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Scope and Coverage under the GPA – Parties' Appendix I including General Notes

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Scope and coverage: key determinants

- General considerations
  - Definition and scope of government procurement
  - Scope of application of a government procurement accord
  - Coverage of entities, goods and services
  - Thresholds
  - Exceptions, restrictions or other attached conditions
- In GPA, scope and coverage defined in both
  - Text of the Agreement
  - Parties' Appendix I

Scope and coverage (text of the Agreement)

- Art II:1/RT*: Agreement applies to:
  - "... any measure regarding covered procurement, ..."
- Covered procurement as defined in Art II:2/RT; some elements:
  - for governmental purposes
  - any combination of goods and services as specified in Appendix I,
  - by any contractual means, not for commercial sale/resale
  - equal to or exceeds specified threshold
  - by a covered entity (see also Art I(n)/RT)
  - not otherwise excluded from coverage in II:3, Appendix I
- Non-application (II:3/RT), exceptions (III/RT, XXIII/94)*
- Other factors impacting on coverage include:
  - rectifications and modifications (XIX/RT, XXIV:6/94)*

** .../RT = of the Revised Text; .../94 = of the 1994 Agreement*

Structure of Appendix I

- Entity coverage specified in three Annexes
  - Annex 1 – Central level entities
  - Annex 2 – Sub-central level entities
  - Annex 3 – Other entities
  - subject to relevant thresholds, any specified derogations
- Coverage of goods and services in two Annexes
  - generally all goods by covered entities
  - Annex 4 – Services
  - Annex 5 – Construction services
  - subject to relevant thresholds, any specified derogations
- General Notes, and individual Notes by Annex
  - specific and general exceptions, exclusions, derogations

Thresholds – general levels

Entities	Goods (SDR)	Services (SDR)	Construction Services (SDR)
Annex 1	130,000	130,000	5,000,000
Annex 2	200,000	200,000	5,000,000
Annex 3	400,000	400,000	5,000,000

- Variations in some threshold levels for
  - Canada, Israel, Japan, Korea and the US

Coverage presentation in Appendix I

- Presentation of entities
  - positive vs negative list of entities
  - other approaches to listing of some Annex 2, 3 entities
- Presentation of goods and services
  - positive vs negative list of services
  - covered defence procurement of goods
- Classification systems used, e.g.
  - *UN CPC, US/Canada FSC, Universal List of Services
- Exceptions, derogations, restrictions etc

➔Market access opportunities offered🡐

** CPC = Central Product Classification; FSC = Federal Supply Classification*

Coverage of entities

- Annex 1 – main approach: positive list
  - Iceland: definitional, with positive list
- Annex 2 – mix of positive list, negative list, definitional or descriptive approach, e.g.
  - positive list, e.g. Israel, Korea
  - definitional/descriptive, e.g. EC, Iceland
  - mix (negative, positive, descriptive), e.g. US, Norway
  - not covered, e.g. Canada; Hong Kong, China; Singapore
- Some further aspects of entity coverage
  - coverage of subordinate linear entities

Coverage of entities, goods (2)

- Annex 3 – mix as for Annex 2, e.g.
  - positive list: Canada; Hong Kong, China; Japan; Korea, US
  - definitional/descriptive: EC, Norway
  - mix (+ve, -ve, descriptive list, etc), e.g.: Switzerland,
- Coverage of goods
  - in principle, all goods covered (subject to Art XXIII/94, Art II:3, III/RT, Appendix I)
  - positive list of covered defence procurement of goods

Coverage of services, construction services

- Services
  - all Parties: positive list of services
  - majority of Parties: explicit reference to Universal List of Services (MTN.GNS/W/120)
- Construction services
  - most Parties: by ref to UN CPC, Division 51
  - positive or negative list:
    - negative list, e.g.: Canada; Iceland; Japan; Norway
    - positive list, e.g.: EC; Israel; Korea; Switzerland; US
- Some Parties: linkage to GATS specific commitments,
  - e.g. EC (Austria), Iceland, Israel, Korea, Lichtenstein, Singapore, Switzerland

Exceptions, restrictions, etc. (1)

