World Trade Organization Agreement on Government Procurement: National Interest Analysis

Executive summary

The World Trade Organization’s Agreement on Government Procurement (GPA) is a plurilateral agreement (meaning that WTO members can apply to accede) within the framework of the World Trade Organization (WTO). Parties to the GPA agree to open, fair and transparent conditions of competition in the government procurement markets covered by the Agreement, estimated to be worth in excess of USD $1.7 trillion per year.¹ Any member of the WTO may accede to the GPA upon agreement of terms between that member and the Parties of the GPA.

The text of the GPA (which is not negotiable) establishes rules requiring that open, fair and transparent conditions of competition be ensured in government procurement. These rules apply only to those procurement activities set out in the respective market access schedules of each Party.

The majority of GPA Parties² have schedules which include central, sub-central (including local government) and many include state-owned enterprises (SOEs) such as utilities or enterprises engaged in commercial activities. Procurement below specified monetary thresholds or relating to specific exemptions that are considered to relate to sensitive expenditure is excluded. The schedules of the existing GPA Parties are published at: http://www.wto.org/english/tratop_e/gproc_e/gp_app_agree_e.htm

New Zealand has been an observer to the GPA since 2008. At that time, the GPA Parties were engaged in the re-negotiation of the GPA text and market access commitments. These were agreed in December 2011 and the Protocol Amending the Agreement on Government Procurement came into force in March 2014. New Zealand’s application is to accede to this revised Agreement and references in this paper to the “GPA” and “Agreement” are references to this revised Agreement.

New Zealand launched proceedings to join the GPA by submitting a formal application in September 2012³ and negotiations with GPA Parties on the market access that New Zealand would offer under the GPA proceeded thereafter. On 29 October 2014, the Committee on Government Procurement (consisting of representatives of all existing members) adopted a decision agreeing to the terms of New Zealand’s accession to the GPA.

Accession to the GPA means that New Zealand businesses will have guaranteed legally binding access to the government contracting opportunities covered by the GPA Parties (currently 43 economies, including the 28 European Union member states). They cover a wide range of government agencies, including entities such as ministries/departments, schools and universities, hospitals and museums as well as entities related to the provision of social housing, infrastructure (roads, rail, airports, ports), public utilities (energy, water resources, telecommunications and postal services) and public transport.

¹ http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm
² The Netherlands in respect of Aruba (a very small country), Hong Kong China, and Singapore (which are city-states) do not have sub-central coverage.
³ GPA/115
All GPA Parties, except for the European Union, will give New Zealand access to all of their covered procurement. The European Union has introduced specific restrictions or carve-outs from the access to its procurement market, similar to what it has done with other GPA Parties. The access provided to New Zealand by the European Union is substantial and comparable to that offered to other developed countries.

In addition to access to covered government procurement opportunities of existing GPA Parties, accession will address specific existing barriers to the United States (US) government market, secure additional market access as new members (such as China) join the GPA, enhance New Zealand’s position for future government procurement free trade negotiations, provide the opportunity to influence the evolution of the agreement and provide a dispute resolution mechanism for New Zealand and New Zealand businesses bidding for government contracts with GPA Parties.

Accession to the GPA will, however, place some constraints on New Zealand’s ability to develop government procurement policies or apply practices which would be discriminatory in nature, the most obvious of which would be preferential buy local policies for procurement covered by our market access commitments. In addition, the procurement practices of covered entities must be consistent with the GPA. This means that covered government entities must openly advertise and fairly evaluate responses, rather than awarding contracts directly. Accession could also subject New Zealand and New Zealand procuring entities covered by the Agreement to dispute settlement proceedings.

In effect, accession to the GPA would lock in a number of procurement practices that New Zealand has already chosen to put in place (and in some instances has already committed to through the provisions of existing free trade agreements). New Zealand’s approach to government procurement is to use open, competitive processes with decisions made on the basis of value for money rather than country of origin. The ability to support local suppliers in other ways than through preferential policy is not constrained by the Agreement.

No legislative measures will be needed to implement the coverage offered by New Zealand, although it will be necessary to formalise the procurement practices of state-owned enterprises and the NZTA-funded procurement by the local authorities before New Zealand can deposit its instrument of accession. The balance of the entities covered by New Zealand’s offer are (or will be from 1 February 2015) bound by the Government Rules of Sourcing which are consistent with the GPA requirements.

1. **Nature and timing of the proposed accession to the GPA**

The Committee on Government Procurement (consisting of representatives from the existing 43 economies that make up the GPA Parties) adopted a decision accepting the terms of New Zealand’s accession on 29 October 2014.

The decision provided that New Zealand would have 9 months within which to deposit its instrument of accession.

The Agreement will enter into force for New Zealand on the thirtieth day following the deposit of New Zealand’s instrument of accession to the Director-General of the WTO.

---

4 GPA Article XXII Final Provisions, paragraph 2
2. **Reasons for New Zealand Becoming Party to the GPA**

2.1 **Background**

Accession to the GPA supports the goals of New Zealand’s Business Growth Agenda. Specifically, it will contribute towards the goal of increasing exports to 40% of GDP by 2025, which is necessary to lift New Zealand’s economic growth and living standards.

New Zealand is highly dependent on international trade to provide economic growth. The small size of New Zealand’s domestic market means that if businesses are to grow they need to be able to export their goods and services to international markets. This is particularly true of those firms which are focused on niche markets. As government procurement typically represents 14-20 percent of GDP in most developed countries, it is important that New Zealand businesses are able to access and compete on an even footing in government markets.

2.2 **Access to government contracting opportunities**

Accession to the GPA secures guaranteed legally binding access to government procurement markets in the existing 43 member economies of the GPA (estimated to be worth in excess of USD $1.7 trillion per year\(^5\)), as well as access to the government markets of new members\(^6\) without having to increase the access that New Zealand would have to provide. It ensures that New Zealand businesses can bid for government contracts covered by each Party’s market access schedules in accordance with the rules and procedures set out in the GPA text.

