

# Government Procurement Provisions in Recent Regional Trade Agreements



## **OVERVIEW OF RESULTS FROM SECRETARIAT EMPIRICAL ANALYSIS**

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# This presentation...



...is based on an empirical study conducted by the WTO Secretariat on **RTAs notified to the WTO since 2000 which remain in force (138 RTAs in total)**.

## Main parts of this presentation:

- **Overview: Three different types of agreements**
- **Text: Features/provisions relating to GP in RTAs**
- **Coverage: Entity coverage, thresholds, goods & services coverage**

# Overview: Three types of agreements (1)

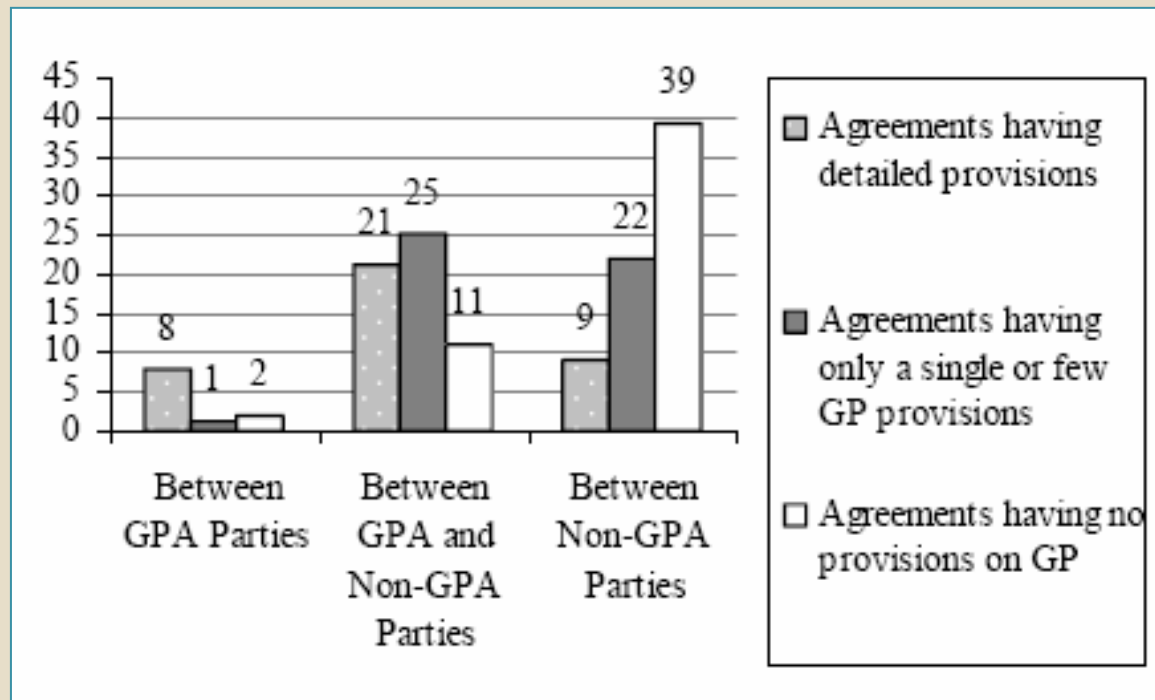


- **Agreements without GP provisions**
  - 37% of agreements
  - Include plurilateral regional economic integration agreements
  - Focus on other disciplines
- **Agreements with a single or few provisions**
  - 35% of agreements
  - Typically do not include coverage commitments
  - Often future-oriented/ “first step”
- **Agreements with detailed provisions on GP**
  - 38% of agreements
  - Typically also include coverage commitments
  - “Alternative” to GPA?

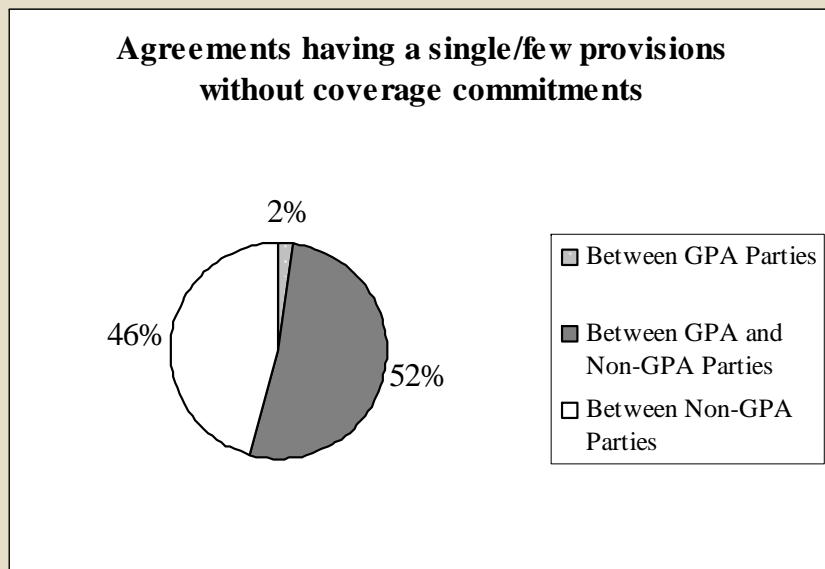


Who concludes which type of agreements?

