

**Non-Tariff Measures in
Regional Trade Agreements in
Asia and the Pacific: SPS,
TBT and Government
Procurement**



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Abstract

This study reviews the extent to which Regional Trade Agreements (RTAs) in Asia and the Pacific address three types of Non-Tariff Measures (NTMs): Technical Barriers to Trade (TBT), Sanitary and Phytosanitary (SPS) and Government Procurement (GP). The analysis covers 58 RTAs signed or/and in force from 2009 to 2018 in Asia and the Pacific. RTAs signed on or after 2014 are found to include more NTM provisions than those signed earlier. Essentially all RTAs signed in the past five years feature extensive provisions on SPS and TBT, with strong links to the WTO SPS and TBT agreements. The number of RTAs featuring provisions on Government Procurement has increased sharply from around 50% prior to 2014, to nearly 80% for RTAs signed over the past five years, although these more recent RTAs refer less frequently to the plurilateral Government Procurement Agreement under the WTO. Provisions aimed at enhancing transparency for all three types of NTMs are commonly found. SPS and TBT provisions go further than those for Government Procurement, with establishment of focal points and dedicated committees to advance cooperation also commonly found, along with provisions on achieving mutual recognition of conformance procedures or equivalences. References to international standards, and the need for harmonization based on these standards, have increased but implementation remains very much of a best endeavour nature. The ratings of the 58 RTAs according to the NTM provisions they contain confirms that the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) agreement goes further than most other RTAs in these areas and set a new global benchmark. Going forward, there is a scope for further strengthening of the NTM rules through RTAs, including through more systematic linkages to the provisions on capacity building and technical assistance for developing members.

JEL: F13, F15

Keywords: Non-tariff measures, Regional Trade Agreements, Asia-Pacific, SPS, TBT, Government Procurement.

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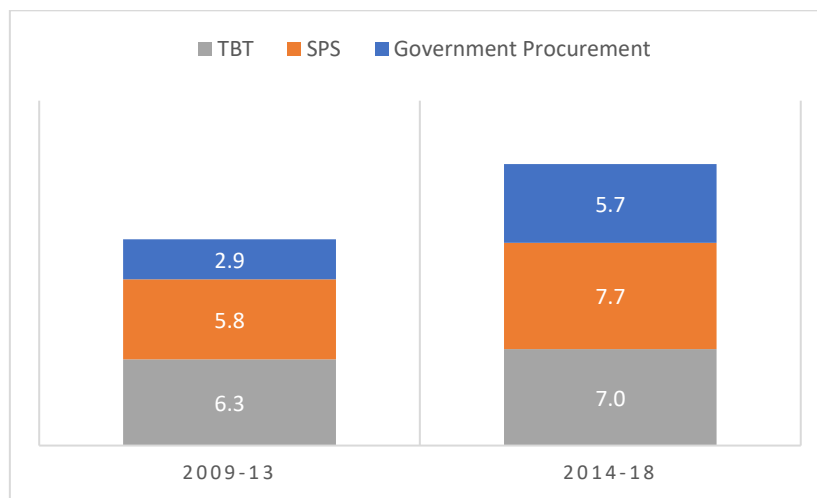
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1. Introduction

As tariffs significantly decreased over the past two decades, the number and complexity of Non-Tariff Measures (NTMs) have increased. NTMs are generally defined as “policy measures other than tariffs that can potentially have an economic effect on international trade in goods”.² While NTMs often have legitimate policy objectives linked to sustainable development, such as human and animal health, they can also become barriers to trade (ESCAP/UNCTAD, 2019).³ As the number of NTMs have continued to increase and make it more difficult to engage in trade, countries have negotiated rules to better govern various NTMs in their regional trade agreements (RTAs).⁴ This includes rules and provisions on Technical Barriers to Trade (TBTs) and Sanitary and Phytosanitary measures (SPS), but also on Government Procurement (GP), among others.

Figure 1 - NTM provisions in Regional Trade Agreements in Asia and the Pacific



Source: Authors' calculations

The purpose of the paper is to examine to what extent issues related to these three types of Non-Tariff Measures have been addressed in Regional Trade Agreements (RTAs) involving Asia and the Pacific economies, and in what manner. Accordingly, the texts of 58 RTAs signed or/and entered into force between 2009 and September 2018 which include at least one Asia-Pacific economy member of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) are analysed. The list of RTAs included in the analysis is provided in Annex.

As part of the analysis, benchmark lists of TBT, SPS, and GP provisions are developed, building on Dür, Baccini and Elsig (2014) and the Design of Trade Agreements database (DESTA).⁵ The content of each RTA is checked against the benchmark lists and rated

² See UNCTAD at <https://unctad.org/en/Pages/DITC/Trade-Analysis/Non-Tariff-Measures.aspx>

³ Hudec (1990) and Mansfield and Busch (1995) noted that NTMs could easily substitute after tariff reductions had been negotiated. Several studies subsequently showed that both SPS and TBT measures were substituted for tariff in by both developing and developed countries (Crivelli and Croschl, 2012; Beverelli et al., 2014; Fontagne et al., 2015).

⁴ Many studies have attempted to calculate the cost, or ad valorem equivalent (AVE) of NTMs, e.g., Berden et al., 2009; Francois et al., 2013; Fontagne et al., 2013; Christophe et al., 2014; Egger et al., 2014, among others. Using these estimates, Francois et al. (2013) examined the economic effect of reducing NTMs through an RTA, namely the Transatlantic Trade and Investment Partnership, and found that tackling NTM would account for about 80% of potential gains under the agreement.

⁵ DESTA accessed between July and December 2018. See: <https://www.designoftradeagreements.org/>

accordingly. This provides a systematic way to compare RTAs over time and regions, and to identify the ones with the most comprehensive coverage in each area.⁶

Figure 1 illustrates how the average number of benchmarked provisions related to the three above-mentioned types of Non-Tariff Measures changed over time in the last ten years. Provisions related to Government Procurement have increased substantially in the most recent agreements, followed by provisions on SPS. In contrast, the number of provisions related to TBT was already high and increased little in RTAs between 2009-2013 and 2014-2018.

2. Technical Barriers to Trade

Technical Barriers to Trade (TBTs) are defined by UNCTAD as “*Measures referring to technical regulations, and procedures for assessment of conformity with technical regulations and standards, excluding measures covered by the SPS Agreement.*”⁷

Technical Barriers to Trade refer to the technical norms and standards that goods imported into a country must comply with, in order to be cleared for entry. Conformity assessment procedures, testing methods and requirements to determine whether a particular good meet the relevant technical norms and standards, can be particularly tedious and cumbersome. Multilateral trade rules on TBTs are set out in the WTO TBT Agreement, in an attempt to ensure technical requirements and related procedures are not used as protectionist measures.

2.1. Benchmark list of TBT Provisions in RTAs

To facilitate comparisons between RTAs, a benchmark list of nine TBT provisions is developed. The list is developed based on the Design of Trade Agreements (DESTA) database, as well as an iterative review of RTAs with some of the most comprehensive texts on the topic.⁸

The 9 provisions or features used to benchmark the RTAs on their TBT content are as follows:

1. *Reference to WTO TBT Agreement:* The RTA specifically refers to and stresses compliance with the WTO Technical Barriers to Trade (TBT) Agreement, which aims to ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade.⁹
2. *Provision on Dispute Settlement:* The scope of the dispute settlement committee under the RTA extends to TBT related matters.
3. *Provision on Information Exchange and Cooperation:* The RTA includes a provision on exchange of information and cooperation for better implementation of the provisions.
4. *Reference to use of International Standards:* The RTA encourages the use of international standards to curb the cost of compliance with country-specific technical standards and norms.
5. *Harmonisation with International Standards:* The RTA promotes harmonisation of member’s practices with international standards.

⁶ Unlike OECD (2019), no attempt is made to look at how binding the specific provisions are, recognizing the generally weak dispute resolution mechanisms in RTAs.

⁷ Source: UNCTAD website [available at] https://unctad.org/en/PublicationsLibrary/ditctab20122_en.pdf?user=46

⁸ The reference list of TBT provisions in DESTA (designoftradeagreement.org) includes No. 1, 2, 3, 4 and 5 below. For more information on DESTA, please refer to Dür, Andreas, Leonardo Baccini and Manfred Elsig. 2014. “The Design of International Trade Agreements: Introducing a New Database”. *Review of International Organizations*, 9(3): 353-375.

