6

Government Procurement in Twenty-First Century PTAs

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6.1 INTRODUCTION

Preferential trade agreements (PTAs) have become the main vehicle to extend procurement rules to non-signatories of the WTO's Agreement on Government Procurement (GPA) (Hoekman, 2015). Preferential trade agreements with provisions on government procurement (preferential procurement agreements, PPAs, following Rickard and Kono 2014) include commitments to open access to procurement contracts on a bilateral/regional basis and explicit prohibition of procurement practices that discriminate against foreign suppliers. Preferential procurement agreements also tend to prohibit price discrimination and a range of other policies, such as local-content requirements, that favour domestic firms.

International rules on government procurement are required because the state has considerable influence over the allocation of resources in market economies through government procurement. Trionfetti (2000) estimates that contestable government procurement markets account for 7–9 per cent of GDP in developed countries, while estimates by the OECD (2002) suggest that government procurement accounts for between 9 and 20 per cent of GDP in developing countries.

A prominent aspect of distortive procurement practices is the preference for domestic over foreign firms in the award of public contracts despite cost and quality considerations. This 'home bias' in public purchase decisions has non-trivial efficiency effects. It can reduce trade flows and influence international specialisation, especially in sectors where public demand is large relative to domestic output and which are characterised by monopolistic competition and increasing returns to scale (Trionfetti, 2000).

Preferential trade agreements vary greatly in their scope and coverage of procurement provisions – some either reflect existing procurement policies of signatories or limit commitments to best endeavour, non-binding, non-enforceable clauses. However, many of the more recent PTAs include extensive procurement

commitments and are also more enforceable, including through domestic bid challenge mechanisms. In fact, PTAs with 'deep' procurement provisions (deep procurement agreements, DPAs) have grown more popular over time, with the majority entering into effect since the turn of this millennium (Shingal and Ereshchenko, 2020).

In this chapter, we discuss and examine the coverage of government procurement in recently concluded PTAs with a view to examining their relationship with the World Trade Organization (WTO). We also assess potential gaps in their coverage and point to new areas that are likely to gain prominence as preferential procurement provisions in the near future. The chapter also suggests ways and mechanisms by which PTAs can incorporate these new issues.

6.2 STYLISED FACTS

Preferential trade agreements can be classified into three groups according to their coverage of government procurement: (a) no coverage at all ('no_prov'); (b) provisions on government procurement exist but are not detailed ('shallow_prov'); and (c) detailed provisions on government procurement are included in the agreement ('deep_prov'). Before the year 2000, most PTAs did not include any provisions on public procurement (Figure 6.1, left panel). The first decade of this millennium saw almost an equal number of PTAs with shallow and deep provisions on government procurement. The last ten years have clearly witnessed a proliferation of DPAs – with the exception of 2011, at least half of all new PTAs negotiated every year during the 2010–2019 period include deep provisions on government procurement (Figure 6.1, right panel).

A majority of the DPAs have been concluded among high-income country partners or involve at least one high-income country. The cohort of shallow-procurement agreements is dominated by PTAs in which one partner is a high-income country (or trade bloc) and the other partner is an upper-middle-income country. In contrast, the group of agreements with no procurement coverage exhibits a greater involvement of lower-middle-income countries. This is also the only cohort that includes agreements involving low-income countries.

6.3 ATTRIBUTES OF RECENT DPAS

Most DPAs negotiated between 2010 and 2019 include provisions on national treatment and transparency and also provide substantive coverage in terms of procuring entities and goods and services (Figure 6.2). Shingal and Ereshchenko (2020) provide a detailed analysis of the ingredients of the non-discrimination, coverage, transparency, dispute resolution, and procedural disciplines associated with DPAs entered into effect up until March 2017. Their analysis shows that, within non-discrimination, the most frequently included provisions pertain to national