# Overview



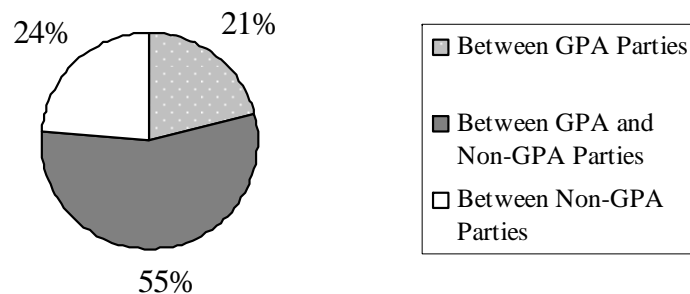
# Agreements with one or few GP provisions



- Both GPA parties and non-parties active
- Key feature
  - Recognition of relevance of GP to international trade
- Other general characteristics
  - Aspirational, soft commitments
  - Future oriented/future negs
- Main users of this approach
  - EU/EFTA with MENA (Mid East & North African) countries
  - Also Turkey with EEME, Japan / Asia

# Agreements with detailed GP provisions

Agreements having detailed provisions and coverage commitments



- GPA Parties more active
- Generally modelled on GPA
  - Some later RTAs on revised text
- Agreements btw GPA Parties
  - Some further opening beyond GPA
- Between GPA and non-GPA Parties
  - GPA as template
  - Some use of NAFTA rules
- Between non-GPA Parties
  - Some regional patterns

# Text analysis of GP provisions



- National treatment / non-discrimination
- MFN
- Procedural rules elaborated
- Domestic review / bid challenge
- Dispute settlement mechanism
- Use of offsets regulated
- Commitments to GPA accession
- Further negotiations
- Provisions on integrity
- Cooperation
- Joint Committee or other administering body
- Coverage commitments



**12 Elements of analysis**

# 12 Elements...a few words on each (1)



- **Basic principles: National treatment/non-discrimination**
  - National treatment: applicable in all RTAs with detailed provisions
  - Significance of 'non-discrimination' vis-a-vis MFN
- **MFN**
  - Generally no MFN in RTAs between GPA/non-GPA parties
  - Present in RTAs with a single or few provisions
  - **Instead: future negotiations**
- **Offsets: prohibited in most RTAs with detailed provisions**
  - regulated use under EU-CARIFORUM, Singapore-Australia RTAs
  - (Developing country exception under the GPA)
- **Procedural rules: Main models: GPA, APEC, NAFTA**
  - Reasons: avoidance of conflicting obligations...?
  - Effect: harmonization of rules



## 12 Elements...a few words on each (2)



- **Domestic review:** in all agreement w/ detailed provisions
- **Dispute settlement:** idem
  - Often in form of arbitration; in some cases, possibility to choose between arbitration and WTO DSM
- **Cooperation:** provisions in 53% of RTAs w/detailed prov.
  - General coordination, exchange of information; may also include technical cooperation
- **Administering body:** majority with specific admin. body
- **Commitment to/provisions on GPA accession**
  - Rare!
  - Instead: Future negotiations
- **Integrity:** 1/3 of RTAs with detailed provisions

# Coverage



- **GPA and NAFTA as gauge for comparison of RTA coverage commitments. Not examined: exclusions.**
- **Who? Entity coverage:**
  - Central government entities
  - Sub-central government entities
  - Other entities
- **What?**
  - Goods,
  - Services &
  - Construction Services
- **When?**
  - Thresholds for all combinations

# Entity coverage



- GPA parties mainly part follow or stay behind their GPA commitments on coverage of entities.
- Out of 22 Agreements between GPA and non-GPA parties, 17 such agreements provide for less or no coverage of sub-central government entities (Annex 2) and no agreement provides for more extensive market access as compared to the GPA. (Exception: New Zealand – Singapore)
- Some agreements between non-GPA Parties provide very broad entity coverage (Latin America)

## General level of GPA thresholds as comparison (expressed in SDR)

<b>Entities</b>	<b>Goods</b>	<b>Services</b>	<b>Construction Services</b>
<b>Annex 1</b>	130,000	130,000	5,000,000
<b>Annex 2</b>	200,000	200,000	5,000,000
<b>Annex 3</b>	400,000	400,000	5,000,000

Variations in some threshold levels for some Parties

# Thresholds



- **Difficult comparison due to conversion of currencies**
- **Between GPA Parties:**
  - Some thresholds are lowered as compared to the GPA, but not across the board (limited side deals?)
- **Between GPA and non-GPA Parties:**
  - GPA/NAFTA model, sometimes combined (e.g. GPA-Mexico)
  - Central government thresholds often lower than GPA
  - No/especially low thresholds in Singapore-Australia/New Zealand
- **Between non-GPA Parties:**
  - Central government thresholds often lower than GPA
  - No thresholds! Panama-El Salvador, Panama-Costa Rica, Chile-El Salvador and Chile-Costa Rica RTAs

# Goods/Services/Construction Services



- **Goods:**
  - Covered across the board (subject to exceptions, e.g. defence)
- **Services:**
  - Positive vs negative list approach (EU vs NAFTA)
  - Very extensive coverage by Chile.
  - Comprehensive coverage: Mexico-Nicaragua; New Zealand-Singapore; Panama-El Salvador; Panama-Costa Rica; Singapore-Australia and Singapore-New Zealand.
- **Construction Services:**
  - Tendency to cover comprehensively
  - Positive vs negative lists
  - **Panama-El Salvador, Panama-Costa Rica, Chile-El Salvador and Chile-Costa Rica RTAs cover all government procurement (no lists)**

# Concluding thoughts



- **Increasing incidence of GP commitments in RTAs**
  - Drivers both GPA parties and non-parties
    - ✦ Flavour of a strong regional dynamic (Latin America)
- **Importance of the GPA (NAFTA in some cases) as model**
- **Convergence towards common norms**
  - Commonality of basic principles at national/intl. levels
- **Coverage-related aspects**
  - Closer adherence of GPA parties to their GPA commitments
  - More liberalization in some RTAs involving non-GPA Parties
- **Q: Are RTAs helping or hindering multilateralization agenda in GP sector...?**