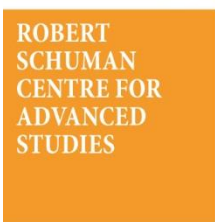




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Government Procurement Policies Across the Tasman;
What Role Played by (Preferential) Trade Agreements?

Malcolm Bosworth

European University Institute
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Abstract

This paper examines developments in government procurement arrangements across the Tasman to assess the extent to which recent trade, especially preferential agreements, of Australia and New Zealand containing government procurement commitments have contributed to any reform in these policies. It argues that (preferential) trade agreements have had little or no impact on any such reforms, and that in the case of Australia, such commitments have not prevented procurement arrangements from going backwards. Transparent price preferences favouring local content have been largely replaced by hidden and more costly discretionary discriminatory measures. In sharp contrast to Australia, New Zealand seems to have maintained a relatively open and non-discriminatory government procurement regime based not on commitments in trade agreements but rather on unconditional MFN unilateral reforms. The central policy message is trade agreements cannot substitute for unilateral reforms.

Keywords

Government procurement, Australia, New Zealand, trade agreements, governance

1. Introduction

The Government procurement market in both Australia and New Zealand (ANZ) is significant, especially if procurement by sub-central government agencies is included. Procurement covers both goods and increasingly services, including construction. Australian Commonwealth procurement alone amounted to \$48.9 billion in 2013-14, up from \$39.3 billion in 2012-13, and total State Government procurement is about the same. Total State and Commonwealth procurement in 2013-14 amounted to about 6.5% of GDP. Such procurement is overwhelmingly sourced from Australia, including within own States. New Zealand (NZ) government procurement (excluding by local governments) amounts to some NZ\$38-40 billion annually, equivalent to currently around 15% of GDP.

ANZ have evolved decentralized systems of government procurement both at the national and sub-central governments. Purchasing is done by the procuring agency following rules and procedures set by centralized agencies and with their guidance and monitoring.

Due to its importance, the efficiency of government procurement can significantly impact on a country's overall resource-use efficiency, and on government budgets. Thus, reforming government procurement to open the market to overseas competition is likely to help address budgetary concerns and more importantly significantly improve economic efficiency. Mindful of this, greater attention is now being devoted globally to negotiating government procurement provisions in trade agreements, whether multilateral, bilateral or plurilateral/regional. A critical issue is therefore whether these trade agreements have been effective in promoting significant domestic reforms in parties' government procurement systems. Or put another way, have they helped domestic liberalization, had no impact or even possibly hindered such domestic reforms? These questions have become even more pertinent given the proliferation of discriminatory preferential trade agreements (PTAs), with many more being negotiated or in the pipeline. This PTA explosion stems largely from governments heralding them as big improvements on earlier versions as modern 21st century agreements by including provisions in new areas, such as government procurement. Thus, government procurement also provides an excellent case study of PTAs generally of their capacities to reform such policies, to see whether PTA provisions deliver nothing more in practice than merely expanding negotiations of commitments on 'paper'?

Consistent with this approach the paper examines the impact of trade agreements on ANZ domestic government procurement policies, and not on the extent to which they may have raised export opportunities by opening overseas procurement markets. While the later commercial opportunities are often seen by governments and trade ministries as the main benefits of trade agreements this is a misnomer. The main gains from trade openness accrue from self-liberalization, not from others opening their markets to increase export opportunities. This is because replacing domestic production with more efficient imports improves the economy's allocative efficiency by releasing resources to be used more productively, whether in import-competing, exporting or non-tradable activities. Increasing exports per se, especially of particular goods or services to certain markets, does not necessarily raise GDP or national welfare, while trade creation from imports displacing inefficient activities does so unambiguously. Thus good economic sense is to focus on the impact of trade agreements in increasing the economy's imports, not their exports. This is the primary economic test that all trade agreements, including PTAs, should be assessed.

It is common for the economic benefits of trade agreements through increased export potential to be exaggerated and oversold by trade ministries and governments (APC, 2009). Market opportunities are only a minor contributor to export success. Opportunities must be realized. This depends on supply responses and the exporters' competitiveness, which is affected by many factors, mainly their efficiency which is affected by home economic, including trade-related, policies (e.g. their economy's openness) and exchange rates.