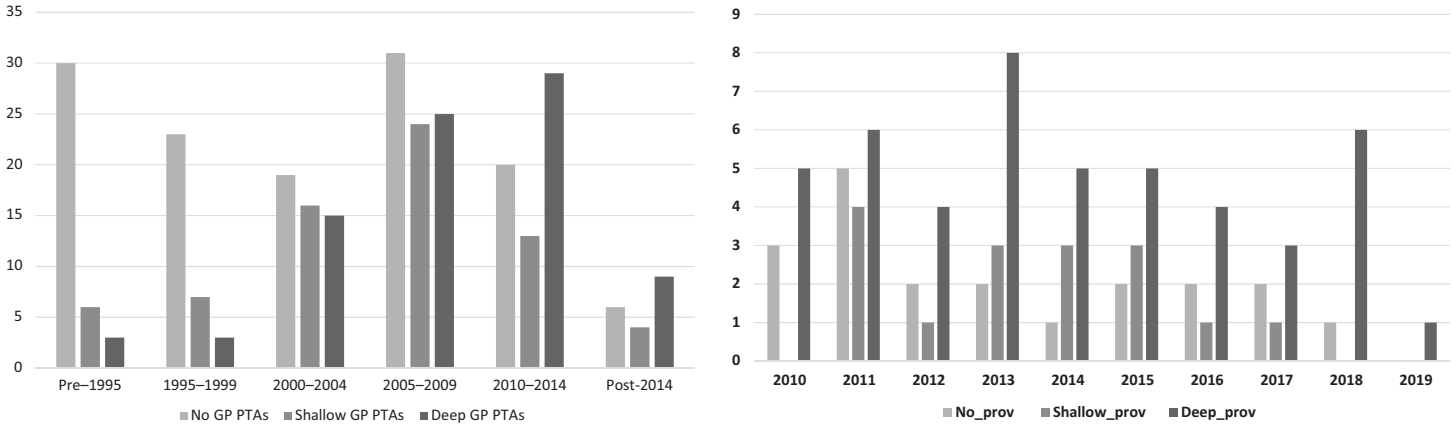

FIGURE 6.1 Evolution of PTA groups by government procurement coverage over time.
Sources: Dür et al. (2014); Shingal and Ereshchenko (2020); authors' own calculations

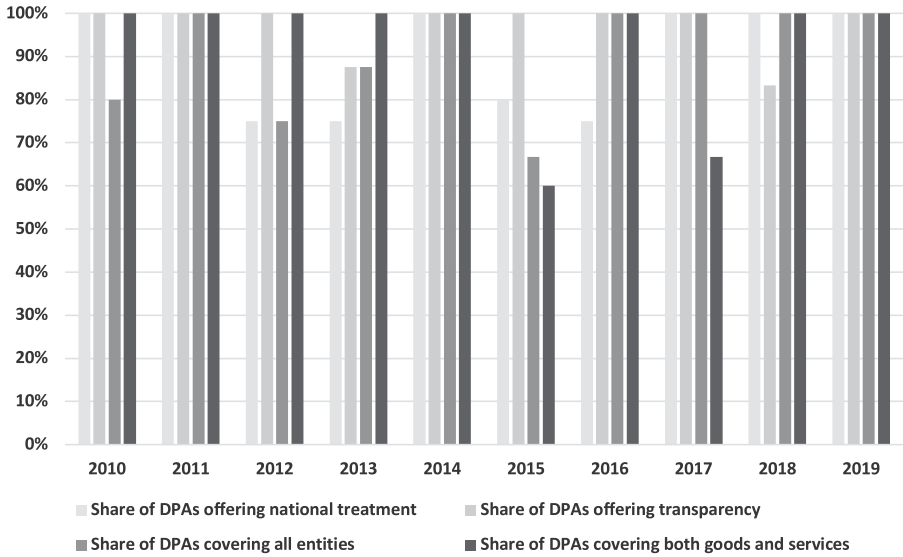

FIGURE 6.2 Attributes of recent DPAs.
Source: Dür et al. (2014); authors' own calculations

treatment, prohibition of offsets, and requiring rules of origin to be not different from those in the normal course of trade (Figure 6.3, top panel).

Deep procurement agreements with relatively high coverage of non-discrimination issues include the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) and agreements signed between the European Union (EU) and Central America, the EU and the Republic of Moldova, the EU and Ukraine, followed by the European Free Trade Association (EFTA)–Central America (Costa Rica and Panama) trade agreement. Notably, all agreements with extensive coverage of non-discrimination issues are North–South agreements.

In terms of coverage of DPAs by procuring entity, the analysis by Shingal and Ereshchenko (2020) shows that while the majority of the DPAs (forty-four agreements) until March 2017 covered entities listed under all three annexes (i.e. central and sub-central government procuring entities and utilities), fifteen DPAs covered only central government entities while twenty agreements covered both central (Annex 1) and sub-central government (Annex 2) entities.