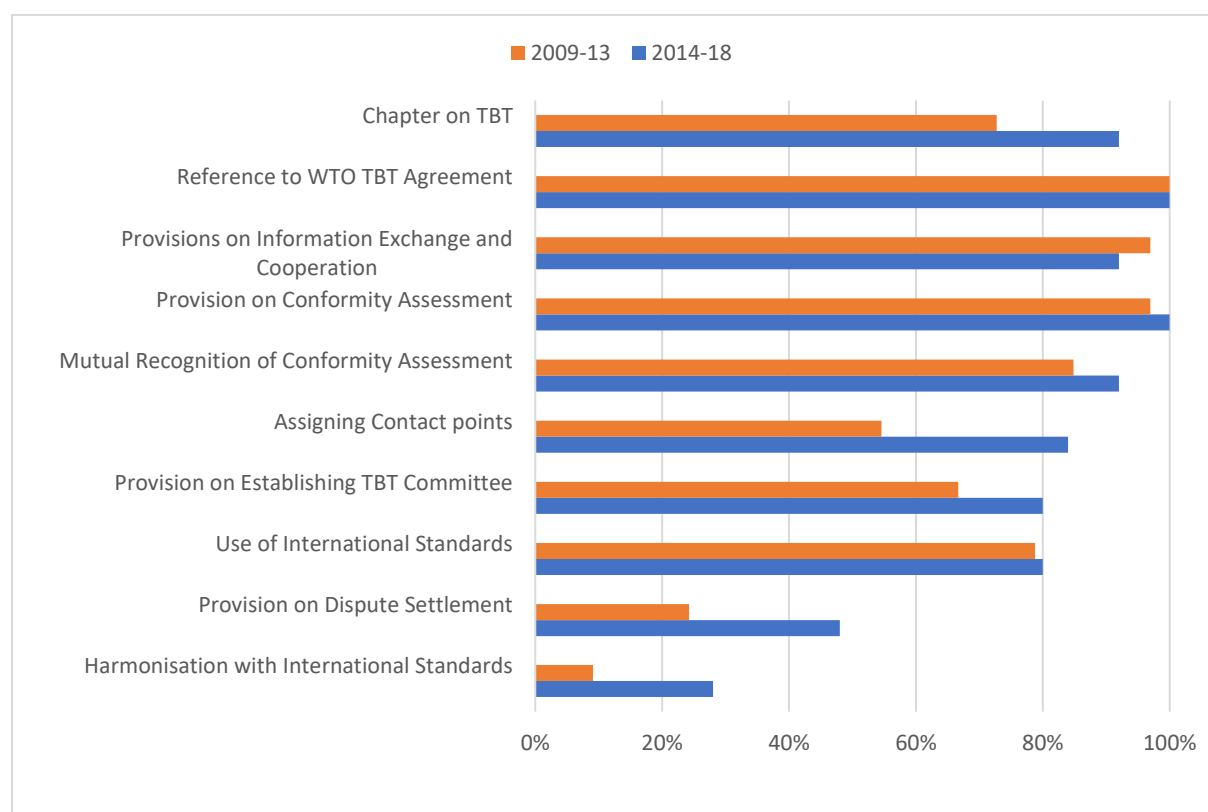
⁹ Source: WTO Website; [available at] https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm

6. *Provision on Conformity Assessment Procedures:* The RTA provides guidance on assessment procedures for conformity to technical standards and norms and how they should be implemented/accepted.
7. *Mutual Recognition of Conformity Assessment Procedures:* The RTA promotes mutual recognition, i.e., acceptance and recognition of the Conformity Assessment Procedures used by the RTA partners, in order to prevent goods being tested in both the exporting and importing country – and to save time and cost.
8. *Establishment of a TBT Committee:* RTA partners form a TBT committee to fulfil the objectives of the TBT chapter.
9. *Assigning Contact Points:* The RTA specifies that all the countries should have TBT Contact/Enquiry points with whom the other countries can instantly connect in case of an enquiry.

2.2. TBT provisions in RTAs in Asia-Pacific

The occurrence of each of the benchmarked TBT provisions in the 58 RTAs analysed is shown in figure 2. In order to infer trends in TBT provisions over time, RTAs are distributed in two groups: RTAs signed in 2009-2013 and RTAs signed in 2014-2018.

Figure 2 – Technical Barriers to Trade provisions in RTAs of Asia-Pacific economies



Source: Authors' calculations

All agreements reviewed have TBT provisions, essentially all in a chapter dedicated to technical measures. All the agreements also mention and abide by the provisions of the WTO TBT Agreement. Some of the agreements also provide for RTA members to rely on the WTO TBT Committee to resolve specific trade concerns – specific laws, regulations or procedure that affect their trade - as mentioned in the TBT Agreement.

Over 90% of the agreements have a provision on Cooperation and Information Exchange, although the percentage decreased slightly from 2009-2013 to 2014-2018. This provision focuses on cooperating with the relevant standardization bodies and regulatory authorities at

regional and international level, along with exchange of information and data with a view to improve the quality and effectiveness of the standards and technical regulations. Most agreements promote and seek to enhance cooperation and information exchange among the public and/or private organisations responsible for standardization, conformity assessment procedures and metrology of RTA members. In this context, a few RTAs also mentions that the applicable law protects the confidentiality of any proprietary information disclosed.

Provisions on Conformity Assessment are included in all RTAs signed in 2014 or after, a slight increase from the 2009-2013 period. Most of them contain specifically the following: (1) The countries accept a wide range of mechanisms to facilitate the acceptance of the results of conformity assessment procedures conducted in other countries; (2) The countries shall have a basis of International Standards while formulating their own Conformity Assessment Procedures. Also, they must have a scientific explanation to it; and (3) The countries must have equivalent methods, standards and procedures for accrediting and licensing the Conformity Assessment Bodies.

Mutual Recognition of Conformity Assessment Procedures is widely featured in RTAs completed after 2009 and has been increasing since then. It features in over 90% of the Agreements signed in 2014 or after. Provisions related to Mutual Recognition of Assessment Procedures generally include the following elements: (1) Countries shall either accept the Conformity Assessment Procedure used by the fellow country or recognize accredited agencies in the fellow country. They shall accept and approve of the Conformity Assessment Procedure in the area of the other party, including the sectors nominated by the parties; (2) Countries shall use relevant International multilateral recognition agreements and exchange information regarding Conformity Assessment Procedure practised by them in order to reach a mutual verdict; (3) Each party shall authorize, sanction and recognize the Conformity Assessment bodies in the fellow country in the same manner as done in the home country; and (4) If a party disapproves of a Conformity Assessment Procedure or Conformity Assessment Body of the other party, it shall, on the request of the other party, disclose the basis on which such a decision was taken.¹⁰ Box 1 gives an example of provisions about Mutual Recognition on Conformity Assessment Procedures, taken from two different free trade agreements (FTAs): CPTPP and New Zealand -Korea FTA.

¹⁰ Not all the agreements contain all the provisions. A few of them just mention about mutually recognizing the Conformity Assessment Procedures of the fellow country.

Box:1 Example of TBT provisions on Mutual Recognition on Conformity Assessment Procedures

Mutual Recognition on Conformity Assessment Procedures generally falls under the article of Conformity Assessment. Following are examples of how countries express that particular provision in two difference agreements:

- (1) *“A Party shall consider adopting measures to approve conformity assessment bodies that have accreditation for the technical regulations or standards of the importing Party, by an accreditation body that is a signatory to an international or regional mutual recognition arrangement.¹¹ The Parties recognise that these arrangements can address the key considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.”* (CPTPP, 2018. Article 8.6.8)

- (2) *“The Parties recognise that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. Such mechanisms include:*
 - (a) facilitating recognition of co-operative arrangements between accreditation agencies from each other's territory;*
 - (b) implementing mutual recognition of the results of conformity assessment procedures performed by bodies located in each other's territory with respect to specific technical regulations;*
 - (d) recognising accreditation procedures for qualifying conformity assessment bodies;*
 - (e) designating conformity assessment bodies or recognising the other Party's designation of conformity assessment bodies;*
 - (f) unilaterally recognising the results of conformity assessment procedures performed in the other Party's territory;”* (New Zealand-Korea FTA, 2015. Article 6.7.2)

There has been a sharp increase in the number of RTAs specifying the need for assigning contact points or enquiry points in the TBT chapter – from less than 60% of RTAs before 2014, to over 80% in the last five years. Typical requirements in this regards include for RTA members: (1) to appoint contact points who would take the responsibility for the application of TBT chapter; (2) to disclose all the details related to the contact point to each other and shall notify in case of change; and (3) to verify that information is exchanged duly on standards, technical regulations and Conformity Assessment Procedures. In case of enquiry points, countries generally agree for the exchange of information among enquiry points to be done electronically.

In line with the increase in contact points, the number of RTAs specifying the establishment of TBT committees also increased significantly in recent years. The TBT committee acts as a means to implement the provisions of Information Exchange and Cooperation between countries. The agreements often mention the following functions of the committee: (1) It shall establish the rules of operation on its first meeting, and shall meet as mutually decided by the members of the committee; (2) It shall look after the implementation and administration of TBT; (3) It shall also examine the matters associated to development, adoption and application of Conformity Assessment Procedures and enable information exchange between countries on related matters. When a Committee on Trade in Goods is established under an RTA, TBT committees also typically must report to it.¹¹ In addition, a few agreements also mention about

¹¹ Not all agreements mention about reporting it to the higher committee.

the establishment of a Sub-Committee to encourage, observe and assist the effective operation of Conformity Assessment Procedures.