Thus, for trade agreements to be worthwhile economically they must help promote domestic unilateral reforms, the best and ultimately the only sustainable method of achieving meaningful

economic openness and gains. This is where trade agreements, especially PTAs, are failing. PTAs in particular are potentially harmful economically because they promote discriminatory liberalization, usually in tariffs.¹ PTAs rarely change actual non-tariff measures but where they do also open up possibilities of trade diversion. Trade Agreements, including PTAs, typically involve negotiating ‘on paper commitments’ that either match existing actual measures or more likely that contain substantial binding overhang by being less open than actual measures, and hence have no impact on actual trade barriers.

Thus, PTAs embrace discriminatory or preferential approaches (conditional MFN) to liberalization in contrast to normal WTO ‘unconditional’ MFN agreements. More importantly, PTAs contradict unilateral reforms, the most efficient approach since by nature they would be non-discriminatory based on ‘unconditional’ MFN. PTAs undermine unilateralism as governments focus on keeping ‘negotiation coin’ for future PTAs and base their trade policy thinking on flawed mercantilism that national welfare is enhanced mainly by getting other countries to liberalize and not from self-liberalization. PTAs also erode the WTO multilateral system by weakening its fundamental principle of ‘unconditional’ MFN. In this regard, the WTO Government Procurement Agreement (WTOGPA) is even an exception to the WTO, being an unattractive plurilateral ‘conditional’ MFN or preferential/discriminatory agreement.

Given the mercantilist dynamics of negotiating trade agreements, especially PTAs, overselling their perceived benefits from overseas market access is virtually inevitable. Each party negotiates from the position that ‘exports are good and imports are bad’, and accordingly adopt defensive strategies to get other parties to liberalize while conceding as little reciprocal opening as possible. Governments are not using trade agreements to promote self-liberalization, where most of the economic gains derive, but more often to entrench current protective arrangements or even to extend them. Thus it is no shock that trade agreements end up being ‘more gloss than substance’ snowed in window dressing being negotiated for foreign policy and other reasons but sold on dodgy economic gains.

This paper attempts to shed some light on the domestic policy implications by examining the role played by ANZ PTAs in setting their government procurement policies. Evaluating the effectiveness of trade agreements against each country’s actual procurement policies is the only meaningful benchmark to use since it is actual policy changes that matter, not simply negotiating commitments ‘on paper’. ANZ are negotiating a network of bilateral and interlocking plurilateral PTAs, often containing government procurement provisions. NZ has also just acceded to the WTOGPA and Australia has announced it is likely to follow. Both countries previously rejected joining the WTOGPA as it was seen to be a bad agreement.

The paper is structured as follows. Section 2 examines the development of Australian government procurement policies at the Commonwealth and most importantly State levels. Section 3 briefly looks at the NZ central government procurement policies. Section 4 examines the approach and commitments made by ANZ in their trade agreements, especially in PTAs (or their equivalent). Section 5 examines Australia’s continued use of government procurement as industry policy. Section 6 concludes the paper.

2. Australia’s Government Procurement Policies

An important milestone in Australian government procurement policies was the National Preference Agreement (NPA) signed in 1986 by the Commonwealth and State governments to phase out respective price preferences that favoured own-state suppliers. Price margins were calculated using the

¹ Unlike in the WTO where tariff bindings (caps) are negotiated, such that actual tariffs may not be changed, actual tariffs are negotiated in PTAs. However, changing actual tariffs preferentially bring with them the prospects of generating trade diversion in goods, which if on balance exceeding trade creation, can reduce the national welfare of PTA parties.

amount of own-state content. They were also applied against imported content. During the 1980's the push to remove inter-state price preferences developed as they became increasingly seen as major impediments to Australian growth.

NZ joined the NPA in June 1989. This followed a review of the Australian and New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), which entered into force in 1983. ANZCERTA agreed to a single Tasman government procurement market by calling for ANZ to work towards eliminating price preferences favouring domestic procurement (Article 11), and to remove offsets on procurement.

While the NPA removed inter-state price preferences by States agreeing not to apply them against each other, preferences remained against imports.² New South Wales (NSW), Victoria (VIC), Queensland (QLD) and South Australia (SA) joined the Commonwealth in applying 20% margins, while Western Australia (WA) and Tasmania (TAS) applied 10% margins.³ The Commonwealth and VIC subsequently removed price preferences on imports in 1989. These price margins, together with the zero price margins adopted by NZ, VIC and ACT were subsequently incorporated into the NPA.

