



T20 Policy Brief

Task Force 06

STRENGTHENING MULTILATERALISM AND GLOBAL GOVERNANCE

Public Health and Plurilateral Government Procurement

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Abstract

The World Trade Organization (WTO)'s Government Procurement Agreement (GPA), as the main plurilateral agreement about government procurement in the international scene, prevents the signatory State from carrying out offset measures when making government procurement. Other international efforts under discussion such as the European Union-Mercosur Trade Agreement also consider a similar offset clause in its government procurement chapter. By accessing these agreements without including an exception to this offset impediment, Low- and Middle-Income Countries (LMICs) will not be able to use their government procurement power to develop domestic public policies related to local manufacturing of health inputs. This contradicts the various international efforts in the direction of Prevention, Preparedness and Response (PPR) for new pandemics, such as the Pandemic Fund and the CEPI's 100 days mission, beyond more than 20 others mapped by the authors. Moreover, WTO is facing an existential crisis, and its unwieldiness is greater than its inability to build consensus among its members, which rises concerns about WTO capacity to deal with LMICs necessities during health emergencies. Therefore, considering this great conflict between government procurement agenda and the global health agenda, G20's leaders must commit themselves to prioritize public health and LMICs possibility to develop local production capacity to be able to fight against the next pandemics and other public health emergencies. This could be done by including a permanent exception in GPA's texts to consider health procurements out of the offset clause scope in the case of LMICs as well as by including a similar clause in the International Health Regulations (IHR 2005) under revision and in the next pandemic agreement that might be an outcome of the Intergovernmental Negotiating Body (INB).

Keywords: GPA, Government Procurement, WTO, PPR, G20.



The Issue

Government agencies need to purchase goods and services with public resources to fulfill their functions. These purchases are generally referred to as government procurement. Often the government considered open, transparent and nondiscriminatory procurement to carry out more effective government purchases, as it optimizes competition in an economic way among suppliers. But at the same time, there are competing political objectives, as governments also make use of government procurement power to achieve domestic objectives, such as promoting specific local industry sectors or social groups.

According to the World Trade Organization (WTO), offering preference treatment for national goods, services and suppliers means a trade barrier since it discriminates against foreign suppliers. These barriers are not addressed by WTO multilateral rules, since government purchases are explicitly exempt from main rules of the General Agreement on Tariffs and Trade (GATT), according to its article III, item 8a, and of the General Agreement on Trade in Services (GATS), according to its article XIII, item 1. WTO members have been working on this issue on three fronts, although the Plurilateral Agreement on Government Procurement (GPA) is the most active and has promoted some substantial trade liberalization since 2014 when GPA2012 entered into force.

Despite the benefits related to trade liberalization, the GPA states that a Member Party, including its contracting entities, should not seek, take into account, impose or execute any offset measure, which means ‘any condition or undertaking that encourages local development or improves the balance of payments accounts of a Member Party, such as the use of national content, technology licensing, investment, counter trade and action or similar requirement.’



Therefore, any condition or commitment that encourages local development of a signatory country may be severely limited to the terms of the GPA. This clause particularly impacts the capacity of LMICs to use their government procurement power to develop domestic public policies related to local manufacturing of health inputs as it is encouraged by various international efforts in the direction of Prevention, Preparedness and Response (PPR) for new pandemics.

GPA members define during the accession negotiations for which entities, goods and services the GPA commitments will be applied, when it is possible to include specific exceptions to the general obligations, in order to preserve public policies in sectors considered strategic, including to the offset clause. However, the accessing countries must use their bargaining power to include exceptions to the GPA, as LMICs have different levels of this power, this might mean that some LMIC cannot be able to negotiate a specific exception. Therefore, the recommendations here

set forth seek to avoid case-by-case negotiations to guarantee LMICs condition to protect their local development even if they pursue a trade liberalization mechanism such as the GPA.

The GPA has 22 parties. Since the European Union and its 27 member states are considered one single party, the GPA covers 49 WTO members. Considering the updated OECD list of Official Development Assistance (ODA) recipients, it is possible to verify which countries belong to LMICs group and then, which LMIC has already been a member of the GPA, they are: Armenia, Moldavia, Montenegro, Macedonia do Norte.¹ None of them had included some exception to the offset clause as well as any program or public policy related to local production development in these countries was identified.

In the G20 context, PPR has been prioritized since G20 in Saudi Arabia in 2020 because by that time the world was suffering due to COVID-19 pandemic impacts in

health and economy. Table 1 shows how G20 prioritizes PPR within the scope of Health Working Group (HWG) in the Sherpa Track as well as how PPR was mentioned by G20 Leaders in their declaration from 2020 to 2024.

TABLE 1. G20 Prioritizes PPR from 2020 to 2024

G20's presidencies	HWG priority related to PPR	G20's presidency priority related to PPR	Leader's Declaration commitment related to PPR
Saudi Arabia 2020	Pandemic Preparedness and Response	Building a resilient and long-lasting recovery	'We commit to advancing global pandemic preparedness, prevention, detection, and response. [...] We take note of the assessments of gaps in pandemic preparedness undertaken by relevant international organizations and we look forward to the work of the Independent Panel for Pandemic Preparedness and Response and the IHR Review Committee on evaluating the global health response to the pandemic [...].