The use of international standards to reduce TBTs is promoted in about 80% of the RTAs, with no significant changes observed between 2009-2013 and 2014-2018. A few RTAs try to specify what is meant by international standards. They mention the standards issued, in particular, by the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and Codex Alimentarius Commission (CAC) shall be considered relevant international standards in the sense of the TBT Agreement. Most of the agreements specify one or both of the following objectives: (1) Parties shall encourage co-operation between their respective organisations in areas of mutual interest, in the context of their participation in international standardising bodies, to ensure that international standards developed are trade facilitating and do not create unnecessary obstacles to international trade; (2) International standards, guides and recommendations that are likely to become the basis of technical regulations, conformity assessment procedures, should not be a hindrance to free trade; (3) Each Party shall use efficient customs procedures, based, as appropriate, on international standards, aiming to reduce costs and unnecessary delays in trade between them, especially the standards and recommended practices of the World Customs Organization. Generally, RTA members agree to use International Standards, wherever a relevant standard exists, or their completion is imminent. However, some RTAs recognize that the developing economies are not expected to use them as a basis of their technical regulation or standards including test methods which are not appropriate to their development, financial and trade needs.

As shown in figure 2, provisions on Dispute Settlement on TBT issues remain rare despite a sharp increase in RTAs signed between 2014-2019. All RTAs that address dispute settlement in TBT chapters either refer to the Dispute Settlement chapter of the agreement or mentions that the parties would act according to the WTO Dispute Settlement Understanding. Some agreements specifically exclude TBT disputes from their Dispute Settlement chapter.

Harmonisation with International Standards is now promoted in about a quarter of the RTAs signed in Asia and the Pacific between 2014-2018. The issue is typically mentioned either under provisions related to cooperation on TBT, or in the provision on International Standard – often in rather indefinite terms. Typically, the Parties should encourage their standardizing bodies, as well as the regional standardizing bodies of which they or their standardizing bodies are Members to undertake the following: (1) Participate within the limits of their resources, in the preparation of international standards by relevant international standardizing bodies; (2) Use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate; and (3) Avoid duplication of, or overlap with the work of international standardizing bodies. A few agreements also specify that they would work together on harmonization of technical standards for specific sectors.¹²

RTAs with the most comprehensive TBT provisions

We calculate a TBT coverage score for each of the RTAs, based on how many of the 9 provisions included in our benchmark list they contain. The score does not consider the level of binding or depth of each provision. As shown in table 1, 3 of the 58 agreements considered in this paper receive a perfect score of 9, i.e., they contain all the provisions discussed in the report. They are: The Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP), the New Zealand-Korea FTA, and the European Union-Japan Economic Partnership Agreement. Twenty agreements have a score of 8, all of them containing all the

¹² CPTPP and Republic of Korea-Canada agreements have provisions on sectoral harmonisation in the fields of Pharmaceuticals, Cosmetics, Medical devices and Automotive sector respectively.

provisions except either a provision on Harmonisation with International Standards or a Provision on Dispute Settlement.

Looking at the text of agreements in more details, the CPTPP is found to be most comprehensive as it defines the technical terms and provides explanations of commitments. It also includes additional provisions and levels of bindings, e.g., a provision on Compliance Period for Technical Regulation and Conformity Assessment Procedure.

Table 1: Agreements with the most comprehensive TBT provisions

Year of Signing	Name of the agreement	TBT Score
2018	CPTPP	9
2015	Republic of Korea-New Zealand	9
2018	European Union (EU)- Japan	9
2018	Australia-Peru	8
2018	European Union (EU)- Singapore	8
2017	ASEAN-Hong Kong, China	8
2017	Pacific Agreement on Closer Economic Relations (PACER) Plus	8
2016	Philippines-European Free Trade Association (EFTA)	8
2016	European Union (EU)- Vietnam	8
2015	Australia-People's Republic of China	8
2015	Japan-Mongolia	8
2015	Republic of Korea-Vietnam	8
2014	Australia-Republic of Korea	8
2014	Republic of Korea-Canada	8
2014	Malaysia-Turkey	8
2013	New Zealand-Taiwan Province of China	8
2013	Republic of Korea-Colombia	8
2013	Singapore-Taiwan Province of China	8
2012	Hong Kong, [China]-Chile	8
2011	India-Japan	8
2010	Hong Kong, [China]-New Zealand	8
2009	Japan-Switzerland	8
2009	Malaysia-New Zealand	8

Source: Authors' calculations

2.3. Summary

Our analysis of TBT provisions in RTAs reveals that all 58 agreements reviewed include a TBT chapter referring to the WTO TBT Agreement. Provisions on Information Exchange and Cooperation and on Conformity Assessment Procedures are also featured in 100% of the agreements signed in or after 2014. Provisions on Assigning Contact Points on TBT issues have become much more prevalent in agreements signed in the past five years, compared to in earlier agreements. While provisions promoting the use of international standards are common, more far reaching provision on Harmonisation with International Standards remain rare. Indeed, RTA partners emphasize Mutual Recognition of each other's Conformity Assessment Procedures over Harmonisation with International Standards. Agreements involving high-income countries in the region appear to be most comprehensive in their coverage of TBT issues. In particular, the CPTPP, possibly together with the Japan-EU trade agreement, are setting new benchmarks for TBT rules and deserve to be carefully studied by those involved in TBT rules negotiations.

3. Sanitary and Phytosanitary Measures

Sanitary and Phytosanitary Measures are defined by UNCTAD as “*Measures that are applied to protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food; to protect human life from plant or animal-carried diseases; to protect animal or plant life from pests, diseases, or disease-causing organisms; to prevent or limit other damage to a country from the entry, establishment or spread of pests; and to protect biodiversity. These include measures taken to protect the health of fish and wild fauna, as well as of forests and wild flora.*”¹³

SPS measures account for the largest number of non-tariff measures, based on data available in the TRAINS database. While they have legitimate objectives, they can become a barrier to trade and have sometimes been used as protectionist measures in the interest of domestic producers. Rules to ensure that SPS measures are not discriminatory and do not unduly affect trade are set out in the WTO SPS Agreement, increasingly complemented by rules specified in RTAs.

3.1. Benchmark list of SPS provisions in RTAs

To facilitate comparisons between RTAs, a benchmark list of fifteen SPS provisions is developed. The list is developed based on the Design of Trade Agreements (DESTA) database,¹⁴ as well as an iterative review of RTAs featuring the most comprehensive texts on the topic.

1. *Reference to WTO SPS Agreement*: The RTA specifically refers to and stresses compliance with the WTO Sanitary and Phytosanitary (SPS) Agreement.¹⁵
2. *Provision on Information Exchange and Cooperation*: The RTA includes a provision on exchange of information and cooperation on SPS measures.
3. *Assigning Competent Authorities and Contact Points*: The RTA specifies that all the countries should have SPS Contact/Enquiry points with whom the other countries can instantly connect in case of an enquiry.
4. *Reference to use of International Standards*: The RTA encourages the use of international standards for SPS measures - to conform to the relevant guidance of international standards.
5. *Establishment of an SPS Committee*: The RTA partners form an SPS committee to fulfil the objectives of the SPS chapter.
6. *Provision on Risk Analysis*: The RTA provides guidance on risk analysis for conformity to standards and norms and how they should be implemented/accepted.
7. *Provision on Equivalence*: The RTA promotes mutual recognition and acceptance of SPS certificates issued by RTA partners, in order to prevent goods being tested in both the exporting and importing country.
8. *Mutual Recognition of standards*: The RTA encourages mutual understanding of SPS measures taken by the RTA partners – to foster mutual confidence and demonstrate the efficiency of the programmes.
9. *Import Checks*: The RTA specifies that SPS inspections should be conducted without undue delay at the border.

¹³ Source: UNCTAD NTM Classification [available at] <https://unctad.org/en/Pages/DITC/Trade-Analysis/Non-Tariff-Measures/NTMs-Classification.aspx>

¹⁴ The reference list of SPS provisions in DESTA (designoftradeagreement.org) includes No.1,2 and 13 below.

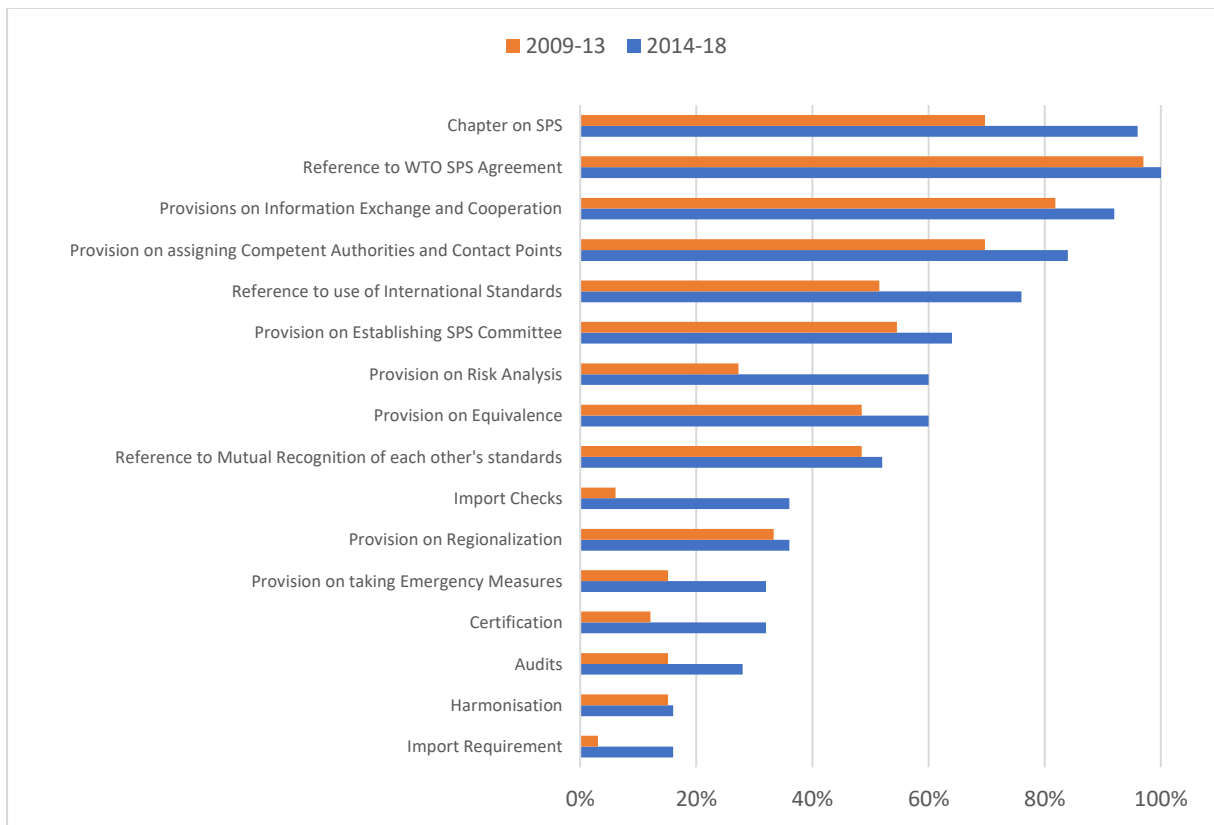
¹⁵ Source: WTO Website [available at] https://www.wto.org/english/tratop_e/sps_e/sps_e.htm