It further ensures that new discriminatory practices that a Party may introduce or buy local polices currently in place (such as those in the United States) will not apply to GPA Parties in relation to covered procurement. This represents a significant benefit to New Zealand, as we already apply open and competitive procurement practices but our businesses are not currently receiving the benefit of these same practices within all the jurisdictions which are party to the GPA.

2.3 **Other benefits**

In addition to ensuring access to government contracting opportunities of existing and new parties, accession to the GPA ensures that New Zealand businesses will be able to compete under the rules set out under the Agreement when bidding for procurement opportunities covered by the other GPA Parties’ market access schedules.

Accession will also enable New Zealand to contribute towards the future development of the Agreement. This is achieved through participation in the GPA work programme (which includes topics of interest to New Zealand, such as participation by small and medium sized enterprises).

\(^5\) http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

\(^6\) Negotiations to secure accession are currently underway by a number of countries, including China; if these are successful this should significantly increase the value of market access under the GPA.
3. Advantages and disadvantages to New Zealand of GPA accession

3.1 Advantages to New Zealand in acceding to the GPA

Accession to the GPA will:
- guarantee access for New Zealand businesses to government procurement markets in the existing 43 member economies;
- address some existing barriers to access that New Zealand businesses face in bidding for government contracts in GPA Parties;
- secure additional market access as new members join the GPA;
- position New Zealand to seek further access to government procurement in future free trade negotiations;
- provide the opportunity to participate in and influence the evolution of the Agreement;
- provide mechanisms for New Zealand and its businesses bidding for government contracts to resolve disputes with GPA Parties.

3.1.1 Guaranteed access to government procurement markets

Through accession to the GPA, New Zealand stands to gain substantially improved access to government procurement markets around the world, including the US, EU, and Japan. A list of the existing GPA Parties is attached as Annex 1. Accession will provide increased opportunities for New Zealand businesses to export more products and services to more destinations contributing to the Government’s goal of increasing exports to 40% of GDP by 2025.

Membership in the GPA will ensure that New Zealand will have access to the procurement opportunities covered by the Agreement. Coverage by the existing 43 GPA Parties is extensive and includes central (typically ministries and departments), sub-central (typically state, provincial and local governments) and other government entities (such as state-owned enterprises). New Zealand suppliers will be able to bid for contracts covering a wide range of goods and services in a variety of sectors including health, education, housing, transport, public utilities and construction.

Where procurements are at or above the agreed value thresholds, the Parties have agreed that those government entities covered by the GPA (listed in each Party’s schedules) will follow certain procedures that provide for transparent and competitive tendering.

A key element of this is non-discrimination and national treatment, which means that Parties must treat suppliers from other countries which are Party to the agreement no less favourably than domestic suppliers. Essentially the GPA opens government contracts up for competition by businesses from economies which are party to the Agreement.

The GPA also benefits Parties through requirements to publish relevant rules, regulations, procedures and administrative rulings of general application relating to government procurement as well as notification of changes to laws and regulations relevant to the GPA (or the administration of those laws or regulations).

3.1.2 Addressing barriers to access

In the absence of the GPA (or bilateral or multi-lateral free trade agreements), access to government procurement markets is not assured. For example, New Zealand businesses

---

7 Value thresholds are negotiated as part of market access when countries negotiate their accession to the GPA although there is a significant degree of convergence by GPA Parties on value thresholds. Below these thresholds, the obligations created under the GPA do not apply.

8 GPA Article VI Information on Procurement Systems
wanting to bid for government contracts in the United States (US) are not currently always able to do so directly. Some New Zealand businesses work around this by substantially transforming their product in the US or selling it through a US intermediary, which means added cost and reduced profit margin to the New Zealand parent supplier. In some cases, this may mean that jobs are created in the United States rather than in New Zealand. In the absence of being a GPA Party (or a bilateral or multi-lateral free trade agreement), New Zealand businesses would continue to face these barriers.

A further concern New Zealand businesses trading in the US have expressed is the inability of New Zealand companies to get on the General Services Administration (GSA) schedule. The GSA can be considered a catalogue of central government approved purchases, from which US federal government agencies purchase listed goods and services. Some state and local governments view GSA listings as a form of accreditation or approval and will also purchase directly from it.

For businesses to get on the GSA schedule, their goods or services must be produced either in the US or in a country that is a GPA Party or in a country that has a free trade agreement with the US that covers government procurement. Accession to the GPA would allow New Zealand businesses to apply for listing on this schedule.

In January 2014 the European Parliament voted in favour of a tool that allows European Union (EU) member states to block non-EU firms from bidding for government procurement contracts, unless the home countries of those firms allow EU firms to tender for their government contracts. This new measure, if it is passed into EU law, will apply to contracts valued at €5 million or more where at least 50% of the total value of the goods or services involved originates outside the EU. Currently New Zealand does not have legally binding government procurement obligations with the EU. GPA accession would secure continued access to these significant markets.

Accession to the GPA will address these specific existing barriers and contribute to ensuring that new measures that restrict access to covered procurement do not apply to New Zealand businesses.

3.1.3 Additional market access
Accession to the GPA will also provide opportunities for increased market access. As new members join the GPA, New Zealand will receive the benefit of their market access without the need to offer more beyond what we already offer to other GPA Parties. This includes the significant market access that would be provided by notable accessions including that of China, which is currently under negotiation. Montenegro’s terms of accession were agreed at the same time as New Zealand’s and it expects to be a GPA Party within 6 months; Moldova and the Ukraine appear to be near finalisation of their accession proceedings. Albania, Georgia, Jordan, Kyrgyz Republic and Oman are also negotiating their accessions, while the former Yugoslav Republic of Macedonia, Mongolia, the Russian Federation, Saudi Arabia and Tajikistan are all obliged to initiate accession to the GPA as part of their WTO accession protocols. Also, Australia has recently announced that it will be working towards GPA accession.