Although the ANZCERTA extended the coverage of government procurement reforms to NZ suppliers in creating the single Tasman procurement market, the essence for the NPA was the unilateral removal of by Australia of inter-state preferences as part of domestic reform. This followed a report by the Australian Industry Assistance Commission, now called the Productivity Commission (PC), that showed preferences were penalizing the efficiency of the heavy engineering industry.

Australia removed inter-state preferences some three years before NZ was granted the same treatment as Australian content. NZ's accession to the NPA extended simultaneously reciprocal national treatment on price preferences to NZ suppliers. Australia therefore effectively extended discriminatory market access treatment to NZ via price preferences while NZ, which had no price preferences against imported content committed never to introduce any against Australian content. In 1991, the NPA was re-named the Australian and New Zealand Government Procurement Agreement (ANZGPA).⁴

a. The Government Procurement Agreement (ANZGPA)

The ANZGPA, like the NPA, encouraged cooperation in government procurement and the elimination of inter-state preference schemes and other forms of discrimination based on origin. ANZ suppliers could compete on an equal footing for government contracts in all States and in NZ. The ANZGPA also fostered discussions to promote greater uniformity in procurement policies and practices eg common contractual, technical and performance standards and specifications. The ANZGPA and its predecessor, the NPA, as domestic legislation signed by both governments thus formed the basis of implementing the single Tasman government procurement market.⁵ Accession to the ANZGPA, like ANZCERTA, is closed to other governments.

The ANZGPA covered Commonwealth, State or Territory bodies, statutory and non-statutory authorities, and government-controlled contracting bodies, but excluded procurement by local governments as well as by government-owned corporations, body corporate or other legal entities with the power to contract, unless the parties decided otherwise. Exemption from the application of

² State preferences applied only to goods and related services, not to just services.

³ The Australian Capital Territory (ACT) never applied preferences to its suppliers against other states or imported content.

⁴ Throughout this document to avoid confusion the WTO Government Procurement Agreement is referred to by the abbreviation 'WTOGPA' and the Australian Government procurement Agreement as the 'AGPA'.

⁵ The ANZGPA is administered by the Australian Procurement and Construction Council (APCC), in which NZ has full participation rights.

preference margins but not from other provisions of the NPA for specified Commonwealth and State bodies, except VIC and the ACT, were dropped in the ANZGPA; New Zealand had made no such exemptions under the NPA. As per the NPA, certain classes of procurement were also exempt from specific provisions (Box 1). ANZ could exempt new developments in purchasing policy, or use that policy to implement other policies, provided there was no discrimination based on origin; and advance purchases to stimulate depressed industries.⁶

Box 1: Specific exemptions from the ANZGPA

Joint bodies with other governments; bodies funded mainly from special industry levies, community groups, special grants or public donations: and bodies competing substantially with the private sector if significantly commercially disadvantaged by applying the preferences.

Procurement exempt from all provisions are:

- from own Departments or authorities if no other supplier asked to tender, unless public tenders called irrespective of whether a government body tenders; and
- in emergencies, e.g. natural disasters.

Procurement exempt from specified provisions are:

- dual or multiple sourcing based on sound and practical reasons not deemed to breach provisions prohibiting discrimination on origin;
- proprietary items to ensure machinery or equipment integrity, and of proprietary equipment of a work, health or safety nature specified in industrial agreements (provisions on selective use of specifications), unless available from a number of sources and public tenders called;
- strategic defence and other items affecting national security subject to provisions prohibiting discrimination but not subject to monitoring;
- Australian governments in accordance with Commonwealth non-procurement policies deemed not to contravene the ANZGPA; and
- when a local source is essential to ensure supply in case of a natural disaster or similar circumstances, and preferences are necessary for the viability of the local source, subject to unanimous agreement.

The ANZGPA committed ANZ to provide services, products and suppliers equal opportunity and treatment no less favourable than that accorded to their own domestic products and suppliers, and to ensure no inter-State and trans-Tasman application of preference schemes and other discrimination based on origin. Origin is defined using the ANZCERTA rules. Thus, as for ANZCERTA and imports of goods generally, the rules-of-origin act as a non-tariff measure restricting trans-Tasman government procurement. This is because NZ goods not meeting these rules-of-origin are ineligible for receiving Australian State preferences and hence discriminated against as non-NZ content.