10. *Provision on taking Emergency Measures*: The RTA encourages RTA members taking emergency SPS measures to notify them to other members so they can be taken into consideration.
11. *Certification of Products*: The RTA specifies the certification is only requested to the extent necessary to protect human, animal or plant life or health.
12. *Provision on Audits*: The RTA includes a provision on audit specifying that the audit shall be system-based and follow the guidance of the WTO SPS Committee.
13. *Harmonisation with International Standards*: The RTA promotes harmonisation between national and international standards, and between the parties' standards.
14. *Provision on Import Requirement*: The RTA enables acquiring relevant information about imported commodities without undue delay to ensure the efficient management of available resources.
15. *Regionalization and Compartmentalization*: The RTA promotes importation based on region or compartment to facilitate mutual trade.

3.2. SPS provisions in RTAs in Asia-Pacific

The occurrence of each of the benchmarked SPS provisions in the 58 RTAs analysed is shown in figure 3. In order to infer trends in SPS provisions over time, RTAs are again separated in two groups: RTAs signed in 2009-2013 and RTAs signed in 2014-2018.

Figure 3 - Sanitary and Phytosanitary provisions in RTAs of Asia-Pacific economies



Source: Authors' calculations

All agreements reviewed have SPS provisions, essentially all in a chapter dedicated to SPS issues and/or referring to the WTO SPS Agreement.¹⁶ When there is no separate SPS chapter, the SPS provisions are usually included in a Chapter on Trade in Goods.

¹⁶ The agreements referring to "International Conventions and Agreement in this field" or similar are also considered as referring to WTO SPS Agreement.

The most common SPS provision found in RTA, besides the one referring to the WTO SPS Agreement, is a provision on Information Exchange and Cooperation. It is included in over 90% of RTAs signed in or after 2014, a ten-percentage point increase from the 2009-2013 period. Most recent agreements promote and seek to enhance cooperation and information exchange among the public and/or private organisations responsible for sanitary and phytosanitary issues. Moreover, cooperation related to assessment procedures and to promote mutual recognition and eliminate duplicate or multiple testing or certification based on internationally applicable standards is typically emphasized. These provisions also include cooperation on trade facilitation and technical assistance related to SPS matters.

Assigning Competent Authorities and Contact points¹⁷ for SPS is required in over 80% of the RTAs signed in the last five years - from only 70% of RTAs before 2014. Related provisions in RTAs often specify that the parties shall disclose all the information related to its contact points in the first relevant meeting of parties (e.g., the sub-committee on SPS, as discussed below) after entry into force of the agreement, to facilitate appropriate communication between partners. This is an essential first step in developing collaboration on SPS among partners, as the contact points also function as enquiry points and exchange information on the issues related to risk assessment, import procedures, change in SPS measures and emergency measures.

Only about two third (66%) of the RTAs signed between 2014-2018 feature a provision on Establishing an SPS committee, a slight increase from the 2009-2013 period. Most agreements specify that this committee dedicated to SPS should be a sub-committee¹⁸ reporting to the general committee. The duties of the sub-committee typically include: (1) establishing rules and regulations related to SPS matters; (2) facilitating trade and implement SPS measures with the help of cooperation, information exchange, equivalence, transparency of actions and mutual understanding of each other's measures; (3) proposing and running technical cooperation programs that focus on developing new methods and scientific techniques for the ease of trade.

The use International Standards is promoted in about 80% of the RTAs in 2014-2018, a sharp increase from less than 60% of RTAs in 2009-2013. Most of the time it forms a part of the general provisions stating that the countries should adopt relevant international standards as developed by international organizations. A few agreements also contain provisions stating that the countries should disclose, whenever they deviate from the application of international standards; and that they should provide rational scientific evidence of the new standards adopted by them.¹⁹ Harmonisation with International Standards is specifically encouraged in only about one-fifth of the RTAs (or 11 of 58 RTAs), with no significant changes observed between 2009-2013 and 2014-2018. Box 2 contains examples of reference to international standards and harmonisation in SPS provisions in 3 RTAs.

¹⁷ 5 agreements mention only about Contact Points, whereas 6 agreements mention only about Competent Authority.

¹⁸ It also includes Joint Committee formed for the implementation of TBT and SPS measures.

¹⁹ These provisions are a part of Pacific Agreement on Closer economic Relations Plus(PACER PLUS) <https://dfat.gov.au/trade/agreements/not-yet-in-force/pacer/Documents/pacer-plus-chapter-6.pdf> and Comprehensive and Progressive Agreement for Trans-Pacific Partnership(CPTPP) <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text/#chapters>

Box 2: International standards and harmonisation in RTA SPS provisions

Below are some examples of SPS provisions encouraging the use of international standards as well as harmonization with international standards. Interestingly, EU agreements with developing countries typically specify gradual harmonization with EU standards, as in the case of the EU-Moldova agreement below.

(1) CPTPP, 2018

With reference to (a) Adaptation to Regional Conditions; (b) Equivalence; (c) Science and Risk Analysis; (d) Audits; (e) Certification; and (f) Transparency, the CPTPP specifies that *“Parties shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.”*

(2) China-Switzerland FTA, 2013

“To harmonise sanitary and phytosanitary measures as broadly as possible, the Parties shall base their sanitary and phytosanitary measures on international standards, guidelines and recommendations established by the Codex Alimentarius Commission (CAC), the World Organisation for Animal Health (OIE), and the relevant international regional organisations operating within the framework of the international plant Protection Convention (IPPC) where they exist or their completion is imminent.” (China-Switzerland FTA, 2013. Article 7.4)

(3) EU-Moldova Agreement, 2014

“The Republic of Moldova shall gradually approximate its sanitary and phytosanitary and animal welfare law to that of the Union as set out in Annex XXIV (Principles for the evaluation of progress in the Approximation Process) to this Agreement” (EU-Moldova Association Agreement, 2014. Article 181. Gradual approximation)

There has been a sharp increase in the number of RTAs specifying the need for Risk Analysis²⁰ in SPS chapter – from less than 30% of RTAs before 2014, to 60% in the last five years. RTA provisions on assessing SPS risks raise the following matters to be considered: (1) The countries shall ensure SPS measures have scientific explanation to their procedures; (2) When the Risk Assessment process comes to an end, the results shall be conveyed to the exporting country; (3) The Risk Assessment process should not become a barrier to trade by imposing more than required restrictions. Related provisions sometimes note that the parties should also consider technical, economic and physical feasibility while imposing standards in order to fulfil the objectives of SPS.

A provision on Equivalence is included in about 60% of RTAs in 2014 or after, a more than ten percentage points increase from the 2009-2013 period. These provisions are reminiscent from Article 4 of the WTO SPS Agreement and provide parties with an opportunity to demonstrate equivalence of their SPS measures to that of other parties.²¹ As such, parties are expected (1) To enter into discussions and develop programs in order to reach a consensus regarding the measures; (2) To abide by the international standards, guidelines and recommendations as given by the International organisations; (3) To take equivalence decisions in accordance with the WTO SPS agreement and with the help of other international organisations along with WTO SPS Committee. In addition, to facilitate equivalence decisions,

²⁰ In a few agreements Risk Assessment is mentioned separately in different articles like Import check, goods in transit and transparency.

²¹ https://www.wto.org/english/tratop_e/sps_e/equivalence2001_e.htm#fntext3

on the request of the exporting country, importing countries are to give a detailed explanation on the SPS measures and what risk would it mitigate.

Closely related to the concept of equivalence, references to Mutual Recognition (see Box 3) of each other's standards are found in about 50% of the RTAs, with no significant changes observed between 2009-2013 and 2014-2018. However, the RTAs do not specifically mention mutual recognition of SPS measures and assessment procedures – perhaps because the concept of mutual recognition (of conformity assessment procedures) relates more to TBT rather than to SPS.²² Rather, the agreements mention about mutual understanding of each other's measures and regulatory processes.