In such future accessions, it is likely that the New Zealand would benefit from the negotiating power of combined GPA Parties which as a group is able to negotiate access to

---

9 “Substantial transformation” means undertaking some defined proportion of the manufacturing process inside a territory.
10 US government agencies can make purchases directly from the GSA schedule knowing that all legal obligations have been fulfilled.
procurement opportunities that New Zealand might not be able to negotiate on its own behalf.

In addition, at some point in the future\(^\text{12}\), it is likely that GPA Parties will re-negotiate their respective market access commitments as took place for the revised GPA. At that point, New Zealand would be able to negotiate additional coverage from other Parties, although it would be on the basis that New Zealand would improve its own coverage.

**3.1.4 Free trade negotiations**
Accession to the GPA may provide an enhanced position for future bi-lateral or multi-lateral free trade negotiations that cover government procurement.

In a negotiation with another GPA member economy, efforts could move beyond market access and focus instead on examining opportunities for enhancing access to government contracts which go further than the GPA - for example, addressing specific barriers to access, improving upon GPA market access coverage, or promoting greater harmonisation of procurement rules. This could result in better access for New Zealand suppliers and potentially lead to deeper integration of government procurement markets.

**3.1.5 Influence the evolution of the Agreement**
Once a GPA Party, New Zealand will have the opportunity to participate in the GPA Committee’s work programme. In general, it is this work that will inform the future evolution of the GPA. Current work items include topics of interest to New Zealand, such as small and medium-sized enterprises, sustainable procurement, and safety standards in international procurement.

**3.1.6 Dispute settlement provisions**
Under the GPA, Parties must provide access to national remedies to suppliers having an interest in a particular procurement covered by the GPA, where they believe that the commitments in the Agreement have not been applied by the procuring entity. In the absence of accession to the GPA, New Zealand businesses that have been able to bid for government contracts with GPA Parties may have no legally enforceable right of recourse where they believe that they have not been fairly treated.

The dispute settlement mechanism established under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) is available (but has been used rarely to date) for disputes between GPA Parties relating to the GPA. This ensures that New Zealand is able to pursue a matter to binding international arbitration should GPA Parties not act in accordance with their obligations under the GPA.

**3.2 Disadvantages to New Zealand entering into the GPA**
Accession presents few disadvantages to New Zealand as New Zealand’s domestic policy is already well aligned with the rights and obligations created under the GPA and no legislative changes are needed to implement the commitments.

**3.2.1 Reduced scope for flexible procurement practices**
As with existing free trade agreements\(^\text{13}\), the GPA will place some constraints on New Zealand’s ability to develop policies or apply practices which would be discriminatory in

---

\(^\text{12}\) Article XXII Final Provisions, paragraph 7
\(^\text{13}\) The New Zealand Hong Kong Closer Economic Partnership Agreement, the Trans-Pacific Strategic Economic Partnership (P4) Agreement, the New Zealand - Thailand Closer Economic Partnership Agreement, the Agreement between New Zealand and Singapore on a Closer Economic Partnership all contain chapters on Government Procurement.
nature, the most obvious of which would be preferential buy local policies for procurement covered by our market access commitments.

In addition, the procurement practices of covered entities must be consistent with the GPA. This means that covered government entities must openly advertise and fairly evaluate responses, rather than award contracts directly to a supplier.

In effect, the GPA would lock in a number of practices that New Zealand has already chosen to put in place, and which in some instances, it has already committed through existing free trade agreements. New Zealand’s approach to government procurement is to use open, competitive processes with decisions made on the basis of value for money rather than country of origin.

The ability to support local suppliers in other ways than through preferential policy is not constrained by the Agreement. As an example the Ministry of Business, Innovation and Employment (MBIE) and New Zealand Trade and Enterprise (NZTE) have been working closely to help support New Zealand businesses to develop their tendering capability so that they can be competitive both domestically and in foreign markets. These and other initiatives to support local businesses, such as through access to research grants or other incentives, are not precluded by GPA accession.

3.2.2 Precedent effect
New Zealand’s GPA offer includes a broader range of government entities than New Zealand has offered in previous trade agreements. This raises the possibility that negotiating partners in future free trade agreements may seek similar levels of access. The nature of negotiations in a trade agreement, however, is such that New Zealand would be in a position to negotiate economic benefits in exchange for any such granting of GPA-levels of market access. In general, it is in New Zealand’s interest to promote liberalisation of government procurement markets in order to increase our exports, but these will need to be weighed up against the demands of negotiating partners.

3.2.3 Less negotiating coin for future free trade agreements
While accession to the GPA could position New Zealand to seek further access to government procurement in future free trade agreements, it could conversely mean that there is less available access that New Zealand could offer in a future free trade agreement with a GPA Party (i.e. less “negotiating coin”).

3.2.4 Disputes
Accession to the GPA could give rise to legal proceedings within New Zealand courts against a covered entity by an aggrieved supplier from a GPA Party. As New Zealand government agencies already accept tenders from foreign suppliers and provide rights of redress through the New Zealand courts, the risk of any increase in legal proceedings is considered minimal.

Accession to the GPA could also give rise to a State-State dispute using the binding arbitration procedures at the WTO. Again, as there have been very few disputes raised by GPA Parties to date, together with New Zealand’s open and competitive procurement practices, the risk of dispute settlement action is considered low.

---

14 GPA Article XXII Final Provisions, paragraph 4
4. Legal obligations which would be imposed on New Zealand by accession to the GPA and reservations

4.1 New Zealand’s market access coverage

4.1.1 Central government entities (Annex 1 to the offer)
New Zealand’s final offer includes all twenty-nine public service departments, New Zealand Police and New Zealand Defence Force as covered entities, and notes that all entities subordinate to these entities (e.g. the work of Consumer Affairs which is part of the Ministry of Business, Innovation and Employment) are also included.

Procurements by these central government entities are covered at and above the value thresholds of: 130,000 SDRs\(^{15}\) (equivalent to approximately NZD $240,000) for goods and services, and 5 million SDRs (equivalent to approximately NZD $8,000,000) for construction services.