<p>Italy 2021</p>	<p>Health and Sustainable Recovery</p>	<p>Ensuring a swift international response to the pandemic</p>	<p>‘We acknowledge that financing for pandemic prevention, preparedness and response (PPR) has to become more adequate, more sustainable and better coordinated and requires a continuous cooperation between health and finance decision-makers, including to address potential financing gaps, mobilizing an appropriate mix of existing multilateral financing mechanisms and explore setting up new financing mechanisms.’</p>
<p>Indonesia 2022</p>	<p>Building Global Health System Resilience and Expanding Global Manufacturing and Research</p>	<p>Unlock further investments for LMICs and other developing countries</p>	<p>‘We remain committed to promoting a healthy and sustainable recovery [...]. While the COVID-19 pandemic is not over, [...] reinforcing that international health threats are ever present and that the G20 and broader global community must come</p>

	Hubs for Pandemic PPR		<p>together to improve our collective prevention, preparedness and response capabilities. [...] We support the work of the Intergovernmental Negotiating Body (INB) that will draft and negotiate a legally binding instrument that should contain both legally binding and non-legally binding elements to strengthen pandemic PPR [...].’</p>
India 2023	Health Emergencies PPR (with focus on One Health and Antimicrobial Resistance)	<p>Improve access to medical countermeasures and facilitate more supplies and production capacities in developing countries to prepare better for future health emergencies</p>	<p>‘We remain committed to strengthening the global health architecture, with the World Health Organization (WHO) at its core, and [...] enhance pandemic preparedness and strengthen existing infectious diseases surveillance systems. [...]</p> <p>We remain committed to strengthening the global health architecture for pandemic</p>

			prevention, preparedness and response (PPR) through enhanced collaboration between Finance and Health Ministries under the Joint Finance and Health Task Force (JFHTF).’
Brazil 2024	Pandemic PPR with a focus on local and regional production of medicines, vaccines, and strategic health supplies	Sustainable Development in its three dimensions: economic, social and environmental	Not Available yet.

Source: Own elaboration based on G20 Leaders Declarations from 2020 to 2023.

Moreover, the Joint Finance-Health Task Force (JFHTF) was launched during the G20 Italian presidency (2021). It aimed at enhancing dialogue and global cooperation on issues relating to pandemic PPR and at developing coordination arrangements between Finance and Health Ministries. By that time, the JFHTF focused on modalities to establish a G20-driven financial facility to ensure adequate and sustained financing for pandemic PPR. In that sense, the Pandemic Fund was established and formally launched in 2022 in the

context of the Indonesian presidency of the G20.

The Pandemic Fund, a multi-stakeholder partnership, provides a dedicated stream of grant financing to strengthen critical PPR capabilities in LMICs. It has mobilized \$2 billion up to December/2023 from 24 sovereign contributors and three philanthropies. The Fund’s governance is inclusive, with balanced representation from the Global North and the Global South, and with governments, philanthropies, and civil society organizations as voting members. Other international initiatives and/or organizations that promote and finance PPR can be founded in the table 2.

TABLE 2. Institutions/Initiatives that promote and finance PPR.

Institutions/Initiatives
Inter America Development Bank
Bill and Melina Gates Foundation
BRICS Vaccine Research Development Center
CAS-TWAS* Centre of Excellence for Emerging Infectious Disease
CEPI (Coalition for Epidemic Preparedness Innovations)
DCVMN (Developing Countries Vaccine Manufacturer Network)
DNDi (Drugs for Neglected Diseases initiative)
FIND!
GAVI (Global Alliance for Vaccines and Immunization)

IPSN (International Pathogen Surveillance Network)
Medicine Patent Pool
Mercosur Ad Hoc Committee to Promote the Expansion of the Regional Productive Capacity of Medicines, Immunizations and Health Technologies
PAHO (Pan American Health Organization)
Path
People's Vaccine Alliance
Public Health Workforce Laboratorium
The mRNA vaccine technology transfer hub in South Africa
The mRNA vaccine technology transfer hub for Latin America and Caribbean Countries
UNTAID
Welcome Trust
World Health Summit
World Health Organization

Source: Own elaboration. *Note:* *CAS-TWAS means Chinese Academy of Sciences-The World Academy of Sciences.

As shown, in the last five years G20 leaders and health ministers have been committing



to implement, finance, support and develop pandemic PPR agenda, including fostering local and regional production of strategic health supplies. Furthermore, plenty of institutions and organizations have spent their resources to promote and finance pandemic PPR. All those efforts aim to reduce health inequities, mainly that related to production, innovation and access to vaccines, treatments, in vitro diagnostics and other health technologies. The COVID-19 pandemic has shown the need for robust and sustainable investment to achieve equity in health. Despite all tools and efforts to develop some effective COVID-19 vaccine, only nearly 33% of people living in low-income countries have been vaccinated with at least one dose, compared with nearly 80% of people living in high-income countries. Thus, since the GPA's offset clause might limit PPR efforts, it goes in the opposite direction in this fight against health inequities. Therefore, it is a nonsense to G20 countries maintain the offset clause, in the case of LMICs, in the GPA or in other government procurement agreement.