Another dimension of the analysis is the threshold above which procurement is covered under a trade agreement. In this regard, thresholds for goods and services procurement by central government entities were *not found to be higher* than the GPA-stipulated thresholds for any DPA. Meanwhile, twenty-three DPAs had thresholds equal to the GPA in goods, services, and construction services covered under Annexes 1, 2, and 3. Most of these agreements include the EFTA countries or the EU as a party, for example EFTA-Colombia, EFTA–Korea, EU–Central America, EU–Ukraine, and EU–Chile. In contrast, twenty-seven DPAs have lower-than-GPA

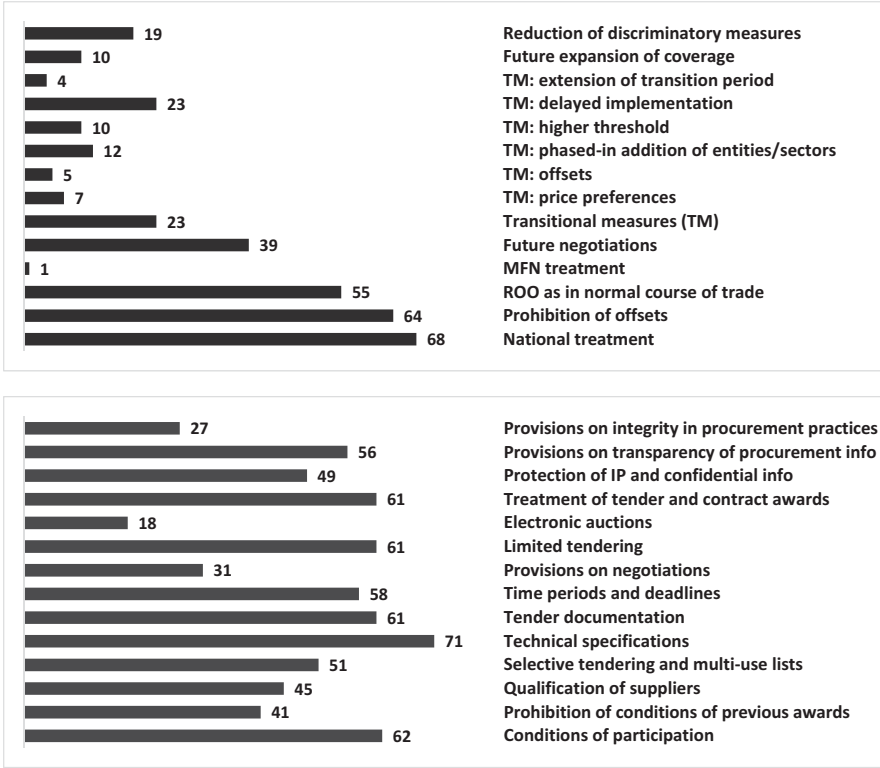

FIGURE 6.3 Snapshot of non-discrimination (first) and procedural (second) disciplines in DPAs.
Source: Shingal and Ereshchenko (2020)

threshold values in at least one area. Notably, in seven of these agreements, the threshold values are lower than the GPA in all measured aspects, that is, goods, services, and construction services under Annexes 1–3. Six of these DPAs have the United States (US) as a party (US–Morocco, US–Panama, US–Peru, US–Chile, US–Singapore, and the Central America Free Trade Agreement–Dominican Republic). The seventh is the EU–Georgia Agreement.

Deep procurement agreements also vary considerably in their coverage of procedural disciplines (Figure 6.3, bottom panel). Two agreements – EFTA–Peru and EFTA–Colombia – cover the highest number of procedural disciplines (twenty-three among the twenty-six classified as procedural disciplines by Shingal and Ereshchenko, 2020), followed by six DPAs that cover twenty-two procedural disciplines (these include EU–Korea, EFTA–Hong Kong, and EFTA–Ukraine). Most DPAs with high coverage of procedural disciplines include North–South or North–North countries. The most frequently covered procedural disciplines provisions (found in over 80 per cent of DPAs analysed by Shingal and Ereshchenko, 2020)

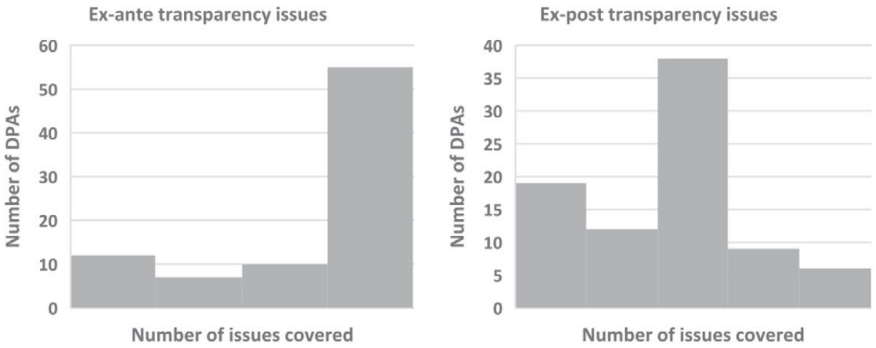

FIGURE 6.4 (a) Ex ante and (b) ex post transparency in DPAs.
Source: Shingal and Ereshchenko (2020)

include those on technical specifications, conditions of participation of suppliers, treatment of tenders and award of contracts, limited tendering, requirements for tender documentation, and time periods and deadlines.