4.1.2 Sub-central government entities (Annex 2 to the offer)
The sub-central coverage provided by New Zealand consists of eleven (out of a potential twenty District Health Boards, including the procurement undertaken through their agent, healthAlliance Limited. Coverage of public health services (for example, provision of home nursing care or immunisation of children) is not covered so that maximum flexibility is retained where these types of services are outsourced. In addition, the Pharmaceutical Management Agency (PHARMAC) has not been included in New Zealand’s entity list.

New Zealand’s sub-central coverage also includes the procurement related to transport projects funded, in whole or in part, through the New Zealand Transport Agency (NZTA) by three city councils (Auckland Council, Wellington and Christchurch City Councils) and four regional councils (Waikato, Bay of Plenty, Wellington, and Canterbury). All other procurement by the listed city and regional councils is not covered by New Zealand’s offer.

The value thresholds for sub-central government coverage are: 200,000 SDRs (equivalent to approximately NZD $370,000) for goods and services and 5 million SDRs (equivalent to approximately NZD $8,000,000) for construction services.

4.1.3 Other entities (Annex 3 to the offer)
New Zealand has offered fifteen Crown agents (including some entities that have significant procurement spend, such as the Accident Compensation Corporation (ACC), New Zealand Housing Corporation, and the New Zealand Transport Agency) and four state-owned enterprises (Transpower, KiwiRail, the MetService and Airways Corporation).

Some entity-specific procurement activity has been excluded from coverage. As such, the offer excludes procurement of pension fund management, public insurance and fund placements, investments and financial services related to securities or trading on an exchange by ACC, procurement of goods and services containing confidential information related to enhancing competitive sport performance by Sport New Zealand, and electrical stringing services, tower painting services, and projects funded directly by private sector customers by Transpower.

The value thresholds at which procurements by these other government entities are covered are: 400,000 SDRs (equivalent to approximately NZD $700,000) for goods and services and 5 million SDRs (equivalent to approximately NZD $8,000,000) for construction services.

\(^{15}\) The SDR was created by the International Monetary Fund (IMF) to serve as a unit of account of the IMF. While based on a basket of currencies, it is not a currency itself but is used in the GPA context as the basis for calculating and converting agreed value thresholds into domestic currencies of the GPA Parties.
4.1.4 Goods, services and construction services (Annexes 4, 5 and 6 to the offer)
All goods are covered. All services are covered except for a few specific exclusions, namely research and development, public health services, education services and welfare services. All construction services are covered.

4.2 Coverage by GPA Parties

All GPA Parties, except for the European Union (EU), will give New Zealand access to all of their covered procurement. The EU has placed reciprocity conditions on New Zealand as set out below.

Some GPA Parties describe coverage by way of a broad definition of the entities covered (for example, all central, regional and local authorities and bodies covered by public law) coupled with an indicative list of the specific entities. Others list by name the entities that they cover. The number and types of listed entities vary. The kinds of entities that GPA Parties cover include ministries/departments, schools and universities, hospitals, and museums, as well as entities related to the provision of social housing, infrastructure (roads, rail, airports, ports), public utilities (energy, water resources, telecommunications and postal services), and public transport.

Aside from Hong Kong and Singapore (which are city states) and the Netherlands in respect of Aruba (a very small country of about 100,000 people), all Parties include some entities in each of the three annexes listing central, sub-central and other entities.

Generally, GPA Parties cover all goods except for goods purchased by defence entities where some goods are not covered. Some GPA Parties carve out or set aside some of their procurement for their small and medium sized enterprises, minority-owned businesses, procurement for disadvantaged regions, and agricultural support and human feeding programmes.

Almost all GPA Parties specifically list the services that are covered and some also specifically carve out sub-sets of some categories of services. For example, Canada includes architectural and engineering services generally, but not when the procurement is related to shipbuilding and repairs.

The value thresholds of GPA Parties are comparable to that offered by New Zealand.

Key aspects of the EU’s proposed reciprocity conditions are:

- fewer central government level contracting authorities than it gives to its closest partners, i.e. Switzerland, Norway, Iceland and Lichtenstein, but comparable to that offered to other developed countries such as United States, Canada and Korea
- there is no coverage of its local councils
- for its regional councils, coverage is restricted to procurement related to urban transportation
- there is no coverage of procurement related to drinking water networks, airport terminal facilities and ports facilities

Notwithstanding these conditions, the access to EU government contract opportunities that New Zealand will achieve through GPA accession is significant. For example, the sub-central coverage alone offered to New Zealand by the EU is in excess of 47 billion EUROs per year.

---

16 The European Union, Switzerland, Norway, Iceland and Lichtenstein.
4.3 Legal implications for New Zealand

For covered procurement, New Zealand government entities listed in our market access schedule will be obliged to apply the procurement procedures set out in the GPA text. These obligations include:

- competitive tendering on a basis that gives the goods, services and suppliers from GPA economies treatment no less favourable than the treatment given to New Zealand suppliers or the suppliers of another GPA economy;\(^{17}\)
- a prohibition against offsets, which are conditions that encourage local development or improve balance of payments accounts;\(^{18}\)
- requirements in respect of the nature and detail required in tender notices and documentation;\(^{19}\)
- requirements relating to the nature of conditions for participation and qualification of suppliers;\(^{20}\)
- minimum time frames for responding to tenders;\(^{21}\)
- requirements relating to fairness in the treatment of tenders and awarding of contracts;\(^{22}\)
- requirements to publish post-award information and to provide reasons to unsuccessful suppliers, where requested.\(^{23}\)

These requirements are all consistent with the requirements in the *Government Rules of Sourcing*.

Accession will also mean that New Zealand will need to:

- publish information on our procurement system (which we currently do on www.procurement.govt.nz);\(^ {24}\)
- inform the GPA Committee of any changes to procurement laws and regulations (which are already notified to the WTO);\(^ {25}\)
- report statistics to the GPA Committee on New Zealand’s covered contracts.\(^ {26}\) This represents a new commitment which will be fulfilled through reporting from the Government Electronic Tenders Service.

