

# Keeping Markets Open While ensuring Due Flexibility for Governments in a Time of Economic and Public Health Crisis: The Role of the WTO Agreement on Government Procurement (GPA)

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☞ Competition policy; International law; International trade; Medical supplies; Personal protective equipment; Public health; Public procurement

Facilitating legitimate international trade in medicines, protective equipment and other health-related supplies has, for years, been an important consideration in ensuring access to health care and robust governmental responses to public health crises around the world.<sup>1</sup> Viruses and bacteria do not respect international borders. Outbreaks that go unaddressed in neighbouring countries or regions of the world indisputably compound the difficulties of controlling public health threats “at home”. Moreover, many countries lack domestic capacity to produce relevant goods and supplies. For these and other reasons, the preservation of open markets in medicines, protective equipment and other supplies has traditionally been seen as being important from an international public health as well as a trade policy perspective.<sup>2</sup>

It must be acknowledged, at the same time, that, in times of crisis, governments everywhere face immense pressures to respond first and foremost to the needs of their own citizens, and to be seen as so responding. They also face legitimate, practical needs to expedite the procurement of medicines, medical equipment and supplies. Such needs are currently both acute and ubiquitous. In most, if not all countries, it is the public health system that is first in line in providing the hospitals, medicines and health services needed in order to save citizens’ lives. Efficient public procurement ensures that the public health system disposes of the medicines, equipment and buildings that are needed in order for it to function, and therefore to save lives and minimize suffering, and constitutes a significant share of public expenditure.<sup>3</sup>

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<sup>1</sup> World Health Organization, World Intellectual Property Organization and the World Trade Organization, *Promoting Access to Medical Technologies and Innovation: Intersections between Public Health, Intellectual Property and Trade* (Geneva: 2013), available here: [https://www.wipo.int/policy/en/global\\_health/trilateral\\_cooperation.html](https://www.wipo.int/policy/en/global_health/trilateral_cooperation.html).

<sup>2</sup> World Health Organization, World Intellectual Property Organization and the World Trade Organization, id. *The prevention of undue restrictions on international trade is an important objective of the International Health Regulations (IHR)*, developed by the World Health Organization in consultation with public health authorities worldwide. World Health Organization, International Health Regulations (2005), available here: <https://www.who.int/ihr/publications/9789241580496/en/>. The avowed purpose of the Regulations is “to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade” (emphasis added).

<sup>3</sup> Governments spend around 30% of total general government spending on public procurement, and over 40% in some European countries (Belgium, Germany, Italy and the Slovak Republic) and in Japan (OECD, Government at a Glance 2019, available at: <https://doi.org/10.1787/8ccf5c38-en>). Health is the second largest spending area (over 9% of GDP). These figures can be expected to be significantly higher during a crisis, in which governments are forced to significantly increase health spending, while general economic activity may decline in most sectors.

The framing and implementation of the WTO Agreement on Government Procurement (GPA) reflect and embody these complementary objectives and values. The GPA “aims to open up, in a reciprocal manner and to the extent agreed between WTO members, government procurement markets to foreign competition, and make government procurement more transparent.”<sup>4</sup> It provides important legal guarantees of non-discrimination and fair treatment for the products, services and suppliers of GPA parties in covered procurement activities.<sup>5</sup>

The GPA is a plurilateral agreement—open to all WTO members but binding only on the Parties to the Agreement. Currently, 48 WTO members are bound by it. Australia is the latest member to have acceded to the Agreement, in 2019. Each applicant’s terms of participation are negotiated with the GPA Parties and set out in its respective schedules.<sup>6</sup> The Agreement was modernized in 2012, adding greater flexibility for its Parties, strengthening governance-related commitments and ensuring greater scope for protection of the environment.<sup>7</sup> At the time of the renegotiation, the total value of procurements covered by the Agreement was valued by the WTO Secretariat at around \$1.7 trillion annually.<sup>8</sup>

As will be elaborated below, the coverage of the GPA includes substantial commitments relating to the procurement of medicines, PPEs and other medical equipment and (to a lesser degree) health-related services. As such, under normal circumstances, it plays an essential role in ensuring open markets and efficient trade in such products.