Transparency is an important attribute of deep PTAs, including those covering government procurement. Shingal and Ereshchenko (2020) classify provisions as providing ex ante and ex post transparency (Figure 6.4). As of March 2017, there were only five DPAs that covered all transparency issues; these included South Korea's agreements with Canada and the EU. The most frequently covered provisions (found in 90 per cent of DPAs analysed by Shingal and Ereshchenko, 2020) include those on the requirement to publish a notice on intended/planned procurement and information provided to bidders (results and reasons for non-selection). In contrast, only a fifth of the DPAs studied by Shingal and Ereshchenko (2020) included provisions for the collection and reporting of statistics.

Thus, a critical element of ex post transparency is largely ignored by signatories that otherwise negotiate deep commitments on government procurement in their PTAs.[1]

An assessment of dispute resolution within DPAs includes an assessment of domestic review procedures and their consistency with Article XVIII of the WTO's Revised GPA (RGPA 2012), as well as that of provisions on dispute settlement and their consistency with Article XX of the RGPA. More than 70 per cent of the seventy-three DPAs studied by Shingal and Ereshchenko (2020) covered all four issues related to dispute resolution, including domestic review procedures and dispute settlement, and the consistency of those provisions with the GPA. More specifically, provisions on dispute settlement are found to be reflected in all DPAs except for Korea–Singapore, Japan–Switzerland, and Panama–El Salvador. The Korea–Singapore

[1] A similar lack of statistical reporting by GPA signatories is documented in Shingal 2011, 2012, 2015.

Agreement lists the particular chapters to which dispute settlement procedures apply, but the government procurement chapter is not among them. The Japan–Switzerland Agreement also excludes government procurement from dispute settlement. In contrast, the Korea–Canada Agreement specifically applies dispute settlement to government procurement provisions.

A number of disciplines have emerged in recent agreements that cover 'new' issues, including those on e-procurement, sustainable procurement, small and medium-sized enterprises (SMEs) participation, adoption of safety standards, and (as in the CPTPP) cooperation between the parties on matters of public procurement. As of March 2017, no agreement covered all five of the new issues. Meanwhile, provisions facilitating e-procurement were found in 60 per cent of DPAs; clauses facilitating SMEs participation were reflected in one-half of all DPAs; provisions on cooperation were observed in 40 per cent of DPAs; provisions on facilitation of safety standards were incorporated in only one agreement (US–Korea); and provisions on sustainable procurement were not found in any agreement as of March 2017.

6.4 ASSESSMENT OF THE RECENT PREFERENTIALISM IN GOVERNMENT PROCUREMENT

Despite the proliferation of DPAs in the last decade, procurement coverage in PTAs was found to be WTO+ in only three DPAs (US–Australia, US–Chile, and US–Peru), while in the majority the coverage was less than or equal to that in the WTO (Shingal and Ereshchenko, 2020). Several non-discrimination attributes are popular in recent DPAs, but very few agreements include provisions on most-favoured-nation (MFN) treatment suggesting that procurement liberalisation is still a 'restricted members-only club', signalling signatories' lack of comfort with open regionalism in a domain where political economy interests are generally protectionist.

Similarly, despite the recognised importance and need for transparency in the international economic order, only about a fifth of all DPAs have included provisions for collecting and reporting statistical data. Thus, a significant facet of ex post transparency is largely ignored by DPA signatories, which is not difficult to explain given that the availability of data on the subject enables a ready assessment of procurement practices. Again, despite the inclusion of new issues, provisions on green and labour-sensitive procurement, as well as those facilitating regulatory cooperation and SME participation, are less popular among DPA signatories.

These are all significant gaps in preferential rulemaking in this area, which future agreements may like to address. Such uptake is also likely to be fast-tracked in e-procurement (given the COVID-19-induced spurt in digitalisation), sustainable procurement (given the much needed realisation and growing impetus being given to climate change initiatives), and SMEs participation (given the growing need to facilitate their involvement in global trade and promote inclusive development).