4.4 Reservations, limitations and exceptions

The GPA does not allow Parties to make reservations against its obligations\(^ {27}\); however, it is possible to include limitations on the market access offered.

New Zealand’s market access offer contains some limitations from coverage in a range of sensitive areas. These limitations are consistent with reservations in the government procurement chapters of existing free trade agreements such as the P4 Agreement with Chile, Singapore and Brunei, and the New Zealand Hong Kong Closer Economic Partnership agreement. These reservations are:

\(^{17}\) GPA Article IV General Principles, paragraphs 1 and 2
\(^{18}\) Article IV General Principles, paragraph 6
\(^{19}\) Article VII Notices, Article X Technical Specifications and Tender Documentation
\(^{20}\) Article VIII Conditions for Participation, Article IX Qualification of Suppliers
\(^{21}\) Article XI Time-Periods
\(^{22}\) Article XV Treatment of Tenders and Awarding of Contracts
\(^{23}\) Article XVI Transparency of Procurement Information
\(^{24}\) GPA Article VI Information on Procurement System
\(^{25}\) GPA Article XXII Final Provisions, paragraph 5
\(^{26}\) Article XVI Transparency of Procurement Information, paragraph 4
\(^{27}\) GPA Article XXII Final Provisions, paragraph 3
a. procurement of research and development services; 

b. procurement of public health services, education services and welfare services; 

c. procurement of goods or services in respect of contracts for construction, refurbishment or furnishing of chanceries abroad; 

d. procurement of goods or services outside the territory of New Zealand for consumption outside the territory of New Zealand; 

e. commercial sponsorship arrangements; 

f. procurement between entities covered by the Agreement except when tenders are called, and 

g. measures necessary to develop, protect or preserve national treasures of artistic, historic, archaeological value or cultural heritage.

New Zealand’s market access offer maintains New Zealand’s ability to take measures which it deems necessary to accord more favourable treatment to Māori, including in fulfilment of its obligations under the Treaty of Waitangi provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Members or as a disguised restriction on trade in goods and services.

The GPA also includes a number of exceptions. The GPA will not prevent New Zealand from taking any actions necessary to protect its essential security interests relating to the procurement of arms, ammunition or war materials or to procurement indispensable for national security or for national defence purposes.

Similarly, provided that 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 the GPA will prevent New Zealand from taking measures that:

- are necessary to protect public morals, order or safety,
- are necessary to protect human, animal or plant life or health,
- are necessary to protect intellectual property or
- relate to goods or services of persons with disabilities, philanthropic institutions or prison labour.

5. Dispute Settlement

5.1 WTO Dispute Settlement

The GPA provides recourse to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) in order to resolve any disputes arising under the Agreement. This is the same dispute settlement mechanism which applies to the broader WTO multilateral agreements on trade in goods, services and intellectual property. It is a State-to-State mechanism for resolving disputes through consultations and binding
arbitration. There is also the possibility of review by a standing Appellate Body. Members are able to make both written and oral submissions before the Panel and Appellate Body. A successful claim will result in a recommendation that the Member concerned bring its measure into conformity with the GPA. In the case of non-compliance, any suspension of concessions or obligations is limited to those under the GPA.

5.2 Challenge procedures in national jurisdictions

Parties must establish domestic review procedures in their national jurisdictions where a supplier may challenge a particular procurement process. New Zealand suppliers will have access to challenge procedures in other GPA member economies. These remedies do not preclude a dispute being initiated under the WTO dispute settlement mechanism.

New Zealand must also ensure that such challenge procedures are accessible to suppliers from GPA Parties. This type of dispute will be handled through the New Zealand courts. Other avenues for dispute resolution include consultations with the procuring entity, and complaints to the Ombudsman or the Auditor-General. No additional procedures would need to be established to fulfil these obligations under the GPA.

6. Measures which the Government could or should adopt to implement the GPA

All central government entities and, from 1 February 2015, all Crown agents (including district health boards) covered by New Zealand’s market access offer are obliged to apply the Government Rules of Sourcing. No new measures are needed to implement the GPA commitments for these entities.

While the SOEs listed in New Zealand’s offer and the NZTA-funded local authorities’ transport projects apply procurement practices that are consistent with the GPA commitments, it will be necessary to formalise these so that they are enforceable by the New Zealand courts. This will be achieved through non-legislative measures, including a combination of ministerial letters of expectation and the NZTA’s Government Policy Strategy.

7. Economic, social, cultural and environmental costs and effects of accession to the GPA

7.1 Economic effects

Overall GPA accession is expected to have a positive impact on the New Zealand economy by providing certainty of access to government contracting opportunities. These benefits are typically difficult to model robustly, given data constraints. Economic modelling has therefore not been conducted.

7.1.1 Size of the opportunity

Government procurement markets are typically a significant proportion of most economies. Government procurement in New Zealand accounts for NZD $38-40 billion per year. A spend analysis of a sample of 161 agencies conducted by the Ministry of Business, Innovation and Employment in 2012 provides an indication of the nature of this spend.

---

42 DSU Article 19
43 GPA Article XX, paragraph 3
44 GPA Article XVIII Domestic Review Procedures
45 All of the entities listed under New Zealand’s central government annex are required to apply the Rules (CAB Min (13) 10/4A).
46 The Whole of Government Direction on Procurement issued by the Ministers of Finance and State Services in May 2014 requires (among other things) Crown agents to apply the Government Rules of Sourcing as from 1 February 2015.
Significant areas of spend for the New Zealand Government (see table 1), as for governments generally, are in social and community services, medical and laboratory, construction and operational goods and services. Expenditure on ICT and professional and other services is also substantial.