- Notes for added clarity or certainty, e.g.
  - definitional issues, e.g. Canada (General Note 2)
  - certain exclusions – e.g. involving financial instruments or securities, property (e.g. US, Gen Note 2,3)
- Defence/national security exceptions (Art XXIII:1)
  - excluded list of entities, goods, services, e.g. Canada, EC, US (Annex 1 respectively)
  - included list of goods, e.g. Korea, Singapore, Switzerland (Annex 1 respectively); Norway (General Notes)
- Other general exceptions (Art XXIII:2)
  - e.g. relating to environmental quality – e.g. Canada, US (Notes to Annex 2 respectively)

Exceptions, restrictions, etc. (2)

- Agricultural products ‘in furtherance of agricultural support and human feeding programmes’, e.g.
  - Canada, EC, Iceland, Liechtenstein, Norway, Switzerland, US
- International agreements, joint projects
- Contracts for hire or re-sale, e.g.
  - Israel, Korea

Exceptions, restrictions, etc. (3)

- Certain entity-specific exceptions, exclusions, e.g.
  - Korea: National Railroad Administration contracts (Gen Note 1(a))
  - US: Shipbuilding activities of NOAA (Annex 1, Annex 4)
- Bilateral market opening, e.g.
  - Annex 4: "A service listed in Annex 4 is covered with respect to a particular Party only to the extent that such Party has included that service in its Annex 4." – US General Note 8; see also
    - Canada (Gen Note 4); EC (Gen Note 3)
    - Korea (Gen Note 3); Norway (Gen Note 3)

Exceptions, restrictions, etc. (4) – relating to domestic policy

- Set-asides for small and minority/medium scale businesses, e.g.
  - Canada, US (General Note 1 respectively)
  - Korea (Notes to Annex 1, 2 & 3)
- Certain domestic preferences, e.g.
  - Japan: non-application to contracts to cooperatives (Note 2 to Annex 3)
- Deviation from NT principle where an individual procurement "may impair important national policy objectives", e.g.
  - EC: Finland, Sweden (General Note 12); Norway (General Note 11)
- Offsets – Israel's Note: offset as per cent of contract value
  - starting point: 35%
  - after 5 yrs: 30%; 10 yrs: 28%; 13 yrs: 20% with periodic review
  - at 20%: further consultations with Parties

Non-application – a sectoral illustration (based on EC General Note 1)

Sector excluded from Annex 3 (EC's General Note 1)	Parties Affected				
	Canada	Israel	Japan	Korea	US
(a) Water	✓				✓
(b) Electricity	✓		✓		
(c) Airports	✓			✓	✓
(d) Ports	✓				
(e) Urban transport	✓		✓	✓	✓
(e) Urban transport – bus services		✓			

- Relevant notes in coverage of Parties affected
  - Canada (General Note 9), Israel (Note 2(b) to Annex 3)
  - Japan (Note 6 to Annex 2, Note 4(a) to Annex 3)
  - Korea (General Note 1(a) & (c))
  - US (Notes to Annex 1, 2, 3 & 4)

A product or service exclusion illustration (based on EC General Note 3)

Products or services excluded (EC General Note 3)	Parties Affected			
	Canada	Israel	Korea	The US
FSC 36, 70, 74 (except 7010 ADPE configurations	✓			
FSC 58	✓			
Air traffic control equipment				✓
HS 8504, 8535, 8537, 8544		✓	✓	
HS 8501, 8536, 902830		✓		
Procurement of dredging services and procurement related to shipbuilding by Annex 3 (d) entities				✓
Contracts or contract components awarded by a covered entity but not themselves (i.e. the contracts) subject to the Agreement	✓			✓

- Relevant notes in coverage of Parties affected
  - Canada (General Notes 1, 4, 5 & 8); Israel (Note 2(a) to Annex 2)
  - Korea (Note to Annex 3)
  - US (exceptions/exclusions in Annex 1, General Note 5)

End note - General observations

- Text of the Agreement – sets out
  - scope of application of Agreement
  - boundaries of coverage
  - general exceptions
- Appendix I – sets out
  - specific details of coverage – entities, goods, services
  - any exceptions, restrictions, limitations or clarifications to coverage

  ➔Influence of reciprocity
- End result sought
  - balance of rights and obligations

End note 2: input into the negotiations

- Transparency, clarity in provisionally agreed revised text (GPA/W/297) – see, for instance
  - Art I(c) – definition, “construction services contract” – from most Parties’ Annex 5
  - Art II:2 – improved clarity in definition of covered procurement
  - Art II:3 – clarification as regards non-application of the Agreement: drawn from Notes, General Notes of various Parties

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Thank you!