Box 3: Examples of Concept of Equivalence on SPS provisions in RTAs

“The recognition of equivalence requires an assessment and acceptance of: (a) existing SPS measures in legislation, standards and procedures, including controls related to inspection and certification systems to ensure that the SPS measures of both the exporting party and the importing party are met;” (EU-Singapore FTA, 2018. Article 5.14.3a)

“The Parties shall, on request of either Party, enter into consultations with the aim of achieving arrangements determining the equivalence of specified sanitary and phytosanitary measures.” (EU-Japan EPA, 2018. Article 6.14.2)

The number of RTAs featuring provisions on Import Checks (for compliance with SPS measures) increased sharply in recent RTAs: from 6% of RTAs before 2014, to over 35% after 2014. The Provisions generally include the following elements: (1) The importing country may carry out Import Checks as a part of their import programme based on the risk related to commodities; (2) Parties shall provide with detailed information and technique of the Import Check on request of the other party; (3) In case of rejection of goods after conducting the Import Checks, the party shall notify in writing supported by factual basis and scientific justification.

Regionalization and Compartmentalization provisions are included in about 35% of the RTAs, with no significant changes observed between 2019-2013 and 2014-2018.²³ Related provisions can in principle facilitate trade, as SPS measures (e.g. an import ban) are applied only to a specific region or geographic area rather than to the entire territory of a country. This may apply when a region is considered a Pest or Disease-Free area and/or an area of low pest and disease prevalence. Compartmentalization goes one step further than regionalization and allows for export from a specific area or block within the region if the block is verified as a disease-free area. A typical requirement in regionalization and compartmentalization provisions is that exporting countries shall promptly provide relevant information on importing countries request and cooperate on the recognition of pest or disease-free areas.

Rules on Emergency SPS Measures are featured in 30% of agreements in 2014 or after, a nearly twenty percentage points increase from the 2009-2013 period. It refers to a situation when the importing country reports an urgent problem arising from the product imported and applies Emergency SPS Measures. Most provisions specify that: (1) The country adopting Emergency measures should promptly inform the other country about it through the contact points appointed in the SPS Committee and shall also disclose all the information regarding the same in writing; (2) The importing country can take any measure deemed necessary

²² See, for example, Key Principles of the SPS and TBT Agreements, a presentation by Gretchen H. Stanton, which highlights the binding nature of equivalence provision in the WTO SPS Agreement as opposed to that in the TBT Agreement. [available at]

<https://www.unescap.org/sites/default/files/2.%20SPS%20%26%20TBT%20Key%20Principles.pdf>

²³ The regionalization was introduced and designed by WTO in relation to the SPS Agreement Article 6.

without any previous notification to protect the human, plant and animal life; (3) The exporting party should be informed regarding the measure taken by the RTA partner in the stipulated time period as agreed by agreement; (4) The countries shall discuss the reason along with the scientific basis and explanation and shall try to resolve it to avoid disruption in trade.

Provisions related to the SPS Certification of Products are found in about 30% of the RTAs signed in Asia and the Pacific between 2014-2018. They generally require that the parties requiring certification for import of goods shall ensure the following: (1) The certification system shall be based on International Standards, including the rules and guidance given by the WTO SPS Committee; (2) Parties shall limit the information and use of certification to fulfil the SPS objectives of protecting plant, human, and animal life.

Provisions on Audit, Harmonization with International Standards (discussed earlier), and Import Requirement are found in less than a third of the RTAs signed in or after 2014. Audit provisions aim at facilitating certification of each other's SPS systems, typically committing the parties to assist each other in conducting audits for their certification system and provide with all the relevant information as requested for the purpose of the audit; to ensure that the result and decision of the auditing party is supported and verified by relevant data. Provisions on Import Requirement measures remain rare but generally focus on ensuring that the importing party ensures that the measures are transparent, scientifically justified and applied to products in a proportional and non-discriminatory manner.

RTAs with the most comprehensive SPS provisions

We calculate an SPS coverage score for each of the RTAs, based on how many of the 15 provisions included in our benchmark list they contain. As shown in table 2, 2 of the 58 agreements considered in the study receive a perfect score of 15, i.e., they contain all the provisions discussed in the report: European Union-Japan Economic Partnership Agreement, European Union and Vietnam Free Trade Agreement. The Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP) and New Zealand and Taiwan Province of China Free Trade Agreement contained all the provisions, except Harmonisation with International Standards.

Table 2: Agreements with most comprehensive SPS provisions

Year of Signing	Name of the agreement	SPS Score
2018	European Union (EU)-Japan	15
2016	European Union (EU)-Vietnam	15
2018	CPTPP	14
2013	New Zealand-Taiwan Province of China	14

Source: Authors' calculations

Other agreements are also worth noting, as they also contain additional provisions not included in the benchmark list. For example, Provisions on Verification and Trade Facilitation are included in SPS provisions in the RTA between European Union and Singapore. Moreover, the agreement of PACER Plus features provisions on Publication of Regulation and Notification, which explain how and when to disclose information to the other party through the Contact Points. That agreement also discusses Special and Differential Treatment, considering the special needs of Developing Countries. Finally, the agreement between Singapore and Sri Lanka has detailed provisions on Competent Authorities in its SPS chapter.

3.3. Summary

Our analysis of SPS provisions in RTAs reveals that all 58 agreements reviewed include at least one SPS provision and that almost all the agreements have a reference to the WTO SPS Agreement. Provision on Information and Cooperation and Provision on assigning Competent

Authorities and Contact Points are also featured in most of the agreements signed in or after 2014. The provision that increased the most (i.e., by thirty-three percentage points) between 2009-2013 to 2014-2018 is the provision on Risk Analysis, highlighting the increasing importance of this issue. In contrast, provisions on Import Requirement and Harmonisation with International Standards remain rare. Generally, however, the number of SPS provisions is increasing and they are becoming more complex, if not more binding. Agreements signed recently appear to be the most comprehensive in their coverage of SPS issues. In particular, the Japan - EU Economic Partnership Agreement and CPTPP are setting new benchmarks for SPS rules and deserve to be carefully studied by those involved in SPS rules negotiations.

4. Government Procurement

Government Procurement (GP) is defined by UNCTAD as *“the process by which a state agency procures a product or service for its own use. The principle objective of keeping open and non-discriminatory government procurement regimes is to allow for competition between potential suppliers, and hence to ensure that the best value for money is obtained.”*²⁴ Government Procurement restrictions are recognized as an NTM in the MAST classification.

Giving a preferential treatment for domestic goods, services and suppliers discriminates against foreign suppliers, and therefore represents a trade barrier in the GP sector. National governments often tend to give preference to national suppliers. The WTO Government Procurement Agreement (GPA) is a plurilateral agreement to facilitate fair and transparent competition among national and international goods and services suppliers.²⁵ RTAs also include rules to limit restrictions on government procurement, which some have seen as possible stepping stone towards accession to the GPA and its multilateralization.²⁶

4.1. Benchmark list of GP Provisions in RTAs

The reference list of provisions builds upon the Design of Trade Agreements (DESTA) database.²⁷ After analysing the agreements, 12 provisions were selected as benchmarks for assessing how and to what extent RTAs strive to make GP less discriminatory and more transparent.

The 12 provisions analysed under Government Procurement are explained below.

1. *Provision on Notice of Procurement:* The RTA includes a provision about the Notice of Procurement where the procuring entity must publish a notice inviting the interested suppliers to participate in the tender.
2. *Provision on Modification to Coverage:* The RTA contains a provision giving the possibility of modification to the coverage, which refers to any change that the procuring entity might want to make.
3. *Provision on National Treatment:* The RTA specifically includes non-discrimination provisions. The treatment of all the tenders must be equal and it should not favour the domestic supplier during the tendering procedure.

²⁴ Source: UNCTAD website [available at] https://unctad.org/en/Docs/edmmisc232add27_en.pdf

²⁵ The GPA is a plurilateral agreement within the framework of the WTO, meaning that not all WTO members are parties to the Agreement. As of July 2019, the Agreement has 20 parties comprising 48 WTO members. Another 34 WTO members/observers participate in the GPA Committee as observers. For details, see: https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

²⁶ See Anderson, Robert & Müller, Anna & Osei-Lah, Kodjo & Pardo, Josefita & Leon, De & Pelletier, Philippe. (2011). Government Procurement Provisions In Regional Trade Agreements: A Stepping Stone To GPA Accession? Chapter 20.

²⁷ The reference list of GP provisions in DESTA (designoftradeagreement.org) includes No. 3, 8, 9, and 10 below.