**Table 1 – New Zealand government expenditure**

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social and Community Services</td>
<td>20.92%</td>
</tr>
<tr>
<td>Construction and Infrastructure</td>
<td>18.93%</td>
</tr>
<tr>
<td>Services Other</td>
<td>5.32%</td>
</tr>
<tr>
<td>Facilities</td>
<td>6.63%</td>
</tr>
<tr>
<td>ICT</td>
<td>6.17%</td>
</tr>
<tr>
<td>Professional Services Consultancy</td>
<td>4.82%</td>
</tr>
<tr>
<td>Personnel Related</td>
<td>1.82%</td>
</tr>
<tr>
<td>Professional Services Temporary Staff</td>
<td>1.98%</td>
</tr>
<tr>
<td>Travel, Events and Accommodation</td>
<td>2.17%</td>
</tr>
<tr>
<td>Vehicles</td>
<td>0.77%</td>
</tr>
<tr>
<td>Waste Management</td>
<td>0.10%</td>
</tr>
<tr>
<td>Energy and Utilities</td>
<td>1.07%</td>
</tr>
<tr>
<td>Marketing and Media</td>
<td>1.89%</td>
</tr>
<tr>
<td>Office Solutions</td>
<td>1.36%</td>
</tr>
<tr>
<td>Engineering Solutions</td>
<td>0.63%</td>
</tr>
<tr>
<td>Logistics</td>
<td>0.85%</td>
</tr>
<tr>
<td>Operational Goods and Services</td>
<td>9.22%</td>
</tr>
<tr>
<td>Clinical, Medical and Laboratory</td>
<td>12.02%</td>
</tr>
<tr>
<td>Fuels Lubricants and Gases</td>
<td>0.58%</td>
</tr>
<tr>
<td>Financial and Banking Services</td>
<td>2.72%</td>
</tr>
</tbody>
</table>

Source: Ministry of Business, Innovation and Employment

As in New Zealand, government procurement is substantial in terms of both percentage of the economy and actual value. In the 29 OECD GPA member countries, government procurement accounts for between 7 and 22% of GDP, as shown in table 2 below.

Actual dollar values of government procurement in these countries are shown in table 3. Procurement by the United States alone totalled US$1,726 billion in 2012. This is 86 times the value of New Zealand’s domestic government procurement. Other significant markets are Japan and Germany at US $675 billion and $469 billion respectively.
Table 2 – Government procurement as a percentage of GDP

Government procurement as percentage of GDP (2011) for 29 GPA member parties

Source: OECD Dataset: National Accounts at a Glance 2013 and MBIE calculations
Table 3: Total value of government procurement markets

Value of government procurement (2011)
(billions US dollars)

<table>
<thead>
<tr>
<th>Country</th>
<th>Value (billions US dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iceland</td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
</tr>
<tr>
<td>Slovak Republic</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
</tr>
<tr>
<td>New Zealand</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td></td>
</tr>
<tr>
<td>Switzerland</td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td></td>
</tr>
<tr>
<td>Group average</td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td></td>
</tr>
<tr>
<td>Korea</td>
<td></td>
</tr>
<tr>
<td>Canada</td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td></td>
</tr>
<tr>
<td>Japan</td>
<td></td>
</tr>
<tr>
<td>United States</td>
<td></td>
</tr>
</tbody>
</table>

Source: OECD Dataset: National Accounts at a Glance 2013 and MBIE calculations

7.1.2 Total procurement market of GPA Parties
Not all government procurement, however, is covered by the GPA. The level of coverage is negotiated by economies when they seek accession. Market access currently offered by the 43 member economies that are parties to the GPA is reported by the WTO to be in excess of US $1.7 trillion per year.47

7.1.3 Value of new opportunities
Accession not only secures access to government procurement markets but provides new opportunities for growth. The value of the GPA accession is likely to increase with the accession of new members to the Agreement. Montenegro’s terms of accession have

47 See footnote 4
already been agreed by GPA Parties, with China, Moldova and the Ukraine actively engaged in negotiations. Albania, Georgia, Jordan, Kyrgyz Republic, and Oman have initiated their accession process, although at present, their level of active engagement is limited. The Former Yugoslav Republic of Macedonia, Mongolia, the Russian Federation, Saudi Arabia and Tajikistan also have commitments in their WTO accession protocols that require them to initiate accession to the GPA. Accession by these and other countries would provide New Zealand with the benefit of their market access at no additional cost in terms of our market offering.

A working paper in 2011 by the WTO Economic Research and Statistics Division provides a methodology to evaluate the potential size of this additional market access. A conservative estimate on this basis (see table 4) suggests that these accessions would bring an additional US $239 billion worth of market access under the Agreement. The accession of China alone would bring the value of market access offered under the GPA to in excess of US $1.9 trillion.

Table 4 – Estimated value of government procurement market of pending GPA accessions

<table>
<thead>
<tr>
<th>Potential Accession Candidates</th>
<th>GDP 2013</th>
<th>Estimated Size of Total GP Market (millions USD)</th>
<th>GP Market Likely to be Covered Initially by the GPA (millions USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>12,903</td>
<td>1,935 – 2,581</td>
<td>323 - 826</td>
</tr>
<tr>
<td>China</td>
<td>9,240,270</td>
<td>1,386,041 – 1,848,054</td>
<td>231,007 – 591,377</td>
</tr>
<tr>
<td>Georgia</td>
<td>16,126</td>
<td>2,419 – 3,225</td>
<td>403 – 1,032</td>
</tr>
<tr>
<td>Jordan</td>
<td>33,678</td>
<td>5,052 – 6,736</td>
<td>842 – 2,155</td>
</tr>
<tr>
<td>The Kyrgyz Republic</td>
<td>7,226</td>
<td>1,084 – 1,445</td>
<td>181 - 462</td>
</tr>
<tr>
<td>Moldova</td>
<td>7,935</td>
<td>1,190 – 1,587</td>
<td>198 - 508</td>
</tr>
<tr>
<td>Montenegro</td>
<td>4,427</td>
<td>664 - 885</td>
<td>111 - 283</td>
</tr>
<tr>
<td>Oman</td>
<td>80,570</td>
<td>12,086 – 16,114</td>
<td>2,014 – 5,156</td>
</tr>
<tr>
<td>Ukraine</td>
<td>177,430</td>
<td>26,615 – 35,486</td>
<td>4,436 – 11,356</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$9,580,565</strong></td>
<td><strong>$1,437,085 - 1,916,113</strong></td>
<td><strong>$239,514 - $613,156</strong></td>
</tr>
</tbody>
</table>

Source: Robert D. Anderson 2011, page 14 and MBIE calculations

7.1.4 Future opportunities from bilateral or multi-lateral negotiations
Accession may also present opportunities for New Zealand to secure additional market access beyond that contained within GPA through bilateral or multi-lateral negotiations with GPA Members. This arises from the significant volume of government procurement not yet covered by the GPA (see table 2), a proportion of which might be the subject of such negotiations.