At the same time, the GPA incorporates important flexibilities that preserve the discretion of governments to respond to public health crises and to act decisively in the interests of their citizens, in a timely manner. Of possibly the greatest prominence among these is the General Exception in Article III:2 for measures necessary for the protection of human life and health. Indeed, as will be discussed below, this General Exception provides an important “safety valve” ensuring that the GPA Parties retain broad residual powers to take the exceptional measures that are necessary in the context of public health crises.

Still, the Agreement also contains more nuanced and tailored provisions that arguably provide all the flexibility that governments need to conduct their procurements efficiently in a crisis context, while still maintaining desirable transparency and post-procurement accountability. These comprise: (i) the availability of shorter time periods for tendering processes in particular circumstances; and (ii) the use of limited tendering (including “direct” or “sole-sourcing”) in response to public health emergencies. Taken together, these flexibilities ensure that the Agreement does not serve as an obstacle to swift, efficient responses by governments in a time of crisis.

Part I of this article outlines the GPA’s application to medical and health-related products and equipment. Part II examines the above-noted flexibilities. Part III provides concluding remarks.

<sup>4</sup> See e.g. [https://www.wto.org/english/news\\_e/news20\\_e/gpro\\_26feb20\\_e.htm](https://www.wto.org/english/news_e/news20_e/gpro_26feb20_e.htm).

<sup>5</sup> See, for authoritative discussion of the legal and historical foundations of the Agreement, Sue Arrowsmith, *Government Procurement in the WTO* (Kluwer Law International: Studies in Transnational Economic Law, 2003). Policy in addition to legal dimensions of the Agreement are examined in Sue Arrowsmith and Robert D. Anderson, eds., *The WTO Regime on Government Procurement: Challenge and Reform* (Cambridge University Press and the World Trade Organization, 2011). Thoughtful discussion of the procedural provisions of the GPA, on which the current analysis builds, is provided in S. Arrowsmith, “*The Revised Agreement on Government Procurement: changes to the procedural rules and other transparency provisions*,” in S. Arrowsmith and R. D. Anderson, eds., id., chapter 10, pp. 285-336.

<sup>6</sup> For each Party, the Appendices to the Agreement include schedules (“Annexes”) defining the party’s commitments with respect to: the procuring entities whose procurement processes will be open to foreign bidders; the goods, services and construction services open to foreign competition; the threshold values above which procurement activities will be open to foreign competition; and exceptions to coverage.

<sup>7</sup> See Robert D. Anderson, “The Conclusion of the Renegotiation of the WTO Agreement on Government Procurement: What it Means for the Agreement and for the World Economy” (2012) 21 P.P.L.R. 83–94. See also Robert D. Anderson, Steven Schooner and Collin Swan, “Feature Comment: The WTO’s Revised Government Procurement Agreement: An Important Milestone Toward Greater Market Access and Transparency in Global Public Procurement Markets” (2012) 54(1) *The Government Contractor* 1–6, and related discussion, below.

<sup>8</sup> See, for additional background, commentary and a survey of recent developments, Robert D. Anderson and Anna Caroline Müller, “The revised WTO Agreement on Government Procurement (GPA): key design features and significance for global trade and development,” *Georgetown Journal of International Law*, Issue 48.4, 2017, pp. 949-1008 (Preliminary text available here: [https://www.wto.org/english/res\\_e/reser\\_e/ersd201704\\_e.pdf](https://www.wto.org/english/res_e/reser_e/ersd201704_e.pdf)); and Robert D. Anderson and Nadezhda Sporysheva, “The Revised WTO Agreement on Government Procurement: Evolving Global Footprint, Economic Impact and Policy Significance,” (2019) 28 P.P.L.R. 71.