4. *Provision on Domestic Review*: The RTA includes provisions referring to the possibility of challenging alleged breaches of the agreement in national courts with non-discriminatory, timely and effective procedures.
5. *Entities covered in Government Procurement chapter*: Taking into consideration that each government functions on different levels and through different entities, the RTA specifically enlists the entities covered by the agreement.
6. *Provision on Limited Tendering*: The RTA allows limited tendering which is a selective tendering procedure employed when specific conditions are fulfilled. The procuring entity can contact a supplier or suppliers of its choice.
7. *Provision on Time Period*: The RTA sets time limits for procuring which are agreed by consent of the parties involved in the procedure.
8. *Provision on Future Negotiations*: The RTA promotes future negotiations with the aim of improving the agreement and achieving the largest possible extension among all parties.
9. *Provision on Disclosure of Information*: The RTA ensures that the complete information about the tendering procedure is disclosed to all the participants and that confidential matters, which would give any type of privilege to a supplier are not disclosed.
10. *Formulating a Committee*: The RTA encourages the creation of a committee for better cooperation, time information exchange and implementation of all the provisions of the agreement.
11. *Provision on Cooperation*: The RTA promotes cooperation between countries in order to foster and better implement Government Procurement measures.
12. *Reference to WTO/GATT Government Procurement Agreement*: The RTA contains explicit provisions and references to the WTO GP Agreement. The WTO defines the fundamental aim of the GPA stating that it “*is to mutually open government procurement markets among its parties.*”²⁸

4.2. Government Procurement provisions in RTAs in Asia-Pacific

The occurrence of each of the benchmarked GP provisions in RTAs analysed is shown in figure 4.²⁹ Whether RTAs had a separate chapter on GP – as opposed to simply a provision,³⁰ or no provision at all – was also assessed. The RTAs are split in two groups, RTAs signed between 2009-2013 and 2014-2018.

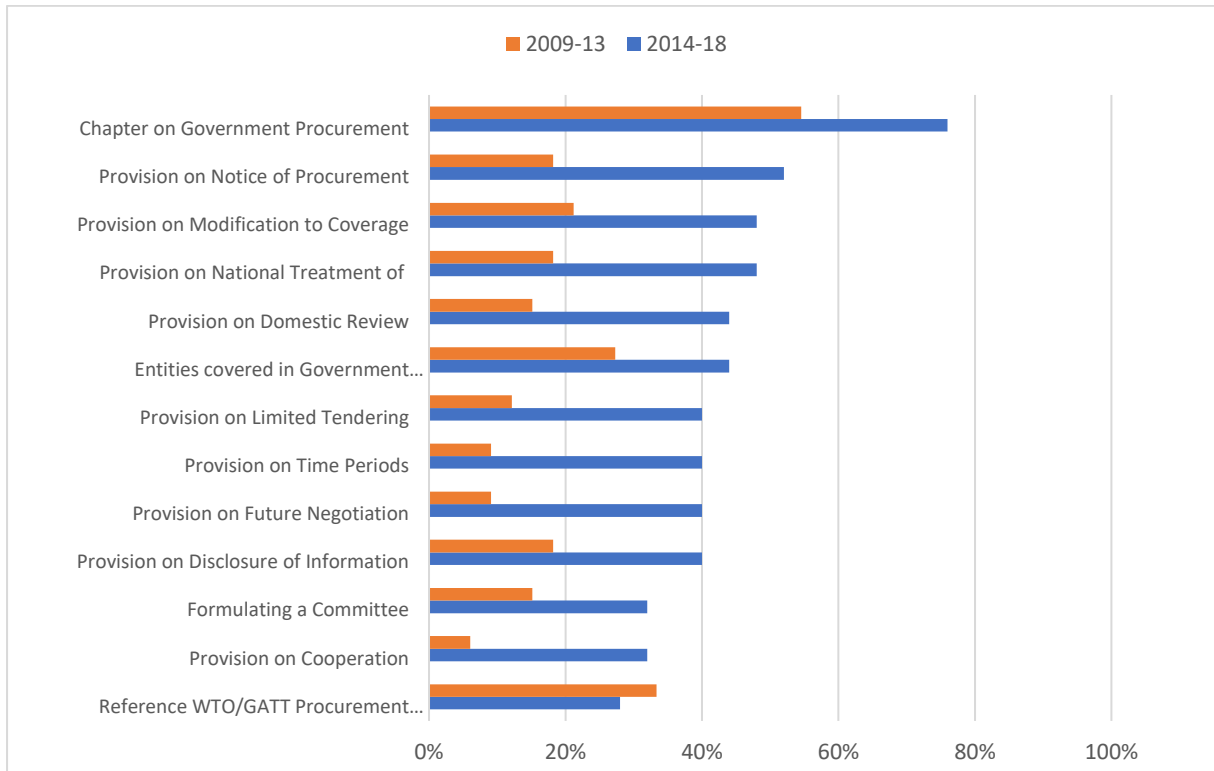
Out of 58 RTAs, only 23 have a chapter on Government Procurement, while 13 agreements just have an article on the latter. Twenty-one agreements do not include provisions on Government Procurement.

²⁸ Source: WTO Website [available at] https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

²⁹ Principle of binary coding is used to record the data. If the agreement has a provision/note/article it is coded as 1, otherwise as 0. The depth or level of binding of each provision is not considered.

³⁰ See for instance Chapter 9 of the EU-Singapore Free Trade Agreement (EUSFTA).

Figure 4 - Government Procurement provisions in RTAs of Asia-Pacific economies



Source: Authors' calculations

The Notice of Procurement is mentioned in 19 agreements and has become the most frequent provision on GP in RTAs signed in or after 2014, featuring in 52 of RTAs signed during that period. The Notice can be further divided into two parts. The first one, i.e. the Notice of Intended Procurement refers to the notices issued for the current need of suppliers and materials. The second part of the Notice of Procurement, i.e. the Notice for Planned Procurement states that procuring entities should publish a notice disclosing the future procurement schedule of one fiscal year by paper or electronic means. The notice should include the subject matter and the time-period of the same. An example of Notice of Procurement provision can be seen in Box 4.

Box 4: Example of provisions on Notice of Procurement in the CPTPP

(1) As part of the tendering procedure, the procuring entity should publish a tender notice inviting suppliers to participate; (2) The tender can be published in paper or electronic form. However, there should not be any charge or fee attached to the application in the tender; (3) The entity shall make sure that the public has a non-discriminatory access to the tender information; (4) The notice should include the following detailed information, unless it is disclosed in the tender documentation:

“(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and the cost and terms of payment to obtain the relevant documents, if any.

(b) a description of the procurement, including, if appropriate, the nature and quantity of the goods or services to be procured and a description of any options, or the estimated quantity if the quantity is not known.

(c) if applicable, the time frame for delivery of goods or services or the duration of the contract.

(d) if applicable, the address and any final date for the submission of requests for participation in the procurement.

(e) the address and the final date for the submission of tenders.

(f) the language or languages in which tenders or requests for participation may be submitted, if other than an official language of the Party of the procuring entity.

(g) a list and a brief description of any conditions for participation of suppliers, that may include any related requirements for specific documents or certifications that suppliers must provide.” ((CPTPP), 2018)

(5) While assessing the tenders for participation, the entity should not impose conditions such as the supplier’s previous experience with the government entity. However, conditions assessing the technical and financial feasibility are allowed by some agreements.

Nineteen of the 58 agreements studied contain provisions on Modification to Coverage and the inclusion of the latter provision has more than doubled in the second time-period. These agreements provide that in case the procuring entity decides to modify a detail regarding the requirements for intended procurement or evaluation criteria, it is required to amend it in the notice or reissue the notice along with the modification. The entity will provide the suppliers with enough time to make changes and re-submit their tender application.

The provision on National Treatment, included in 18 of the RTAs have more than doubled in the second time-period as well, being included in 48% of the agreements. It mentions that the procuring entity will handle all tenders equally, without discriminating between the tenders from the home country and the foreign country. It shall also respect the confidentiality of tenders and procured information. The procuring entity shall not discriminate between the locally established suppliers and other suppliers.

The provision referring to Domestic Review (see Box 5) is included in 16 agreements and has seen a tremendous increase of inclusion, from 15% in the 2009-2013 period to 44% in the 2014-2018 period. Throughout the analysis, the following provisions appeared in most of the agreements under the article of Domestic Review: (1) Each country should have a non-discriminatory, transparent administrative tribunal competent to resolve the issues of alleged breach of Government Procurement measures by the procuring party; (2) The following should be ensured by the country while dealing with complaints from the suppliers: (i) The supplier should be given enough time to file a complaint in writing to the judicial authority; (ii) All the relevant documents should be provided to the complainant by the procuring entity; (iii) The

judicial authority shall provide its decision in reasonable time and transparent manner along with an explanation of the latter; (3) In addition to the above-mentioned conditions when a compensation is awarded to the complainant by the judicial body, such compensation should not exceed the cost of preparing the tender and the cost related to the complaint.

Box 5: Domestic Review Mechanism in the revised WTO Government Procurement Agreement

“The revised GPA requires, in Article [XVIII](#), that all parties to the Agreement should establish domestic review systems that are timely, effective, independent, transparent and non-discriminatory. These systems permit suppliers to challenge breaches of the GPA and/or the national legislation giving effect to the Agreement. The review body, which may be an administrative authority or a court, must have the authority to implement remedial measures and/or to ensure compensation for the loss or damages suffered by a supplier. Rapid interim measures must also be available to preserve a supplier's opportunity to participate in relevant procurement activities, where appropriate.” ()*

(*) Source: WTO Website [available at] https://www.wto.org/english/tratop_e/gproc_e/disput_e.htm

The provision on Government Entities covered by the agreements varies as 15 agreements clearly state that they cover all the three entities, those are the Central Government, Regional Government and the Government Enterprises, whereas 3 agreements simply vaguely state that they cover the Central Government under the Government Procurement Chapter. However, 18 agreements do not disclose any information regarding this matter.