---

49 Based on OECD findings that procurement accounts for on average 15-20% of GDP
50 Based on an assumed ratio of GPA-covered procurement to GDP ranging from 2.5% - 6.4% based on data provided by the EU and the United States to the WTO in 2007. For further information on methodology please see: Robert D. Anderson, Philippe Pelletier, Kodjo Osei-Lah. “Assessing the Value of Future Accessions to the WTO Agreement on Government procurement (GPA).” Economic Research and Statistics Department, World Trade Organization, 2011.(available from http://www.wto.org/english/res_e/reser_e/ersd201115_e.pdf)
7.1.5 Value of contracts won by New Zealand businesses

The benefits realised by New Zealand businesses and the domestic economy will depend on how successful our suppliers are at winning additional contracts with GPA member governments.

While it is impossible to predict the volume of contracts that will be won as a result of GPA market access, there should be a positive impact on exports. For example, should New Zealand secure an additional 0.25% of contracts currently available through GPA market access, this would account for US $4.25 billion of additional exports or US $4.75 billion if the accession of China is included.

7.1.6 Current activity by New Zealand exporters

Government procurement markets may offer a useful diversification from resources-based exports which still account for over half of New Zealand’s exports of goods and services.

New Zealand Trade and Enterprise (NZTE) is working intensively with at least 70 significant exporters, supporting them to win government business in the GPA member countries. Key economies include the US, Canada, Japan, Singapore, Korea, Hong Kong, Chinese Taipei, and the EU. NZTE is working with over 130 individual government agencies in the member economies.

Currently, the exporters are generally high value-added specialist services and goods manufacturers covering:

- communications equipment
- IT (passenger information, open source, high-speed network monitoring hardware, firmware and software, business intelligence, e-government applications, weather forecasting and graphics, imaging software, network security, data warehousing software, aviation and marine monitoring, optimisation technology)
- defence and security (security systems, simulation systems, surveillance, risk and investigation software, analytics and intelligence technologies, hydro-pneumatic flushing systems)
- healthcare (including IT, beds and dental equipment)
- agribusiness and food (beef, snack foods, milk flow metres, bovine TB reduction)
- GPS/GIS (technology and services, GPS timing products, tracking services for remote and high risk areas, satellite tracking devices)
- marine (jet workboats, amphibious technology, positive buoyancy pontoons, marine collisions warning systems, marine electronics, diving technology, marine monitoring, navigational lights)
- aviation (air traffic control, aircraft interior fit-outs, aviation monitoring, baggage handling equipment and systems)
- specialised manufacturing and technologies (energy management systems, green technology, air purification, air conditioning and ventilation, apparel, optics, electro-technology, commercial catering equipment, wireless power technologies, rocket and propulsion technologies, respiratory protection equipment, bacteria detection; and
- precision castings and services (engineering consultancy, research methodologies and services, logistics).

The types of government agencies in these countries include defence, health, law and border enforcement, transport, ports and aviation, food and agriculture, justice, state and internal affairs, forestry and land, housing, energy, utilities and water, education, treasury, banking and taxes, postal services, broadcasting, science and research, and state and municipal governments.
The opportunities for penetration by these existing customers into current GPA government markets are significant. NZTE will work with these companies upon New Zealand becoming a member of the GPA to realise the immediate benefits (for example, listing on the US GSA schedule). NZTE will then seek to work with up and coming companies selling to New Zealand government agencies to help them realise export opportunities with GPA member economies. NZTE will also broaden its reach in terms of the number of government agencies it is working with in the GPA member countries.

7.2 Impact of competition from GPA Parties

GPA accession should have minimal impact on New Zealand suppliers competing for these contracts with the New Zealand Government. Procurement decisions are made on the basis of value for money over whole of life, rather than on the basis of origin of goods or services and this will not change with the introduction of the GPA. However there may be a slight increase in competition from foreign suppliers in the domestic market as our accession to the GPA raises the profile of New Zealand as a trade destination for GPA member countries. These impacts are not expected to be significant.

7.3 General impacts/benefits of trade

There may be general trade benefits to New Zealand from GPA accession. New Zealand businesses may gain knowledge and experience through greater and deeper participation in export markets. Exporting to government agencies covered by GPA Parties may also allow producers to expand output and exploit economies of scale, thereby lowering average production costs and realising efficiency gains. New knowledge or technology can also spill over to other parts of the New Zealand economy. Current international literature suggests that economic models typically under-predict the gains associated with trade liberalisation if these effects are not taken into account.

Sometimes trade agreements which establish preferential arrangements between countries can be distortionary and result in trade diversion; for example, when the price of a good or service is altered by tariffs such that it is cheaper to purchase the good from a less efficient producer. The GPA will not have this effect. New Zealand government agencies are not obliged to source goods and services from GPA Parties.

7.4 Costs to businesses

There are not expected to be any additional costs on New Zealand businesses from New Zealand’s participation in the GPA. Where there are specific barriers currently in place, GPA accession may reduce the cost of participation in government procurement in those economies.

Currently measures in the United States mean that some New Zealand businesses are obliged to use intermediaries or locate elements of production in the US to access government contract opportunities. The removal of these trade barriers should allow these businesses to reallocate their resources more efficiently. This may include relocation of all or part of their supply chains to take advantage of factors including economies of scale, lower production costs, or shipping costs to realise efficiency and productivity gains.