The ANZGPA also called for promoting opportunities for ANZ suppliers to compete for government business based on value for money, and to avoid biased purchasing practices. It specifically excluded certain discriminatory or biased procurement practices which denied equal opportunity.⁷ Value for money became the primary determinant in procurement, which included quality, price, delivery and service support, using life-cycle or similar costing techniques, where appropriate.

Australia, as under the NPA, met the ANZGPA's national treatment obligation by extending State price preferences against imported content to NZ suppliers. Such price preferences continued not to apply to non-NZ imported content, thereby discriminating against it. The national treatment obligation

⁶ These provisions were seemingly never used.

⁷ For example, designing tender specifications and issuing tender requests to exclude ANZ suppliers; biasing specifications towards or against particular firms' products; the timing of tender opening and closing to prevent interested ANZ manufacturers developing proposals and submitting tenders; specifying quantities and delivery schedules reasonably judged to prevent ANZ firms meeting requirements; and adopting purchasing practices to avoid public scrutiny.

did not require Australia to remove its inter-state price preferences but rather that they apply also to NZ content.

While it would have been preferable economically for Australia to extend such market access unilaterally to all trading partners (not just NZ), even without reciprocity, this was never contemplated. Reforming government procurement was seen mainly in the context of removing inter-State price preferences and establishing the single Tasman market.

b. Commonwealth Government Procurement

Total Commonwealth procurement of goods and services in 2012-13 was \$48.9 billion, comprising over 66,000 contracts. Almost two-thirds related to services. Of the total Commonwealth procurement, some 11% by value and 5.6% by number of contracts was contracted overseas in 2013-14, mainly covering goods and services unavailable domestically. Thus, some 89% was likely to be procured domestically in 2013-14 (up from 82% in 2012-13 when 92% of services were likely to have been sourced from Australian suppliers and 70.1% of goods).⁸ Rather detailed centralized statistics are available on Commonwealth government procurement.

Over the past three years, the Commonwealth has purchased 93% of services from Australian suppliers (totalling \$60.2 billion) and 60% of goods (totalling \$28.7 billion). Much of the overseas procurement covered large military contracts for goods not produced domestically. Some half, by value, of Commonwealth procurement covers defence.

Commonwealth procurement was decentralized from the outset by devolving purchasing responsibilities to the procuring entities. Commonwealth Procurement Guidelines (CPGs) were first issued in 1998 under the Financial Management and Accountability (FMA) Act 1997. These were replaced by Commonwealth procurement Rules (CPRs) in December 2008. Commonwealth procurement was always underpinned by the core principles of value for money (on a whole-of-life basis), supported by efficiency and effectiveness; accountability and transparency; ethics; and industry development. Procuring entities have to consider the commercial and practical benefits of buying from competitive ANZ industries in evaluating value for money, and ensure that procurement methods do not discriminate against them, especially SMEs.

Key principles now also cover encouraging competition, risk management, and procurement methods. Value for money remains the core procurement rule, but is to also consider the non-financial costs and benefits of procurement. Suppliers must be treated equitably and not be discriminated against irrespective of size, degree of foreign affiliation or ownership, location, or origin of their *goods* and services. Provisions also exist on ethical and non-corrupt behaviour and procurement, and to ensure accountable and transparent processes.

The Department of Finance is responsible for the CPRs, which apply to all goods and services as well as procurement by all agencies falling under the FMA Act 1997 and prescribed bodies under the Commonwealth Authority and Companies Act 1997. CPRs were last updated in July 2014. They exclude procurement to maintain or restore international peace and security; to protect human health; essential security; and national artistic, historic or archaeological treasures. The new Public Governance, Performance and Accountability Act 2013, applied from July 2014, governs government procurement and includes CPRs as part of its rules.

⁸ However, classifying Australian sourced goods and services, especially by the Commonwealth, may be overstated because the only means of identifying local sourcing is the tenderers' Australian Business Taxation Number, and their business address. No information is available on the extent to which supplied goods and services is local content. Seeking further information from tenderers to determine local content shares would the Government believes add unreasonable complexity and 'red tape' to government procurement processes.