Besides global health initiatives, local manufacturing efforts in LMICs have also emerged or expanded since the pandemics, because of governments' concern with health sovereignty. Latin American countries offer some interesting examples.

Brazil has a network of public pharmaceutical and biotechnology laboratories that has played a major role in the country's health responses by locally producing medicines, vaccines and diagnostics to supply the public healthcare system. During the pandemics, new funding sources and regulatory flexibilities supported the local manufacturing of vaccines, but also the expansion of R&D and production in the two main public producers, Bio-Manguinhos, part of the Oswaldo Cruz Foundation, and the Butantan Institute.

In its turn, in 2021 the Colombian government launched a cooperation program with private companies to reactivate the production of vaccines and achieve autonomy. This



cooperation resulted in the construction of VaxThera, a Colombian company dedicated to the research and development of biologicals in the city of Rionegro, Antioquia, with a US\$ 54 million investment from the financial Grupo SURA. Another initiative conceived at the same year is BogotaBio, a public-private partnership between the city of Bogotá and the Chinese company Sinovac to manufacture vaccines.

Besides, the WTO finds itself embroiled in a protracted crisis of both credibility and relevance. Central to this predicament is the perpetual struggle to balance the safeguarding of intellectual property rights against the fair distribution of life-saving medicines and vaccines, particularly crucial during periods of global health emergencies. The proposition laid forth by South Africa and India to temporarily waive intellectual property rights pertaining to COVID-19-related essentials aimed to ensure equitable access to vital treatments, irrespective of a nation's economic prowess. However, despite protracted discussions, a consensus remained elusive, leaving a palpable sense of frustration regarding the WTO's efficacy in addressing the pressing demands imposed by health crises.

Moreover, the paralysis of the Dispute Settlement Body, an entity deemed indispensable by numerous nations, exacerbates the situation, with little prospect of imminent improvement. The prevailing state of affairs within the WTO evokes grave concern and raises doubts about its future capacity to orchestrate meaningful interventions for LMICs during crises, including initiatives such as technology sharing and international coordination aimed at bolstering production capabilities.

Considering the above, this Policy Brief recommends that the leaders of the largest economies in the world act actively in reversing the existing scenario:

1. G20 countries must include a permanent exception in GPA's and other procurement agreement's texts to consider health procurements out of the offset clause scope in the case of LMICs.

- a) As exposed above, LMICs should receive special treatment in the GPA, regarding the offset clause, since the use of government power in the public procurement is a strong and relevant tool to promote and develop local production. Considering that the agreement has already stated some special conditions to LMICs in its text, this recommendation is feasible.
- b) Since the GPA allows its members to improve the agreement, G20 countries might actively propose this permanent exception to The Committee on Government Procurement (CGP).
- c) G20 countries might suggest the following or similar sentence: 'in the case of LMICs, offset measures to develop local production capacity of health inputs will not be covered.'

2. G20 countries must include the same clause regarding this issue in the International Health Regulations (IHR 2005) under revision and in the next pandemic agreement that will be an outcome of the Intergovernmental Negotiating Body (INB), that might be discussed in the World Health Assembly (WHA).

- a) G20 Countries must be aware that the political will formation in the international



scene carried out in international forums, such as WHA, and expressed by consensus in declarations or resolutions, must be an outcome of public debates, so that governments can be responsive to the interests of those they represent.

- b) These are the foundations of the concept of health democracy, which, given the sensitive nature of the right to health, requires that individuals be able to exercise their autonomy, through expressing their interests and participating in the deliberative processes that will lead health norms' elaboration that affect them.

3. G20 countries must support the global coalition in favor of recognizing special products and inputs, such as vaccines, as global public goods, which allow flexibility for their acquisition in the international trade.

- a) According to WHO, “The goods would be global because they present indirect benefits beyond national borders” as well as knowledge aspects of technologies can be also global public goods, even if the product itself is private.

4. G20 leaders should present a motion for a Resolution to the 2025 WHA that recognizes the impacts of restrictive clauses on the local development of LMICs related to offset measures on government procurement agreements, especially in the GPA, as well as guaranteeing the support of G20 countries in case-by-case negotiations during the LMICs accession process to these agreements related to offset exceptions.



Scenario of Outcomes

If the above recommendations were followed by G20 leaders, the LMICs will be able to promote trade liberalization if they want to, through the GPA, without compromising their capacity to develop their local health industry. Therefore, they can prevent, prepare and respond to new pandemics whenever it comes. Moreover, it will avoid case-by-case negotiations and will give freedom to LMICs decide to choose trade liberalization and national health industry development at the same time.

Finally, the recommendations put an end to the glaring contradiction of the richest countries in the world that, at the same time, invest large amounts of resources and time in initiatives to promote PPR, and encourage the GPA and other commercial agreements for government procurement that prevent the success of these efforts in PPR.

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