at the time of the signing of the Customs Union agreement. Small and medium-sized enterprises represented by the Union of Chambers of Commerce and Commodity Exchanges of Turkey were in favour of competition law, though they were not strong enough by themselves to push for it in the absence of the Customs Union conditionality. Small and medium-sized enterprises, and especially in the flourishing industrial sector located in the Central and Eastern Anatolian regions, called “the Anatolian tigers,” have driven the growth of the Turkish economy in the 2000s, and have been important players pushing for reforms in public policies, as well as advocating for changes in Turkish foreign policy (Kirisçi 2009; Turgut 2006). Such firms and associations representing them have an interest in effective enforcement of competition law, because it has the potential to open up markets dominated by larger players.

Consumer interests and think tanks have gained importance in Turkey with the gradual opening of the political system and the surge in non-governmental organizations since the 1990s (Keyman and Icduygu 2003, 221, 226–27). Among these, a growing number of consumer associations have become active, such as the Consumers’ Association (Tüketiciler Derneği), Consumer Rights Association (Tüketici Hakları Derneği), Association of Consumers (Tüketiciler Birliği), and the Association for the Protection of Consumers (Tüketiciyi Koruma Derneği). Recognizing the importance of consumer associations in strengthening competition policy, the TCA has recently called on Turkish non-governmental organizations, including consumer and business associations, to participate more actively in the institutionalization of competition policy in Turkey (TRT 2014).

A number of prestigious and influential think tanks have also focused on competition law and policy in Turkey. Center for Economic and Foreign Policy Studies (Ekonomi ve Dis Politika Arastirmalari Merkezi), Economic Policy Research Foundation of Turkey (Türkiye Ekonomi Politikasi Arastirmalari Vakfi) and similar think tanks have conducted and published research on competition policy, thus have contributed to public awareness of the issue. A growing number of competition lawyers are active in Turkey (Harik 2015), and as frequent users of the system they have demanded more transparency and accountability from the TCA. The Competition Association (Rekabet Derneği), is an NGO established by academics and lawyers, and has been very active in publishing research, organizing seminars, and providing inputs for legislative reforms to the Turkish competition law (Rekabet Dernegi 2016).

In addition to this pro-competition domestic constituency, a host of international actors have aided in sustaining and strengthening competition law and policy in Turkey. The TCA has taken an active part in the ICN’s activities since it joined in 2002. It co-chairs one of its working

groups, and hosted the ICN's annual conference in Istanbul in 2010. The TCA has also taken part in OECD's voluntary peer review in 2005, and recommendations of the peer review became inputs for legislative changes that strengthened Turkish competition law and policy (Author's Interview 2011). The TCA's ties to the ICN and the OECD have helped the durability and effectiveness of competition law and policy in Turkey by creating opportunities for regular socialization between Turkish officials and their peers in other countries. Turkish officials' concerns with their reputation in these organizations motivate the TCA to align Turkish legislation and enforcement practices with internationally accepted norms and standards (Author's Interview 2011).

## **V. Conclusion**

This paper has explored the fate of reforms adopted under conditionality of trade agreements. Membership conditionality has been a powerful motor of democratic, human rights, rule of law and economic reforms in countries that seek membership to regional organizations and trade agreements. However, once the agreement is signed, the pressures and incentives created by conditionality are relaxed, and socialization opportunities diminish. Under these conditions, there is significant potential for backsliding or failure to implement the reforms in the target country. In this paper I have argued that under these conditions, reforms may still survive, depending on the existence of a domestic pro-reform constituency, and the support and guidance from other international organizations.

The adoption of competition laws in Mexico and Turkey provide tentative support for these arguments. Competition laws were adopted in the early 1990s in these two countries under the conditionality of NAFTA and the EU-Turkey Customs Union Agreement. Given the economic structures of these countries, and the environment of weak post-agreement conditionality, there was reason to expect that the reforms might be reversed or seriously weakened post-agreement. In both countries, competition laws were not only maintained, but also strengthened through legislative changes and institutional reforms. The case studies are suggestive of the importance of a pro-domestic constituency, and the impact of international organizations and transnational networks for the maintenance of reforms. The comparison between Mexico, where the domestic constituency in favour of reforms has developed only more recently, and Turkey where such a constituency emerged earlier and stronger also highlights the role of domestic pro-competition constituency in the effectiveness of implementation.

The argument elaborated and tested in this paper has a number of contributions to theoretical and policy debates. Theoretically, I join a number of authors that emphasize the importance of domestic actors and coalitions in enacting and sustaining reforms motivated by

membership conditionality (Aspinwall 2013; Dimitrova and Buzogány 2014; Noutcheva and Aydin-Düzgit 2012; Spendzharova and Vachudova 2012; Vachudova 2014), but additionally, I emphasize the international context—international organizations and transnational networks—beyond the regional bloc imposing the original conditionality. Thus I highlight the joint influence and the interaction of the domestic and international actors in motivating and sustaining reforms. Such a perspective has policy implications as well. The presence of external anchors has greatly accelerated the adoption of reforms promoting democracy, human rights and a market economy in developing countries, yet the durability and effectiveness of these reforms have been questionable. This paper suggests that the sustainability of reforms adopted under conditionality requires a joint effort by multiple international organizations and transnational networks, and continued support of these international actors to domestic pro-reform constituencies.

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## Note

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<sup>i</sup> Note that Mexican constitutions of 1857 and 1917 included a ban on monopolies, which was not enforced due to the absence of implementing regulation (Avalos 2006, 10; del Villar and Soto Alvarez 2005, 108).