Commonwealth bodies have always had to source at least 10% of purchases from SMEs (ANZ firms with up to 200 full-time employees). Procurement practices should not unfairly discriminate against SMEs and provide them appropriate opportunities to compete. Determining value for money is to consider the benefits of contracting with competitive SMEs; barriers to entry that may prevent SMEs from competing eg costly preparation and submission of documents; SME capabilities and commitments to local or regional markets; and the potential benefits of having a larger, more competitive supplier base.

In 2012-13, overall SME participation in Commonwealth procurement was 31.7% by value, well above the 10% target, and 60.5% based on the number of contracts awarded. Another 12% was contracted to small enterprises.

Procurement above \$5 million also has to take account of and the tender documentation reflect any industry development criteria and associated evaluation methodology, where appropriate, to extend opportunities for SMEs to participate. No procurement methods are stipulated but are decided by the procurement entity case-by-case. Tenderers for projects exceeding \$5 million (\$6 million for construction) in significantly populated indigenous areas must consider opportunities for these communities.

The CPGs were substantially revised in 2005 to incorporate additional mandatory procurement and tendering procedures and rules on procurements at or above \$80,000 for FMA agencies, and \$400,000 for relevant CAC Act Bodies (excluding construction services where the threshold is \$7.5 million). These changes included in domestic legislation commitments agreed by Australia with the US in their Free Trade Agreement. Consistent with this Agreement, some specific procurement contracts exceeding the thresholds for FMA agencies and CAC bodies are exempt from these mandatory procedures (Box 2). For example, the exemptions for indigenous SMEs or suppliers primarily servicing disabled persons allows for direct contracting.

Box 2: Procurement Exempt from Mandatory Procedures

- Real property or accommodation, excluding construction and goods and services procured
- outside Australia for external consumption (including construction)
- from another government entity if no commercial market exists or when legislation or Commonwealth policy requires using a government provider eg tied legal services;
- by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Defence Imagery and Geospatial Organisation;
- from a business primarily providing services to disabled persons;
- from a business that primarily exists to provide the services of persons with a disability; and
- of goods and services from an SME with at least 50% indigenous ownership funded by international grants, loans or other assistance, grants and sponsorship payments from non-Commonwealth entities;
- directly for providing foreign assistance;
- research and development services;
- experts or neutral persons, including barristers, for current or anticipated litigation or dispute;
- fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;
- motor vehicles;
- by the Future Fund Management Agency of investment management, investment advisory, or master custody and safekeeping services for the purposes of managing and investing the assets of the Fund;
- blood plasma products, plasma fractionation services, government advertising services & labour hire.

These mandatory rules relate mainly to procurement processes and procedures eg a presumption for open tendering, when and under what conditions limited tendering could be used, and minimum time limits for tendering. By including these mandatory procurement procedures for generally non-construction procurements exceeding AUD\$80,000 into the CPGs/CPRs the Commonwealth

effectively extended these procedures and processes in AUSFTA provisions to all of Australia's trading partners. Thus, the Commonwealth effectively extends to all suppliers the same treatment which it has committed to under its PTA commitments on government procurement. But of course PTAs were not needed to achieve this outcome – it could have been better achieved by adopting these changes as part of a broadly-based unilateral, non-discriminatory procurement policy at the central government. Moreover, given the complexities of their procurement systems it is unclear if this is the case for at least some States.

Procurement-connected policies

These are provided for in the CPGs/CPRs and cover Commonwealth policies where procurement has been identified as a means of delivery. There have proliferated in recent years to number 24 administered among 11 Commonwealth departments (Table 1). The relevant policy-owning entity is responsible for administering, reviewing and providing information on the policy as required. These set special regulations that all suppliers to Commonwealth procurement must meet, including meeting other employment, worker disability and national codes or principles.