New and upcoming PTAs can take up these selected issues, learning from the experiences of recent, cross-regional, North–South, deep PTAs and ensuring high levels of enforceability marked by binding obligations with some form of dispute settlement. We inform this discussion in the following section by looking at preferential rulemaking in government procurement in a few recent comprehensive trade agreements such as the CPTPP, the Regional Comprehensive Economic Partnership (RCEP), EU–Canada Comprehensive Economic and Trade Agreement (CETA), EU–Japan Economic Partnership Agreement, and the United Kingdom (UK)–EU Trade and Cooperation Agreement.

6.5 EMERGING MODELS OF PROCUREMENT REGULATIONS IN RECENTLY NEGOTIATED PTAS

As shown in the overview so far, various countries have negotiated procurement chapters in PTAs following different regulatory objectives and various negotiating approaches. Overall, the literature has so far identified two prominent models of procurement regulation within bilateral trade agreements: a US and EU model (Corvaglia, 2017).

The US has traditionally used the negotiation of PTAs to push the liberalisation of the procurement sector, parallel to the plurilateral negotiations of the GPA. However, this strategy was not pursued after 2012 and in the negotiation of PTAs under the Bush Presidency. In negotiating these previous agreements, the US adopted a 'one size fits all' approach, extending practically identical transparency and procedural requirements (Heilman Grier, 2022). The recent renegotiation of the North American Free Trade Agreement (NAFTA) consolidated in the United States–Mexico–Canada Agreement (USMCA) has represented a major backward step in US bilateral regulation and liberalisation of procurement, with the complete exclusion of Canada from the USMCA procurement provisions, leaving it only subjected to GPA provisions (Yukins, 2018).

In the landscape of the PTAs, as portrayed before, the EU approach to negotiating preferential regulation of public procurement seems to emerge as the indisputably influential regulatory model. Contrary to the US monolithic approach to negotiating and regulating public procurement in PTAs, the EU has adopted a more tailored approach in its more recent agreements, differentiating between GPA partners and non-GPA partners. On the one hand, EU PTAs with GPA partners (Canada, Japan, South Korea, and the UK) mirror the GPA provisions, even including some WTO+ requirements and exceeding GPA coverage in the market access offers. On the other hand, with middle- and low-income countries outside the GPA, the EU accepted GPA commitments focused on ensuring transparency in the conduct of the covered procurement contracts. Of the agreements signed with GPA parties, CETA and the UK–EU Trade and Cooperation Agreement are particularly relevant for our analysis as they include innovative provisions in the procurement chapter that exceed GPA commitments.

While CETA considerably expands procurement market access commitments beyond the GPA coverage of the CETA parties (including the MASH sector covering municipalities, academic institutions, schools and hospitals and Canada's all provinces and additional central government entities on both parties), the text of the agreement seems to replicate GPA procurement commitments. Chapter 19 of CETA includes general principles of non-discrimination and transparency (Article 19.5), together with specific procedural rules applicable to covered procurement contracts largely based on the procedural rules of the GPA. However, departing from the GPA's regulatory template, the CETA strengthens its national treatment commitments, prohibiting the inclusion in the tender documentation of a requirement of prior work experience in the country's territory. Similar provisions are also included in the EU–Korea and EU–Singapore PTAs, together with the EU–Japan Economic Partnership Agreement. Moreover, as new GPA+ procurement issues, CETA parties highlight the importance of using environmental, social, and labour-related criteria in procurement tenders (e.g. the obligation to comply with collective agreements), as not discriminatory and not constituting an unnecessary obstacle to international trade. The recognition of the importance of the use of procurement for socio-environmental purposes is also present in the text of the EU–Singapore PTA, including the possibility of using eco-labels or green labels in the technical specifications.

The EU–UK Trade and Cooperation Agreement consolidates the most innovative procurement commitments included in previous PTAs with GPA parties. Title VI of Heading One of Part Two covers public procurement in the framework of the EU–UK Free Trade Agreement (FTA) and is largely based on the GPA, but adds several innovative regulatory features present in other EU PTAs with non-GPA parties. First, like EU PTAs with Canada, Japan, and Singapore, an explicit prohibition from imposing prior work experience requirements in the country strengthens the application of the principle of non-discrimination in procurement contracts. Second, each party shall ensure that its procuring entities conduct covered procurement by electronic means to the widest extent practicable (Article 278). Moreover, additional GPA+ procedural rules focus on the inclusion of labour, social, and environmental considerations along the entire procurement process. And finally, the possibility for procuring authorities to review tenders with abnormally low prices is clearly allowed, to verify if it could constitute a grant of subsidy as this represents a possible regulatory overlap (similar to EU PTAs with Japan and Singapore).