## **I. The GPA's role in promoting open markets for medical and health-related supplies, equipment and services**

The GPA sets out legal guarantees of transparency and non-discrimination that are intended to promote fair procedures and efficient trade in participating WTO Members' public procurement markets. The principle of non-discrimination requires, in respect of procurement that is "covered" by the GPA (i.e. specified in relevant schedules and of value above the relevant thresholds), that Parties to the Agreement treat the products, services and suppliers of any Party to the Agreement in a manner "no less favorable" than that extended to their domestic products, services and suppliers. In general, Parties also may not discriminate among goods, services or suppliers of other Parties. These principles are reinforced by important requirements relating to the transparency of procurement processes and the fair treatment of individual suppliers.<sup>9</sup>

The Agreement is not merely, however, a bulwark of open and transparent markets in the public procurement sector—it is also intended to promote modern, efficient approaches to public procurement that deliver optimal value for money to citizens. It encourages the use of modern e-procurement systems and mandates trade-facilitating and efficiency-enhancing measures, such as the avoidance of technical specifications that pose unnecessary obstacles to international trade and the use of international standards, where feasible. The revised version of the Agreement that was adopted in 2012 and came into effect in 2014 also embodies new substantive obligations for governments to avoid conflicts of interest and to prevent corrupt practices in their procurement activities, and new scope for the implementation of measures to protect the environment.<sup>10</sup>

It is important to note that the GPA applies only to those government agencies or entities, and those goods and services, that have been specifically committed by the Parties and reflected in their respective schedules of commitments (formally, their "Appendix I Annexes"). For this reason, the coverage of Parties' health-related entities, and of relevant goods and services, is of prime interest in understanding the GPA's role in the health sector generally. The following provides a summary of pertinent details; additional information is provided in two Appendices to this article.

As shown in Appendix Table 1, entities that carry out health or crisis-related procurements are covered extensively by the GPA Parties at the central and sub-central levels of government and as "Other entities" subject to government control or influence. Almost all Parties expressly include such entities (e.g., federal health ministries) at the central government level. Four parties additionally cover emergency response-related entities at the central government level. The majority of Parties that have a sub-central level of government (e.g., states, provinces, cantons, municipalities, etc.) either cover health authorities at this level or do not expressly exclude them, and two Parties expressly list emergency response-related entities at that level (excluding the rural level).<sup>11</sup> Furthermore, several Parties cover other types of health-related government entities (e.g., health boards or hospitals) and one Party, additionally, covers fire and emergency units as other entities.

With respect to the GPA's coverage of goods related to the COVID-19 crisis, unless otherwise excluded, the GPA covers *all* goods procured by covered entities in value above the relevant thresholds. As shown in Table 1 below, such goods include pharmaceutical products, test kits, face-masks, rubber gloves, protective garments, hand sanitizers, medical ventilators and intubation kits. No GPA party systematically excludes such goods from its coverage and only one party has excluded a list of specific goods procured by its Ministry of Health. In sum, the range of goods relevant to the COVID-19 crisis that is covered by the GPA is broad.

<sup>9</sup> See, for definitive discussion, Arrowsmith, above note 6. See also Anderson and Mueller, *id.*

<sup>10</sup> Anderson, above note 8; Anderson and Müller, above note 9.

<sup>11</sup> Searches for "health", "emergency" and "hospital" related entities have been carried out at: <https://e-gpa.wto.org/en/Search>. Disclaimers set out at: <https://e-gpa.wto.org/en/Help/Disclaimer> apply.

**Table 1—GPA coverage of goods related to the COVID-19 Crisis (NB: the goods mentioned are covered by all GPA Parties, subject to relevant exceptions including with respect to defense procurement)**

Health and emergency-related goods covered by GPA Parties, with HS Codes					
<i>Pharmaceutical products</i> (30) – including more specifically <i>COVID-19 Test kits</i>	Textile <i>face-masks</i> , without a replaceable filter or mechanical parts, including surgical masks and disposable <i>face-masks</i> made of non-woven textiles (6307.90).	Surgical <i>rubber gloves</i> (4015.11) Other rubber gloves (4015.19)	<i>Protective garments</i> for surgical/medical use made up of felt or nonwovens whether or not impregnated, coated, covered or laminated (fabrics of heading 56.02 or 56.03). This includes spunbonded garments (6210.10)	<i>Hand sanitizer</i> A liquid or gel generally used to decrease infectious agents on the hands, alcohol-based type. (3808.94)	<i>Medical ventilators</i> (artificial respiration apparatus) Provides mechanical ventilation by moving breathable air into and out of the lungs (9019.20). <i>Intubation kits</i> (9018.90).
Diagnostic reagents based on polymerase chain reaction (PCR) nucleic acid test (3822.00).					
Diagnostic reagents based on immunological reactions (3002.15).					