Table 1: Selected Procurement-connected Policies

Procurement-Connected Policy	Relevant Policy Agency	Start Year	Suppliers affected			Minimum Threshold (\$million)
			Small (<20)	SME (<200)	Large (>200)	
Procurement On-Time Payment Policy for Small Business	Finance	2012	X			Up to \$1
Competitive Neutrality Guidelines	Treasury	2004	X	X	X	
Legal Services Directions	Attorney General's	2005	X	X	X	\$5
Intellectual Property Principles for Australian Government Agencies	Attorney General's	2008	X	X	X	
National Code of Practice for Construction Industry Implementation Guidelines	Employment	2013	X	X	X	
Protective Security Policy Framework	Attorney General's	2013	X	X	X	
Trade Sanctions	Foreign Affairs & Trade	2014	X	X	X	
Information, Communications & Information Systems Security Manual	Signals Directorate, Defence	2005	X	X	X	
Commonwealth Disability Strategy	Social Services	2010	X	X	X	
Fair Work Principles (revoked 1 July 2014)	Employment	2010	X	X	X	
Workplace Gender Equality Procurement Principles and User Guide	Employment	2013	X	X	X	
The National Code of Practice for Construction Industry Implementation Guidelines	Employment	2013	X	X	X	
Australian Government ICT Sustainability Plan	Environment	2010	X	X	X	
ICT SME Participation Procurement Policy	Industry	2010	X	X	X	\$20
National Public Private Partnership Policy Framework & Guidelines	Infrastructure, Regional Australia	2008	X	X	X	\$50
Indigenous Opportunities Policy	Prime Minister & Cabinet	2011	X	X	X	\$5
Australian Industry Participation Plans for Government Procurement	Industry	2010	X	X	X	\$20

Policies to Assist Industry Participation in Procurement

The *Australian Industry Participation National Framework* (AIP National Framework) was signed by Commonwealth, State and Territory Governments in April 2001. They committed to incorporating in their industry development policy the principles of full, fair and reasonable opportunity; free of interstate preferences; regional development; competitive neutrality; value for money; transparency of process; policy consistency; and consistency with Australia's international obligations. In addition to the *AIP National Framework*, each state has its own industry participation policies aimed at increasing Australian industry participation in public and private sector investment projects.

Some industry participation assistance schemes fall under the Australian Industry participation (AIP) programs administered by the Department of Industry. They are designed to encourage full, fair and reasonable opportunities for Australian industry to compete in major public projects. AIP programs have required since 2010 tenderers for Commonwealth procurement over \$20 million to prepare and implement plans outlining proposed actions to provide Australian suppliers, especially SMEs, with opportunities.⁹ Requirements apply to all covered entities and have been adopted by some Commonwealth authorities and companies. The ICT SME participation procurement policy works the same for ICT contracts but requires higher AME participation of 20% for SME participation of the contract value for software/services levels (10% for hardware).

Commencing in December 2013, all major projects, both public and private, with a minimum capital expenditure of \$500 million must meet mandatory requirements (Australian Jobs Act 2013), which includes developing and implementing an AIP.

The Defence Department's procurement promotes Australian industry participation (Box 3).

⁹ As at end-February 2014, six AIP plans had been approved.

Box 3: Defence Material Procurement

Governments prefer directing defence capital expenditure to Australian-based firms to foster long-term, sustainable growth in the domestic defence industry. Hence, the Department of Defence's procurement policies and practices form part of a broader industry policy framework. Offsets or purchasing preferences are no longer used to procure capital equipment but industry is provided more detailed and timely information on Defence's future capital investment plans and operational aspects of its procurement policies and practices. Industry assistance is provided through a combination of:

- carefully tailoring and closely monitoring direct grants or subsidies to Australian-based firms, typically in industry skilling, innovation and export market development;
- adjusting timing of capital projects to assist Australian-based firms bridge gaps in their workload, if achievable at reasonable cost and within operational plans;
- paying price premiums to build or maintain domestic industry capabilities of especially high military-strategic value, in strict accordance with value for money; and
- implementing and progressively strengthening procurement rules so that tenderers can fully explore opportunities for Australian industry participation, and to accept those that are competitive.

These procurement rules are embedded in the Australian Industry Capability (AIC) Program. It differs from the AIP by eschewing the use of quotas or minimum targets to ensure domestic goods and services are properly considered. An AIC Plan must be prepared for procurement projects exceeding \$20 million. The AIC Program's effects mainly acquisition projects where the comparative advantage of Australian-based firms is generally weakest. On average, capital equipment acquisition projects absorb around 30% of Defence's total in-country equipment spend.

The Program also expressly provides that an AIC Plan be prepared for all procurement projects involving Priority Industry Capabilities (PICs). They are capabilities for building or supporting Defence capital equipment which, if not available in-country, are deemed to place at risk the nation's defence self-reliance and operational needs. The PIC program is to maintain industry capability at the minimum level consistent with identifiable need. PICs are assessed within a value for money framework.