6.6 THE SIGNIFICANCE OF PROCUREMENT CHAPTERS IN COMPREHENSIVE TRADE AGREEMENTS: CPTPP AND RCEP

Outside the procurement regulatory approaches followed in bilateral PTAs, where the US and the EU have traditionally been the most prominent actors, comprehensive trade agreements offer a different and more flexible regulatory approach. Under

pressure to negotiate procurement obligations suitable for a larger membership, including GPA and non-GPA parties, different regulatory patterns shaped around transitional measures and GPA+ commitments seem to have emerged.

A special place in this analysis is reserved for Chapter 15 of the CPTPP, which incorporates the original Trans-Pacific Partnership (TPP) rules and annexes and contains government procurement regulations for goods and services. As highlighted in the first part of this chapter, the CPTPP provides an in-depth regulatory framework for the regulation of transparency and non-discrimination in the covered procurement activities of its Members and offers an extensive regulation of procurement practices and tendering procedures.

More precisely, the CPTPP regulation of public procurement aims to establish the principle of non-discrimination among parties to the agreement and ensure national treatment by explicitly prohibiting preferences for domestic goods, services, and suppliers in procurement activities conducted under the agreement (Article 15.4). The fundamental principle of national treatment is further strengthened by the prohibition of offsets and the attention to rules of origin in the procurement of goods, similar to GPA Article IV. Moreover, the entire conduct of the procurement process is also carefully regulated, considering the principles of non-discrimination and transparency, from technical specifications to the qualification of suppliers to conditions of participation and award criteria (Articles 15.12 5 to 15.17). Detailed provisions also focus on the publication of procurement information and time periods for different procurement methods (Articles 15.6 through 15.11).

Even if most of the CPTPP procurement provisions mirror the GPA text when it comes to transparency and non-discrimination, Chapter 15 offers innovative and ambitious GPA+ provisions addressing new and innovative regulatory features of procurement regulation. For example, one of the most original provisions is Article 15.18, requiring each party to ensure *integrity* in covered procurement practices. Special attention is also paid to the support of SMEs in Article 15.21, ensuring, to the extent possible, transparency and availability of information to facilitate the participation of SMEs in procurement and considering '*the size, design and structure of the procurement, including the use of subcontracting by SMEs*'. Regulatory attention to the procurement access of SMEs is also reflected in the market access negotiations. Several CPTPP parties excluded set-asides and domestic preferences for SMEs from their commitments, which is contrary to their position in the GPA Schedule, as in the most notable example of the US.

Finally, in terms of the emergence of innovative regulatory features, what is particularly interesting in the CPTPP procurement regulation is the inclusion of transitional and special measures to accommodate the market access needs of its parties in its extended membership. While Mexico replicated its transitional measures already achieved under the USMCA and its agreement with the EU, Malaysia and Viet Nam shaped their procurement regulation and market access commitments on the basis of extensive transitional measures. Various types of transitional

measures have been included to help both Malaysia and Viet Nam implement the procurement chapter of the agreement. The key transitional measures in Malaysia's and Viet Nam's procurement commitments include higher thresholds during the transitional period (spanning from twenty to twenty-five years), and the possibility of imposing offsets or price preferences for a certain period after the implementation (again between twenty and twenty-five years).

In addition to these transitional measures common to both, the two countries added specific flexibilities in sensitive areas. On the one hand, Viet Nam was able to secure special measures for the protection of the purchase of pharmaceutical products, applying even higher thresholds, reserving extensive set-asides, and excluding distribution services from its commitments. On the other hand, Malaysia protected the possibility of continuing its traditional and well-established use of public procurement as a strategic instrument in support of the Bhumiputra minority under the CPTPP (McCrudden, 2006). To support the economic participation of this ethnic minority and shield it from the impact that the CPTPP could have, Malaysia was able to negotiate and ensure the application of permanent set-asides, price preferences, and higher thresholds. For all these reasons, the CPTPP has been described in this emerging literature as an example of '*how an FTA can facilitate the first-opening of procurement of developing countries*' (Heilman Grier, 2022).