The provision about Limited Tendering is included in 14 agreements and had a relevant increase in the second period. It defines that a procuring entity can use Limited Tendering if the objective of the entity is not to protect the domestic market by avoiding competition or to discriminate between two groups of suppliers. Limited tenders are often used when the project concerns national security, or when it is not feasible or practical to call for open tenders.

The provision regarding Time Period is included in 13 agreements and it has increased from 9% in the first period, up to 40% in the second. The agreements clearly state the required time and deadlines to be followed by the procuring entity for different procurement circumstances. They also state that the notice of procurement should include the period for acceptance of the tender, and all the details regarding the time limit, if any. The procuring entities have a right to reduce the period of tendering, but it should not be less than the minimum limit as provided by the agreement.

The provision on Future Negotiations is mentioned in 13 agreements and it had more than tripled in the second period. The provision promotes future negotiations between countries in order to increase market access coverage, extend advantages to other parties on a reciprocal basis and reduce discriminatory measures.

Regarding the Provision on Disclosure of Information, it is contained in 16 agreements, with only a slight increase observed in the frequency of this measure between 2009-2013 and 2014-2018. The latter provision can be further divided in two categories. (1) In the first part, the Provision of Information to Parties, the agreements state that each country shall publish its procurement law, procedures, guidelines and any additional information or changes to the law. Each country on the request of the other country shall disclose information regarding the tendering process and share the records maintained by them. The country receiving the information cannot disclose it until and unless the fellow country has a consent on it. (2) In the second part, the Non-Disclosure of Information, the agreements state that any country including its procuring entities shall not disclose any information in any form if it is going to: (i)

Disrupt the fair competition between the suppliers; (ii) Favour a person or group of people by hindering the public interest.

The provision regarding the creation of Committees is contained in 13 agreements, and the inclusion of the provision has more than doubled in the second period. The purpose of this provision is to better implement GP measures. Countries together form a committee comprising of their representatives. The committee shall ensure better cooperation between parties by sharing and analysing information of each other's procurement procedures and market along with maintained statistical record. Furthermore, it shall also discuss the issues regarding future negotiations between the countries.

The provision on Cooperation between the countries has also seen a significant increase in more recent agreements, reaching over 30 percentage points, even though it is contained in only 10 agreements. The agreements state that the countries agree to cooperate by understanding each other's procurement procedures, exchanging information, such as regulatory framework and statistics, and making use of electric means of procurement procedures as much as possible.

Overall, 18 agreements refer to the WTO Government Procurement Agreement (GPA). The relevant data on this provision is that the inclusion of the WTO reference had a slight decrease of 5 percentage points in the second observation period. The GPA has been signed by only 48 members of the WTO. WTO has also launched an e-GPA portal, under the revised GPA for transparency of market access information. A separate WTO Dispute Settlement Mechanism is also set up along with national level Domestic Review Mechanism.³¹

RTAs with the most comprehensive GP provisions

Only 1 out of 58 agreements has all the 13 provisions referred to above. Four other agreements have a score of 12. There is a significant rise of 2.8 points in the average provisions on Government Procurement from 2009-2013 to 2014-2018. All the Provisions are found in the Government Procurement Chapter/Article of the agreements. Table 3 shows the agreements with the highest Government Procurement scores.

Table 3: Agreements with the most comprehensive GP provisions

Year of Signing	Name of the agreement	Government Procurement Score
2018	Australia-Peru	13
2018	CPTPP	12
2018	European Union-Singapore	12
2016	European Union-Vietnam	12
2014	Australia-Japan	12

Source: Authors' calculations

Out of all the agreements having a high score, the CPTPP is the most exhaustive. It contains provisions on Condition for Participation for Suppliers, Qualification of Suppliers, Technical Specification on Conformity Assessment Procedures, Documentation of Tender, Post Award Information and Facilitation of Participation by SMEs. All the other agreements comprise of some of the above-mentioned provisions but not all of them.

³¹ Source: WTO website, Government Procurement,[available at] https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm ; https://www.wto.org/english/tratop_e/gproc_e/disput_e.htm

4.3. Summary

Countries have started paying more attention towards Government Procurement over the past five years, which can be seen in the rise of the inclusion of the Government Procurement chapter by 20 percentage points. On the contrary, reference to WTO Government Procurement Agreement has fallen over the first lustrum by 4 percentage points. The most frequent provision overall in the last decade is Modification to Coverage, although Notice on Procurement has become most frequent in RTAs signed since 2014 – they are found in half or more of these agreements. All the other GP provisions have increased dramatically in the period 2014-2018. However, special attention may need to be paid to provisions on Cooperation and on Government Procurement Committee as both of them are found in less than one-third of the agreements reviewed, suggesting that in many cases, parties remain reluctant to deepen cooperation on government procurement issues besides those already included in the agreements. The big leap in the inclusion of provisions specifying periods for procurement processes (31 percentage points increase between 2009-2013 and 2014-2018 RTAs) is welcome, as this is a pragmatic way to enhance transparency in government procurement.

5. Conclusions and Implications

In this paper, reference lists of RTA provisions on SPS, TBT and Government Procurement were developed to examine the extent to which RTAs signed over the past 10 years have included them. A key finding is that the number of NTM provisions in RTAs has increased significantly in RTAs signed over the past five years, compared to those signed earlier in the decade.

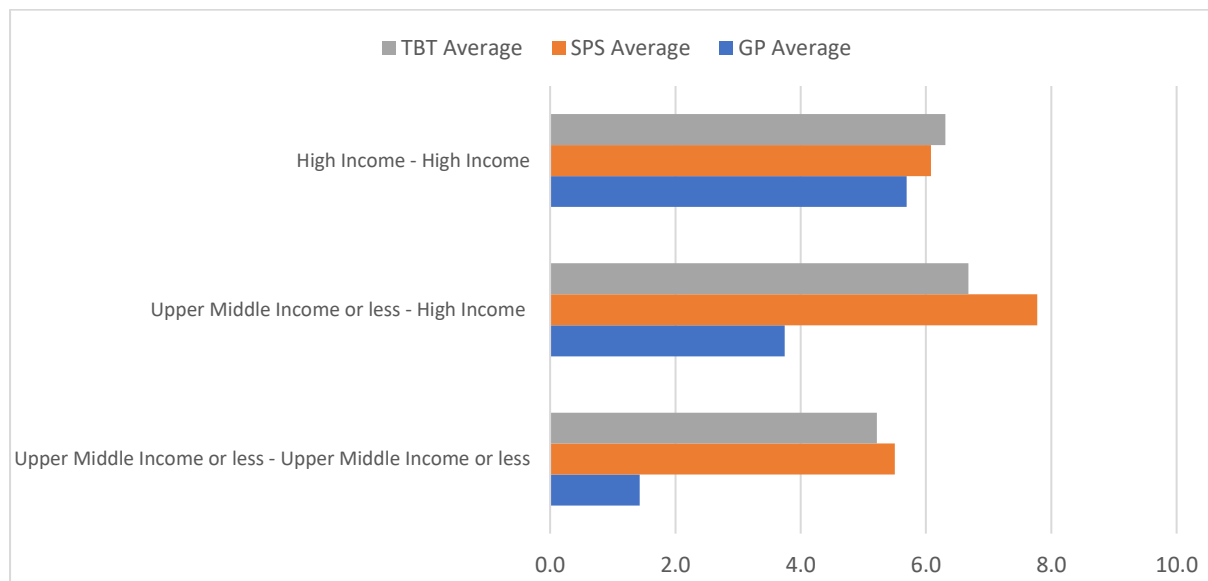
However, the coverage of RTAs appears to vary widely depending on the type of NTMs examined. All agreements signed over the past 5 years include significant provisions on SPS and TBT - if not fully dedicated chapters. In contrast, many RTAs still lack provisions on Government Procurement, although the number of RTAs that contain the latter provisions has risen sharply between 2009-2013 and 2014-2018. All agreements signed on or after 2014 refer to multilateral rules on SPS and TBT. However, even in RTAs that deal with government procurement, reference to the Government Procurement Agreement under the auspices of the WTO are not systematic. In fact, 2014-2018 RTAs refers to the plurilateral agreement on Government Procurement under the auspices of the WTO, is less often referred to than in older 2009-2013 RTAs. Provisions on cooperation are almost always included in the TBT and SPS chapters of recent RTAs, often together with the establishment of dedicated committees to deal with TBT and SPS issues under the agreements. Similar provisions on Government Procurement remain uncommon.

Agreements involving high-income economies appear to have more NTM provisions, with the CPTPP standing out as one of the most comprehensive across all three types of NTMs examined here. As shown in figure 5, RTAs between high-income economies have more NTM provisions than RTAs between upper middle income or lower economies. Interestingly, RTAs between upper middle income and high-income economies are found to put more emphasis on SPS provisions than other RTAs. In contrast, RTAs among high-income economies contain at least 50% more provisions on Government Procurement than other RTAs.³² As such,

³² The World Bank Income Classification 2018 is used as the basis to classify the RTAs into three groups, as shown in figure 5. See: <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>

countries at different stages of development are prioritizing different NTMs based on their perceived impact on trade among the parties.