Defence spends around \$10 billion annually on acquiring and sustaining capital equipment. Most is in-country, averaging 50-60%. Defence expenditure accounts for 60% of all shipbuilding and repairs in Australia.

c. State Government Procurement

State governments have their own procurement policies. They generally utilize the same principles as the Commonwealth e.g. value for money, competition and non-discrimination, but do not necessarily implement them in the same way. The availability of detailed statistics on government procurement varies substantially between the states. State procurement systems have also evolved to be complex and cumbersome, full of 'red tape', largely coinciding with efforts to remove relatively straightforward price preferences favouring local content with more hidden discretionary forms of discriminating against foreign content.

(i) New South Wales (NSW)

The NSW procurement system is decentralized; entities manage their own procurement. The Procurement Board administers the framework and associated regulations (Public Works and Procurement Act 1912). It develops and implements a government-wide strategic procurement approach; ensures best value for money (the overarching requirement); improves competition and facilitates access by the private sector, especially SMEs and regional enterprises; reduces administrative costs of procuring agencies; and simplifies procurement processes while ensuring probity and fairness.

Procurement by all agencies and prescribed state-owned corporations are covered. Also are goods and services (including construction) procured by or for an agency to either exercise statutory functions or pursuant to statutory procurement powers. Procuring entities must follow the Board's

policies and directions; adhere to probity and fairness; and provide requested information on procurement.

The Board has an Agency Accreditation Scheme to assess agencies' capability to undertake different levels and/or types of procurement. They can generally only engage in procurement consistent with their accreditation. When the Scheme extended to construction accredited agencies will be able to procure services over \$1.3 million.

Price preference margins

NSW until recently applied price preferences of 20% to goods and related services of ANZ origin. Margins applied on the imported content of all tenders claiming local content, and added to the tendered price used to evaluate tenders. Tenderers had to supply details of imported (non-ANZ) and local content and substantiate if required.

NSW firms also received additional country location preferences of 2.5% or 5% under the Country Industries Preference Scheme (CIPS). This preference was added to all other tender prices after applying the 20% preference margin against overseas content. If an inter-state or NZ supplier was the preferred tenderer after applying the ANZ preference, no country preference was applied. If for tenders above \$100,000 an Australian tenderer was not the lowest but was within 20% of the lowest tender (before application of preference), the responsible Minister could provide Australian tenderers an opportunity to reduce prices. Such Ministerial discretion could be exercised on significant purchases where the preference margin was insufficient for the Australian tenderer to win on price, or if it was believed circumstances warranted it. While the preference scheme recognised that the fundamental principle guiding procurement was to achieve best value for money, other factors also needed to be considered, such as technical performance, delivery, maintenance, and the NSW Government's wider economic development and social objectives. The Price Preference Schemes applied to all bids exceeding \$700,000.¹⁰

While the ANZ Price Preference Margin and Country Industries Preference Scheme ceased for large enterprises from 2008 they continued for SMEs as permitted under the AUSFTA. NSW also extended other AUSFTA procurement commitments, including on procedures and processes, by extending the minimum AUSFTA thresholds on covered procurement (construction of \$7.769 million and for goods and services of \$551,000) so that suppliers from the parties were treated the same as domestic suppliers. NSW had also certain exceptions specified in AUSFTA from covered procurement e.g. health and welfare services, education services and motor vehicles.

A new procurement scheme for SMEs called the Local Jobs First Plan was implemented from July 2009.¹¹ It improved SME opportunities to compete when providing ANZ content.¹² It covered all goods and services, including ICT and consultancies, exceeding \$700,000, and to all procurement methods.¹³ Agencies established specifications and evaluation procedures to provide ANZ-SME suppliers opportunities to compete on value for money, designed tendering procedures to minimize

¹⁰ The 20% price discount applied to the ANZ-SME content in tenders. The discount was not based on whether the tenderer was an SME but rather applied on the ANZ-SME content. In addition the CIP price margin applied as appropriate, but not to services with no manufacturing component. Tender prices adjusted for price discounts were used to evaluate the tender.

¹¹ ANZSMEs are firms employing up to 200 full-time equivalent persons.

¹² ANZ-SME content was the value-added content sourced from ANZ-based SMEs. It included ANZ value-added in supply chains by SMEs where it could be shown, but excluded overseas-based value addition and/or imported content. Goods not made in New Zealand but imported via there and not meeting ANZCERTA rules-of-origin are not considered ANZ content.