The regulatory influence and relevance of the CPTPP become particularly visible in the procurement chapter of the RCEP, another comprehensive trade agreement with an extended membership combining GPA and non-GPA countries. Only five of the fifteen RCEP Members are GPA signatories (Australia, Japan, New Zealand, Singapore, and South Korea) while another six are 'Observers' to the GPA – China (2002), Indonesia (2012), Malaysia (2012), Philippines (2019), Thailand (2015), and Viet Nam (2012) – with China negotiating GPA accession since 2007. Notably, existing PTAs among RCEP Members cover government procurement and some even include deep provisions such as the CPTPP, and the Australia–South Korea, South Korea–New Zealand, and South Korea–Singapore trade agreements. Several RCEP Members' PTAs with third countries include deep procurement provisions, especially those of Korea and Singapore, but the influence of these agreements on the RCEP is limited.

Government procurement is covered under Chapter 16 of the RCEP Agreement. Regional Comprehensive Economic Partnership Members recognise the importance of promoting the transparency of laws, regulations, and procedures, and developing cooperation among themselves in matters of government procurement. They appreciate the role of government procurement in furthering the economic integration of the region and in promoting growth and employment. Provisions under the procurement chapter only apply to central government procuring entities (as notified by RCEP Members). The chapter also provides for derogation from transparency and cooperation obligations for RCEP least developed countries (LDCs) Members (Cambodia, Laos, Myanmar) though they can benefit from

cooperation between other Members. Internationally competitive procurement by member countries are governed by generally accepted procurement principles. Members are also required to publish information on laws, regulations, and procedures (including on tender opportunities and by electronic means, if possible and in English) with the chapter annex specifying the means (paper or electronic) utilised by Members to publish procurement information.

The novelty of the RCEP procurement chapter lies in its provisions on the forms of cooperation that include information exchange on laws and procedures; training, technical assistance, and capacity building; sharing information on best practices, including with respect to micro-, small, and medium enterprises (MSMEs); sharing information on e-procurement systems; and designation of contact points to facilitate cooperation and information sharing. The agreement also provides for a review article aimed at improving the chapter in the future to facilitate government procurement. However, there is no recourse to dispute settlement under the RCEP Agreement for any matter arising under the procurement chapter.

On the whole, the level of ambition of the RCEP procurement chapter is low as it only focuses on transparency and cooperation, which are soft issues. Even on transparency, the chapter includes no obligation to report information on public purchases à la Article XVI: 4 of the RGPA. There is no explicit mention of market access or national treatment and no recourse to dispute settlement or provisions for a bid challenge mechanism. In that, RCEP falls way short of the GPA or procurement provisions in RCEP Members' PTAs with third countries and among themselves.

That said, there are similarities between the RCEP and the CPTPP, even if the latter's regulatory provisions addressing public procurement are significantly more detailed and its market access commitments more ambitious. Note that absent from the opening of RCEP negotiations in 2013, the procurement commitments were only added in 2017 and consolidated in 2018. Instead of aiming at regulating the sector, the RCEP procurement chapter thus aims at ensuring transparency and cooperation among the parties, to develop a greater and mutual understanding of each other's procurement systems. For this reason, the regulatory focus is on diffusing minimum transparency standards and ensuring that information is publicly available. Even if it does not offer deep procurement commitments, the RCEP has been praised as a '*step forward*' for the advancement of preferential procurement regulation in the Association of Southeast Asian Nations (ASEAN) region, where PTAs were traditionally excluding procurement commitments (Heilman Grier, 2022).

6.7 CONCLUDING REMARKS AND FUTURE REGULATORY PATTERNS

In the preceding sections of the analysis, we provided a quantitative and qualitative overview of the regulatory patterns in government procurement that have emerged in PTAs negotiated or ratified over the past decade. So far our focus has been on the

current regulatory landscape of preferential regulation of public procurement, highlighting the emergence of deep procurement commitments. We specifically examined the incorporation of provisions such as non-discrimination and offsets, coverage and thresholds, procedural disciplines, ex ante and ex post transparency, dispute resolution, domestic review, as well as newer regulatory concerns like sustainability, safety standards, SMEs, integrity, and e-procurement. Throughout our analysis, we paid close attention to the membership of these preferential agreements, highlighting the increasing participation of high-income countries and signatories of the GPA as the key drivers behind these deeper regulatory trends.

Based on this analysis, we will now try to construct future scenarios and anticipate regulatory trends. In section 5, we explained how two models of preferential regulation of procurement emerged so far. In contrast to the US' standardised approach to regulating and liberalising public procurement in PTAs, the EU has adopted a more tailored strategy in its recent agreements, distinguishing between negotiations with GPA partners and with those who are not. Based on the trade strategies recently published by both actors, we expect to see the EU's model of preferential regulation of public procurement standing out as the one more influential in the future.