7.5 Social effects

The GPA is not expected to have any discernible detrimental impact on New Zealand socially and should have an overall net-benefit. The following section sets out the potential effects on domestic employment, social regulation, cultural and environmental effects.
7.5.1 Employment
The removal of barriers such as those in the US will allow firms to locate/relocate all or part of their supply chains to New Zealand with positive implications for domestic employment. The expected increase in domestic exports resulting from accession might similarly lead to some increase in domestic employment.

7.5.2 Social Regulation
New Zealand’s social welfare regulatory frameworks will not be affected by accession to the GPA.

7.5.3 Cultural effects
Accession to the GPA is not anticipated to have any negative cultural effects.

7.5.4 Environmental effects
Accession to the GPA is not anticipated to have any environmental impacts. The GPA does not prevent New Zealand from taking non-discriminatory measures necessary to protect human, animal or plant life or health, or public morals. The GPA also includes a provision which allows New Zealand to prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

8. The costs to New Zealand of compliance with the GPA

8.1 Costs to government agencies of implementing and complying with the GPA
There should be no cost for government agencies associated with compliance with the GPA commitments. Existing government procurement policy frameworks are consistent with the GPA and no changes will be required to current procurement practices.

8.2 Costs to businesses of complying with the GPA
There will be no additional costs on businesses from New Zealand’s accession to the GPA. The predominant effect of the GPA should be to increase transparency of opportunities and procurement processes and reduce transaction costs for some New Zealand businesses bidding for government contracts with GPA Parties.

8.3 Ongoing participation in GPA Committee activities
The cost of ongoing participation by New Zealand in GPA Committee activities and fulfilment of the requirements to publish information, notify changes to laws and report on statistics is anticipated to amount to approximately NZ $50,000 annually.

9. Completed or proposed consultation with the community and Parties interested in the treaty action

9.1 Agency consultation process
The negotiation of the terms of New Zealand’s accession to the GPA was led by officials from the Ministry of Business, Innovation and Employment with support from the Ministry of Foreign Affairs and Trade. Throughout the negotiating process officials informed or consulted with relevant agencies in preparing New Zealand’s market access offer, using a range of forums to provide general information on the GPA and our potential accession to government agencies. This included:

51 GPA Article III Security and General Exceptions
52 GPA Article X.6 Technical specifications
- Briefing of departments/ministries and Crown entities
- Oral updates to MBIE’s governance groups, namely the Procurement Functional Leadership Advisory Group and the Collaborative Procurement Advisory Group
- Information available online at www.procurement.govt.nz
- Individual meetings, emails and correspondence with members from relevant agencies at various stages of the negotiations.

In general, government agencies were of the view that the obligations imposed on them by accession to the GPA were consistent with the Government Rules of Sourcing and good procurement practices.

9.2 Public consultation process

An announcement of the decision to seek accession to the GPA was made by the Minister for Economic Department and the Minister of Trade on 15 August 2012. Information on the GPA and the fact that New Zealand is pursuing accession has been publicly available on the WTO’s website throughout the negotiation period. Within the limitations of an ongoing negotiation process, efforts have been made to ensure relevant stakeholders were aware of the accession process and the potential implications. This engagement took a number of forms including:

- Regular updates to MBIE’s Business Reference Group
- Public information available online at www.procurement.govt.nz
- Engagement with Business New Zealand
- Engagement with the New Zealand Council of Trade Unions
- Engagement with the Industry Capability Network Advisory Board
- Meetings with specific businesses interested in GPA accession

Consultation with businesses (including Business New Zealand and the Industry Capability Network Advisory Board) identified that businesses were very supportive of accession to the GPA. Many were of the view that it was long overdue.

The Council of Trade Unions expressed concerns that the GPA may constrain the Government from including provisions in government contracts relating to health and safety standards or local industry participation requirements.

Following agreement on New Zealand’s final market access offering by the 43 GPA member economies, information about New Zealand’s accession has been made available on www.procurement.govt.nz and further details will be provided. Businesses that New Zealand Trade and Enterprise work with were informed that New Zealand’s terms of accession have been agreed. Further formal engagement will be undertaken with interested stakeholders, including Business New Zealand, Chambers of Commerce and interested businesses. Given New Zealand’s membership of the WTO does not extend to Tokelau, New Zealand’s accession to the GPA will not extend to Tokelau. Accordingly, consultation with Tokelau was not required.

10. Subsequent protocols and/or amendments to the GPA and their likely effects

The Parties to the GPA may agree to amend the text of the Agreement and the market access offers. A decision to adopt an amendment and to submit it for acceptance by the

---

53 Article XXII Final Provisions, paragraph 11
Parties must be by consensus. Except where amendments do not alter the rights and obligations of the Parties, amendments enter into force upon acceptance by two thirds of the Parties and thereafter for each other Party upon acceptance by it.\textsuperscript{54}

11. Withdrawal or denunciation provision in the GPA

New Zealand may withdraw from the GPA after having provided written notice of the withdrawal to the Director-General of the WTO. The withdrawal would take effect upon the expiration of 60 days from the date of the notification.

Should New Zealand cease to be a member of the World Trade Organization, it will then also cease to be a Party to the GPA with effect on the date on which it ceases to be a member of the WTO.\textsuperscript{55}

\textsuperscript{54} GPA Article XXII Amendments, paragraph 11
\textsuperscript{55} GPA Article XXII.12 Withdrawal, paragraphs 12 and 13
Annex 1 – GPA Parties (as at November 2014)

Armenia
Canada
European Union (with regard to its 28 member states)
  Austria
  Belgium
  Denmark
  Finland
  France
  Germany
  Greece
  Ireland
  Italy
  Luxemburg
  Netherlands
  Portugal
  Spain
  Sweden
  United Kingdom
  Cyprus
  Czech Republic
  Estonia
  Hungary
  Latvia
  Lithuania
  Malta
  Poland
  Slovak Republic
  Slovenia
  Bulgaria
  Romania
  Croatia

Hong Kong, China
Iceland
Israel
Japan
Republic of Korea
Liechtenstein
Netherlands, with respect to Aruba
Norway
Singapore
Switzerland
Chinese Taipei
United States