Source: The above table has been compiled by the authors using the “e-GPA” market access information tool (see: <https://e-gpa.wto.org/>). For an overview of the HS codes, see <http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/tools-to-assist-with-the-classification-in-the-hs/hs-online.aspx>.

With regard to the coverage of health-related services under the GPA, as reflected in Appendix Table 2, only three GPA Parties (Armenia, Ukraine and the United States) currently cover such services.<sup>12</sup> Parties also generally cover construction services across the board, including works for health buildings (CPC code 5128) that may be relevant to ad-hoc procurement of health facilities and/or shelters. All these categories of procurements are subject to the thresholds that are set out in the GPA Parties’ schedules.<sup>13</sup>

In sum, a significant range of the goods and services that are being or may be procured by governments in response to the COVID-19 crisis are covered by the rules and requirements of the GPA, subject (importantly) to relevant flexibilities that are built into the Agreement (to be discussed below). Both these commitments and the flexibilities that are available to meet the current crisis did not arise by happenstance – they reflect careful foresight and negotiation by the representatives of the GPA Parties over decades. Taken together, they illustrate both the usefulness of the Agreement as a tool for maintaining open and transparent markets and the stark fact that it will not stand in the way of prudent, practical measures by governments that are necessary to respond to the crisis.

## II. The flexibilities available to GPA member governments in a time of crisis

Under normal circumstances, the GPA requires procuring entities to put in place procedural and transparency measures with regard to specific procurements that are designed to provide the widest possible range of qualified suppliers, including those from other GPA Parties’, a fair chance to compete for contracts—thus enhancing competition and ensuring best value for money. These include, for example, obligations to publish notices and respect minimum timelines for preparation of responsive tenders. In times of crisis, on the other hand, Parties often need (or feel that they need) additional flexibility in responding to their citizens’ needs, promptly and swiftly. The GPA, as a legal instrument designed by the Parties in their own interests, addresses this need for flexibility, inter alia, in various ways which are discussed below.

<sup>12</sup> Most Parties use so-called “positive lists” in order to indicate their services coverage. This means that a service is only covered if falling within the categories listed in the Parties’ Annex 5. As shown in Appendix Table 2, none of these Parties cover health-related services. Five Parties (Armenia, Australia, New Zealand, Ukraine and the United States) use so-called “negative lists”, meaning that a service is covered unless expressly excluded. As shown in Appendix Table 2, related exclusions are found in the Annexes of two Parties.

<sup>13</sup> A significant proportion of procurement at the central and sub-central government levels are excluded from the ambit of the Agreement, by virtue of the thresholds that are set out in Parties’ schedules. See, for pertinent details, <https://e-gpa.wto.org/en/ThresholdNotification/FrontPage>.

In that regard, the GPA, while ultimately preserving very significant policy space for Parties as set out in the introduction to this article, takes a ‘tiered approach’ and envisions different flexibilities ranging from targeted exceptions to mandatory minimum timelines, through the possibility to use limited tendering, to wide-reaching general exceptions, depending on the needs faced in a particular emergency or crisis situation. In effect, it offers a menu of choices that can help policy makers in deciding to what extent and which normally applicable procedural and transparency rules can and should be suspended during a crisis.

*(1) The availability of shorter time periods for tendering processes in particular circumstances.*

As the first, simple but helpful, measure, the GPA provides flexibility in regard to time periods for the procurement of goods, services and construction services in whose regard expedited procurement is needed in times of crisis. Specifically, Article XI:4 of the GPA allows a procuring entity to reduce applicable time periods from the baseline minimum time period for tendering set out in Article XI:3 of 40 days to not less than 10 days where “a state of urgency duly substantiated by the procuring entity renders the time-period for tendering established in accordance with paragraph 3 impracticable.” All other transparency and procedural requirements remain in place, under this approach.

*(2) The use of limited tendering in response to public health emergencies*

The GPA also contains more targeted procedural exceptions for Parties needing to take extraordinary measures but wishing to continue to observe the beneficial transparency and competition enhancing disciplines of the GPA to the full extent possible. In particular, Article XIII:1(d) of the Agreement allows for the application of limited tendering “insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering”.