The European Commission's trade strategy for the coming years, based on the concept of open strategic autonomy, envisages the negotiation of future trade agreements focusing '*on strengthening bilateral partnerships; creating the conditions to support the security, resilience, and stability of supply chains; creating new opportunities for businesses through diversification of imports, exports and investments; and supporting sustainable development*' (WTO, 2023 European Union Trade Policy Review). The EU's future trade will be shaped on the basis of these strategic interests and values, alongside the more traditional EU's market access agenda, of which public procurement is a crucial pillar. Consistent with this, public procurement is a vital component of the EU's ongoing negotiations with Australia, India, Indonesia, and Malaysia. Moreover, the EU vision of an open and strategic trade agenda confirms the pattern of including strong sustainability clauses in the preferential regulation of public procurement.

Moreover, in the context of its future trade liberalisation agenda, a new EU International Procurement Instrument (IPI) is aimed at strengthening the international negotiating position of the EU in the area of government procurement. This influential instrument, adopted in 2022, enforces limitations on the participation of suppliers from countries outside the EU that have implemented measures to restrict EU suppliers' access to their own government procurement market. The primary focus of the 2022 IPI strategy is clearly aimed at third countries, outside the GPA reciprocity commitments, that do not currently have any established public procurement agreements with the EU, functioning more as a political platform for future negotiations (Dawar, 2023).

While the EU appears to be the more influential driver behind the preferential regulation of procurement, the US seems to set itself in a different direction. While

the Trump Administration was even considering the possibility of withdrawing from the GPA (Anderson and Yukins, 2020), the current US administration seems to have adopted a 'light touch' approach to trade negotiations, marking a clear departure from past administrations. As shown in the critical minerals agreement[2] signed by the United States Trade Representative with Japan in March 2023, trade cooperation among the parties is advocated through the use of aspirational language. The US current administration seems to aim at building its future trade strategy on agreements lacking substantial market access commitments and enforceable obligations, similar to the case of the Indo-Pacific Economic Framework for Prosperity and contrary to traditionally negotiated US trade agreements (US, 2023 Trade Policy Agenda and 2022 Annual Report of the President of the United States on the Trade Agreements Program). The US seems to be oriented toward a shallower regulatory approach to government procurement, if included at all, in its strategic trade vision for the future.

Outside the influence of specific actors, in the previous analysis we saw how the liberalisation and regulation of procurement in DPAs have also followed specific designs of procurement commitments, shaped by the influence of commitments of GPA Members. Several DPAs include provisions based on and often mirroring those in the GPA, particularly those relating to non-discrimination, transparency, the conduct of the procurement process, and dispute settlement. That said, only five new parties have acceded to the GPA in the last decade, suggesting that the future procurement regulatory scenario is more likely to be driven by PTAs, in particular those led by the EU. It is undeniable that the GPA so far has provided a flexible regulatory baseline for the negotiations of DPAs, thanks to its flexible architecture of core harmonised commitments and additional flexibility in terms of coverage (Sanchez-Graells, 2022). However, some more recent agreements, like the UK–Australia FTA and UK–New Zealand FTA, have also started to show some emerging deviations in terms of the national treatment obligations and the requirements of domestic review procedures. This seems to indicate the possibility of moving in the future from a GPA= to a deeper GPA+ scenario in the preferential procurement regulation among GPA parties and particularly when it comes to the coverage of their DPAs.

At the same time, cross-regional agreements have also shown the possibility of transferring emerging regulatory patterns to lower-middle-income countries outside GPA membership. The most important and influential example in this regard, the CPTPP, shows a possible way forward outside the GPA template by offering transitional flexible measures in the form of price preferences, offsets and higher

[2] Agreement Between the Government of Japan and the Government of the United States of America on Strengthening Critical Minerals Supply Chains available at https://ustr.gov/sites/default/files/2023-03/US%20Japan%20Critical%20Minerals%20Agreement%202023%2003%2028.pdf.

thresholds, and coverage of emerging issues like the support of SMEs, inclusion of social and environmental consideration and reference to integrity and anti-corruption provisions. Patterns of graduation of commitments and flexibility of coverage could represent the way forward for a progressive integration of lower-middle-income countries in the preferential regulation of government procurement, a field that for too long has remained a club for high-income countries only.

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