Figure 5 – Average NTM provisions in RTAs, based on income level of parties



Source: Authors' calculations

The analysis revealed that provisions aimed at increasing the transparency of NTMs, regardless of their types, have become significantly more prevalent in recent RTAs. Indeed, providing full clarity on what the measures are – and what they entail – is an important starting point. More importantly, it can be noted that the trend, at least for SPS and TBT, is to establish mechanisms under each RTA to further pursue collaboration in this area, such as dedicated committees and/or negotiating mutual recognition agreement of conformance procedures to TBT. While operating these mechanisms certainly involve some resources, they can help ensure that transparency and other provisions are actually implemented, accelerate resolution of issues between parties, and develop innovative solutions to ensure that NTMs do not become protectionist trade barriers – which may be brought to the multilateral level, in particular in the case of SPS and TBT since RTAs almost always make a very clear link to the related agreements and institutions at the WTO on these two issues.

Adoption and harmonization with international standards are increasingly mentioned in RTAs in relation to NTMs, but typically on a best endeavour basis. Application of international standards can greatly facilitate the implementation of mutual recognition and/or equivalence provisions. Thus, greater emphasis and further strengthening of international standards provisions may be useful going forward, including coordinated participation of parties in the actual development of these international standards. Given the cost and human capacity needed to both develop and implement international standards, strengthened provisions in this area may be more systematically accompanied by technical assistance and capacity building provisions when RTAs include developing countries.

Finally, the analysis in this paper suggests that more attention needs to be paid to bilateral and regional rules on Government Procurements, given the absence of a fully multilateral agreement in this area and the massive public infrastructure needs in the region. More transparent GP practices would indeed enable competitive forces to play their role in ensuring that the best public infrastructure and services can be obtained at the lowest possible prices. In this context, future research on NTM provisions in RTAs may focus on provisions on intellectual property rights and other types of NTMs, keeping the need for these provisions to be adapted to each party's level of development (Grosse Ruse-Khan and Puutio, 2017 and

Baker, 2018). Efforts should also be made in further evaluating the depth and level of binding of these provisions, and their actual impact on trade and foreign direct investment.³³

³³ For a recent discussion of the links between NTMs and foreign direct investment, please see Heather and Chen (2019).

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Annex – Regional Trade Agreements considered in this paper (2009-2018)

Agreement	Members	Source	Year (signing)
ASEAN-Australia-New Zealand	Australia; Brunei Darussalam; Cambodia; Indonesia; Lao People's Democratic Republic; Malaysia; Myanmar; New Zealand; Philippines; Singapore; Thailand; Vietnam	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=437	2009
ASEAN-India	Brunei Darussalam; Cambodia; India; Indonesia; Lao People's Democratic Republic; Malaysia; Myanmar; Philippines; Singapore; Thailand; Vietnam;	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=438	2009
China-Peru	China; Peru	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=666	2009
European Union (EU)-Papua New Guinea/Fiji	EU; Fiji; Papua New Guinea	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=759	2009
India-Republic of Korea	India; Republic of Korea	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=715	2009
Japan-Switzerland	Japan; Switzerland	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=179	2009
Malaysia-New Zealand	Malaysia; New Zealand	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=489	2009
Turkey-Chile	Chile; Turkey	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=539	2009
Turkey-Jordan	Jordan; Turkey	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=502	2009
Turkey-Serbia	Serbia; Turkey	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=627	2009
China-Costa Rica	China; Costa Rica	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=677	2010
Hong Kong, [China]-New Zealand	Hong Kong, China; New Zealand	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=488	2010
Kazakhstan-Serbia	Serbia; Kazakhstan	http://www.upravacarina.rs/lat/Medjunarodni%20sporazumi/Kazahstan.pdf	2010
Malaysia-Chile	Chile; Malaysia	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=453	2010
Republic of Korea-European Union (EU)	Republic of Korea; EU	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=167	2010
Singapore-Costa Rica	Costa Rica; Singapore	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=678	2010
Hong Kong, [China]-European Free Trade Association (EFTA)	Hong Kong, China; Iceland; Liechtenstein; Norway; Switzerland	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=689	2011

India-Japan	India; Japan	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=173	2011
India-Malaysia	India; Malaysia	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=544	2011
Japan-Peru	Japan; Peru	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=760	2011
Republic of Korea-Peru	Republic of Korea; Peru	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=645	2011
Commonwealth of Independent States (CIS) Free Trade Area	Armenia; Belarus; Kazakhstan; Kyrgyzstan; Republic of Moldova; Russian Federation; Tajikistan; Ukraine	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=762	2011
Turkey-Mauritius	Mauritius; Turkey	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=806	2011
Vietnam-Chile	Chile; Vietnam	http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=685	2011
Australia-Malaysia	Australia; Malaysia	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=186	2012
Hong Kong, [China] -Chile	Hong Kong, China; Chile	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=746	2012
Republic of Korea-Turkey	Republic of Korea; Turkey	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=699	2012
China-Iceland	China; Iceland	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=454	2013
China-Switzerland	China; Switzerland	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=635	2013
New Zealand-Taiwan Province of China	New Zealand; Taiwan Province of China	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=874	2013
Republic of Korea -Colombia	Colombia; Republic of Korea	http://www.mincit.gov.co/tlc/publicaciones/4468/free_trade_agreement_between_the_republic_of_colombia_and_the_republic_of_korea	2013
Singapore-Taiwan Province of China	Singapore; Taiwan Province of China	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=890	2013
Thailand-Chile	Chile; Thailand	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=684	2013
Australia-Japan	Australia; Japan	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=175	2014
Australia -Republic of Korea	Australia; Republic of Korea	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=537	2014
European Union (EU)-Georgia	Georgia; EU	http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=848	2014
Korea-Canada	Korea; Canada	https://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=168	2014
Malaysia-Turkey	Malaysia; Turkey	http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=823	2014

Turkey -Republic of Moldova	Republic of Moldova; Turkey	http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=931	2014
Australia-People's Republic of China	China; Australia	http://rtais.wto.org/UI/PublicShowEARTAIDCard.aspx?rtaid=156	2015
China-Republic of Korea	China; Republic of Korea	http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=697	2015
Japan-Mongolia	Japan; Mongolia	http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=835	2015
Republic of Korea -New Zealand	Republic of Korea; New Zealand	http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=643	2015
Republic of Korea -Vietnam	Republic of Korea; Vietnam	http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=709	2015
Singapore-Turkey	Singapore; Turkey	https://ie.enterprisesg.gov.sg/~media/IE%20Singapore/Files/FTA/FTAs/Turkey%20Singapore%20FTA/Turkey%20Legal%20Text%20-%20TRSFTA	2015
Vietnam-Eurasian Economic Union (EAEU)	Kyrgyzstan; Kazakhstan; Russian Federation; Vietnam; Armenia; Belarus	http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=973	2015
Georgia-European Free Trade Association (EFTA)	Georgia; Iceland; Liechtenstein; Norway; Switzerland	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=953	2016
Philippines-European Free Trade Association (EFTA)	Philippines; Iceland; Liechtenstein; Norway; Switzerland	http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=954	2016
European Union (EU)- Vietnam	Vietnam; EU	http://rtais.wto.org/UI/PublicShowEARTAIDCard.aspx?rtaid=872	2016
ASEAN -Hong Kong, China	Brunei Darussalam; Cambodia; Hong Kong, China; Indonesia; Lao People's Democratic Republic; Malaysia; Myanmar; Philippines; Singapore; Thailand; Vietnam	http://wtocenter.vn/other-agreement/asean-hong-kong-free-trade-agreement	2017
China-Georgia	China; Georgia	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=991	2017
Hong Kong, [China] -Macao, China	Hong Kong, China; Macao, China	http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=1029	2017
Pacific Agreement on Closer Economic Relations (PACER) Plus	Australia; Cook Island; Kiribati; Marshall Islands; Micronesia; Nauru; New Zealand; Niue; Palau; Samoa; Solomon Islands; Tonga; Tuvalu; Vanuatu	https://dfat.gov.au/trade/agreements/not-yet-in-force/pacer/Documents/pacer-plus-chapter-6.pdf	2017
Australia-Peru	Australia; Peru	https://dfat.gov.au/trade/agreements/not-yet-in-force/pafta/full-text/Pages/fta-text-and-associated-documents.aspx	2018
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	Australia; Brunei; Canada; Chile; Japan; Malaysia; Mexico; New Zealand; Peru; Singapore; Vietnam	https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/cptpp/comprehensive-and-progressive-agreement-	2018

		for-trans-pacific-partnership-text/#chapters	
European Union (EU)-Singapore	Singapore; EU	http://rtais.wto.org/UI/PublicShowEARTAIDCard.aspx?rtaid=847	2018
Singapore-Sri Lanka	Singapore; Sri Lanka	https://ie.enterprisesg.gov.sg/~media/IE%20Singapore/Files/FTA/Existing%20FTA/Sri%20Lanka%20Singapore%20FTA/Sri-Lanka-Legal-Text-SLSFTA	2018
European Union (EU)-Japan	Japan; EU	http://trade.ec.europa.eu/doclib/press/index.cfm?id=1684	2018