Where the above condition is met, Article XIII:1(d) authorizes procuring entities not to apply to particular procurements a number of the transparency and procedural measures of the GPA, notably Articles VII to IX— putting in place notice publication requirements as well as conditions for the participation and qualification of suppliers; Article X (paragraphs 7 through 11)—requiring the publication of tender documentation setting out technical specifications and evaluation criteria; Article XI—setting out minimum time periods to be respected; Article XII—applicable to negotiations; Article XIV on electronic auctions, and XV on the awarding of contracts.

Notably, however, procuring entities are exempted only from the mandatory application of the provisions that are set out specifically in the chapeau of Article XIII:1 (see preceding paragraph). Other provisions of the Agreement remain applicable and can arguably be relevant even in a situation of crisis. For example, paragraphs 1-6 of Article X are not mentioned in the chapeau set out in Article XIII:1 and, inter alia, require the use of international standards to the extent possible, for the purpose of avoiding the creation of unnecessary obstacles to international trade. Importantly, also, the post-award transparency requirements contained in Article XVI of the GPA remain applicable. These require the publication of award notices within 72 days as well as the eventual publication of statistics, including with respect to the extent to which limited tendering has been used for covered procurement.<sup>14</sup> In these ways, the GPA, while not standing in the way of efficient procurement in the context of public health emergencies, including, if necessary, direct sourcing from a particular supplier, nevertheless upholds certain basic values aimed at permitting at least appropriate ex-post evaluation and monitoring of procurement through basic post-award transparency.

<sup>14</sup> See Article XVI:1 and 4(a)(iii) of the GPA.

*(3) The General Exception in Article III:2 for measures necessary for the protection of human life and health*

Third, to provide appropriate flexibility to protect citizens' health and address any situation that might not already be adequately addressed through the above-mentioned flexibilities, the GPA contains a broad exception to the application of the Agreement in its Article III:2, which provides that:

[...]

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, *nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures:*

[...]

- (b) *necessary to protect human, animal or plant life or health;*

[...] [Emphasis added]

The foregoing is subject to the conditions set out in the chapeau to Article III.2.<sup>15</sup>

The wording of GPA Article III:2 has not been interpreted by the WTO Appellate Body (AB) or a dispute settlement panel in the specific context of the GPA. However, a similarly structured and worded exception is contained e.g. in Article XX of the GATT 1994.<sup>16</sup> In the context of that provision, the AB has noted that:

“In order that the justifying protection [...] may be extended to it, the measure at issue must not only come under one or another of the particular exceptions [...]; it must also satisfy the requirements imposed by the opening clauses [...]. The analysis is, in other words, two-tiered: first, provisional justification by reason of characterization of the measure [...]; second, further appraisal of the same measure under the introductory clauses [...].”<sup>17</sup>

Further to the above, in *Colombia - Textiles*, the AB stated, again with regard to the corresponding language in Article XX of the GATT 1994:

[...] The more vital or important the interests or values that are reflected in the objective of the measure, the easier it would be to accept a measure as ‘necessary’.<sup>18</sup>

It found also that ‘[t]he greater the contribution, the more easily a measure might be considered to be ‘necessary’.<sup>19</sup>

Certainly, the acceptability of all conceivable measures taken in response to the COVID-19 crisis cannot be assumed, in advance, vis-à-vis the elements of Article III:2. Still, the COVID-19 crisis has already resulted in the deaths of (minimally) hundreds of thousands of people worldwide and has been compared, in its impact and lessons to be learned, to the “Spanish Flu” of 1918.<sup>20</sup> In this context, there would seem to be broad scope to invoke the GPA’s general exception for human (or animal or plant) life and health in relation to measures taken to enhance the speed and efficacy of procurements of goods and

<sup>15</sup> The chapeau to Article III:2 ensures that the application of the General Exceptions in that Article are “Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties”.

<sup>16</sup> See also Article XIV(b) of the General Agreement on Trade in Services (GATS).

<sup>17</sup> Appellate Body Report, DS2: United States — Standards for Reformulated and Conventional Gasoline (US—Gasoline), dated 29 April 1996 (adopted on 20 May 1996), p. 22, available at: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds2\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds2_e.htm).

<sup>18</sup> Appellate Body Report, DS461: Colombia—Measures Relating to the Importation of Textiles, Apparel and Footwear (Colombia—Textiles), , dated 7 June 2016 (adopted on 22 June 2016), paras. 5.71-5.74, available at: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds461\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds461_e.htm).

<sup>19</sup> Ibid.

<sup>20</sup> See e.g., “The World Changed Its Approach to Health After the 1918 Flu. Will It After The COVID-19 Outbreak?” available here: <https://time.com/5797629/health-1918-flu-epidemic/> and “Coronavirus and the lessons we can learn from the 1918-1920 Great Influenza Pandemic,” available here: <https://www.weforum.org/agenda/2020/03/coronavirus-great-influenza-pandemic-covid19-prepared-outbreak/>.

services such as medicines, mask, gloves, ventilators and other medical apparel and equipment that appear currently to be desperately needed to relieve suffering and death, and defeat the virus.<sup>21</sup>

### III. Concluding remarks

In normal times, the WTO Agreement on Government Procurement serves as a bulwark of open and transparent markets in the public procurement sector. This has been considered by the Parties to the Agreement, over many years, to be an important guarantor of both the rights of the Parties' suppliers and of best value for money for governments and citizens. Since the modernization of the Agreement in 2012, it also promotes the use of e-procurement tools and embodies important commitments to the avoidance of conflicts of interest and the prevention of corrupt practices. As has been set out in this article, the Agreement includes substantial coverage of medicines, PPEs and other medical equipment, and (to a lesser degree) related services.

Notwithstanding the above, the GPA also incorporates important flexibilities that preserve the discretion of governments to respond to public health crises and to act decisively in the interests of their citizens, in a timely manner. As elaborated above, these flexibilities include: (i) the availability of shorter time periods for tendering processes in particular circumstances; (ii) the use of limited tendering in response to public health emergencies; and (iii) where necessary, the General Exception in Article III:2 for measures necessary for the protection of human life and health. These flexibilities ensure that the Agreement permits swift, efficient responses by governments in a time of crisis including, very much, the current COVID-19 pandemic.

As outlined above, the GPA flexibilities in fact embody a tiered approach, depending on the evolution of a crisis and on how critical the goods and services procurement are for crisis response. Parties can, where warranted, impose "*any measure*" *necessary to protect human health*. Still, they may not have to resort to this general exception as they can also procure necessary goods and services through limited tendering in conditions of "extreme urgency", and generally expedite procurements for reasons of duly substantiated urgency even when normal procurement methods are used. In this way, post-award transparency measures, inter alia, remain applicable to the largest extent possible. From this perspective, the GPA at least permits adherence to the principle, enunciated for example by the Open Contracting Partnership, that even emergency public procurement procedures should remain as open and transparent as possible.<sup>22</sup> Arguably, this is essential not only to maintain public trust in the procurement system during a crisis, but also to enable appropriate post-crisis audits and monitoring. This is consistent also with the principle that, where public policy objectives are pursued in departure from normal GPA rules, this should be done in as trade-friendly a way as possible. This seems appropriate and constructive given the unpredictable nature of the crises the world will face at any particular time, and economies' mutual interdependence in responding to them.

<sup>21</sup> The conditions noted in the chapeau to Article III:2 (see note 9, above) seem unlikely to pose difficulties for emergency procurement, as procuring entities seem unlikely to put in place unnecessary discriminatory measures excluding suppliers from particular Parties, as these would be detrimental to their own needs. Still, it is important to note that the GPA, like other WTO Agreements, upholds general values of non-discrimination and good faith even in times of emergency, thus strengthening the fabric of international cooperation and collaboration.

<sup>22</sup> See <https://www.open-contracting.org/2020/03/25/emergency-procurement-for-covid-19-buying-fast-open-and-smart/> and see also Chris Smith, Nicolas Penagos, Lindsey Marchessault and Gavin Hayman, "Improving Emergency Procurement: An Open Data-Driven Approach" (2020) 29 P.P.L.R. 171–179.

**Appendix Table 1 – GPA Parties’ Coverage of Health Sector and Emergency-related Entities**

The above table has been compiled by the authors using the “e-GPA” market access information tool (see: <https://e-gpa.wto.org/>).

Parties	Coverage of relevant entities in Annex 1, 2 or 3		
	Annex 1 – Central Government Entities	Annex 2 – Sub-central Government Entities	Annex 3 – Other Entities
<i>Armenia</i>	yes, emergency related entity.	x	x
<i>Australia</i>	yes	yes, including emergency related entities, some exclusions of certain services	yes
<i>Canada</i>	yes, including emergency related entity.	yes, partial, some exclusions of certain services	x
<i>European Union with regard to its 27 member states and the United Kingdom:</i>	yes, general coverage.	yes, general coverage.	x
<i>Hong Kong, China</i>	yes	not applicable	yes
<i>Iceland</i>	yes, general coverage.	yes, general coverage.	x
<i>Israel</i>	yes, exclusion of certain goods.	x	x
<i>Japan</i>	yes	x	yes
<i>Korea, Republic of</i>	yes	x	x
<i>Liechtenstein</i>	yes, general coverage.	yes, general coverage.	x
<i>Moldova, Republic of</i>	yes	x	yes
<i>Montenegro</i>	yes	x	x
<i>Netherlands with respect to Aruba</i>	yes	not applicable	x
<i>New Zealand</i>	yes	yes	yes, emergency related entity.
<i>Norway</i>	yes, including emergency related entities.	yes	
<i>Singapore</i>	yes	not applicable	x
<i>Switzerland</i>	yes, general coverage.	x	x
<i>Chinese Taipei</i>	yes	yes	yes
<i>Ukraine</i>	yes, emergency related entity.	x	x
<i>United States</i>	yes	yes, partial, including emergency related entities.	X



**Appendix Table 2 – Coverage of Health and Emergency-related Services, and Construction Services**

The above table has been compiled by the authors using the “e-GPA” market access information tool (see: <https://e-gpa.wto.org/>).

Parties	Services	Exclusions and Exceptions
	Health and social services (CPC Prov. 931) – Parties using a negative list approach (see note 13) are marked with an asterisk	Construction services – covered across the board by all Parties <sup>23</sup>
		Notes to specific Annexes
		General Notes (Annex 7)
<i>Armenia</i> *	yes	yes
<i>Australia</i> *	x (due to applicable exclusion)	yes
<i>Canada</i>	x	yes
<i>European Union with regard to its 27 member states and the United Kingdom:</i>	x	yes
<i>Hong Kong, China</i>	x	yes
<i>Iceland</i>	x	yes
<i>Israel</i>	x	yes
<i>Japan</i>	x	yes
<i>Korea, Republic of</i>	x	yes
<i>Liechtenstein</i>	x	yes
<i>Moldova, Republic of</i>	x	yes
<i>Montenegro</i>	x	yes
<i>Netherlands with respect to Aruba</i>	x	yes
		Annex 5: Express exclusion of Health and welfare services
		Annex 7: exclusion of measures for the health and welfare of Indigenous people
		Annex 2: For those provinces and territories marked by an obelisk (†), this Agreement does not cover the procurement of goods, services or construction services purchased for the benefit of, or which is to be transferred to the authority of, [...] social services entities or hospitals.
		Annex 3: Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not covered.

<sup>23</sup> including Construction work for health buildings (5128); and Assembly and erection of prefabricated constructions (514).

<b>Parties</b>	<b>Services</b>		<b>Exclusions and Exceptions</b>	
<i>New Zealand</i> *	x (due to applicable ex- clusion)	yes	Annex 3: Fire and Emer- gency New Zealand: This Agreement only covers procurement that was previously covered by the New Zealand Fire Service Commission. For the avoidance of doubt, the following procure- ments are excluded from cover: any procurement by Fire and Emergency New Zealand that was previously conducted by Rural Fire Authorities, Rural Fire Committees and/or Territorial Author- ities (for the purposes of their functions under the Forest and Rural Fires Act 1977). Annex 5: Express exclu- sion of Health and wel- fare services	x
<i>Norway</i>	x	yes	x	x
<i>Singapore</i>	x	yes	x	x
<i>Switzerland</i>	x	yes	x	x
<i>Chinese Taipei</i>	x	yes	x	x
<i>Ukraine</i> *	yes	yes	x	x
<i>United States</i> *	yes	yes	x	x