¹³ The Plan excluded construction and related services; and community service grants, unless purchasing a service from State contracts or other prequalified panels.

costs to tenderers, and included SME participation as tender criteria. For contracts from \$1 million to \$4 million, agencies also ensured tenders included SME participation criteria that were weighted in tender evaluation. For tenders above \$4 million, tenderers had to submit a SME participation plan (SMEPP) that included SME participation criteria. SMEPPs had a weighting in the tender evaluation of at least 6%.¹⁴

The Local Jobs Plan was replaced in early 2013 by the NSW Government Procurement: Small and Medium Enterprises Policy Framework. It is intended to increase government business opportunities, support competition, reduce administrative burdens for SMEs, maximise their access to government procurement opportunities to win public business, and to deal more easily with government. Agencies must improve SME access to procurement opportunities by taking reasonable steps to obtain at least one written quotation from a prequalified SME supplier for contracts up to \$1 million.

Price preferences for ANZ-SME content were removed. However, procuring agencies instead have to develop SME Opportunity Statements on the impact their procurement has on SMEs. The threshold for having to submit SMEPPs on how tenders will support local industry was also raised from \$4 million to \$10 million. They are still considered in the tender evaluation and, if successful, become part of the contract.

Open public tenders are no longer legislatively mandated as the default form for procuring goods and services. Procurement processes must be probity rich and transparent, suitable to the particular purchase, and have appropriate regard for policy and trade agreements.

The Government supports purchasing opportunities for businesses employing disabled people. Provisions simplify purchasing of some goods and services for directly engaging disability employment organisations, subject to achieving value for money. Agencies can buy goods and services up to \$150,000 from a recognised Aboriginal business, provided the suppliers' prices are reasonable and consistent with normal market levels, and at least one written quotation is obtained.

(ii) Victoria (VIC)

The Government Purchasing Board (VGPB) was established in 1995 under the Financial Management Act 1994. It develops procurement policy and practice. Since inception, VGPB's has led government procurement of goods and services to deliver value-for-money. In particular, it also develops procurement capability; minimises risk; and enables all businesses to access procurement opportunities. It monitors departmental compliance with procurement policies and Ministerial directions and reports irregularities to the relevant Minister.

VGPB policy and practices apply to all Government departments, Victoria Police and to 12 specified administrative offices. They do not extend to government business enterprises; construction; non-contractual agreements or any form of assistance including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, co-operative agreements and sponsorship arrangements; and purchasing arrangements associated with a project undertaken in accord with the Partnerships Victoria policy; and property (land) transactions.

Procurement methods include open, selective, and limited tendering as well as quotations for procurement up to and including \$150,000. Larger procurement is to be let by open or selective tender unless subject to an exemption. The rules were revised to incorporate the provisions of Australia's PTAs, most notably with the US. For example, exemptions from conducting open or selective tenders to engage by limited tender incorporate the Agreement's provisions as does the list of procurements

¹⁴ SMEPPs have quantitative details on employment, investment and other impacts, and comments on the tenderer's SME involvement in supply chains.

exempt from VGPA rules, and applying the minimum number of days for an open tender to close, are extended for covered procurement exceeding the agreed value thresholds.

Procurement policies seek to maximize opportunities for local suppliers ie the achievement of a desired procurement outcome at the best possible —not necessarily the lowest price— price based on a balanced judgement of relevant financial and non-financial factors. Competition and contestability are seen as important drivers to achieving value for money. The significant costs of tendering especially for SMEs are recognized, and the Government is committed to creating government procurement business opportunities for SMEs.

Departments must consider non-metropolitan regional suppliers if they offer at least the same value for money.

The Victoria Industry Participation Plan (VIPP)

The VIPP encourages bidders for government contracts to use local suppliers, including SMEs, in delivering procurements. It is concerned with procurement activity where the goods and services are considered contestable and competitive international and ANZ markets exist. The VIPP is administered by the Industry Capability Network (ICN) Victoria. The ICN certifies VIPPs prepared by short-listed bidders, and assists them in preparing VIPP Plans, under strict probity arrangements. In 2013-14, ICN secured orders of \$22 million for local industry under the VIPP.

VIPP processes cover procurement wholly or partially funded by Government equal to or above \$1 million in regional VIC and \$3 million in Melbourne. Procurements must be registered on the VIPP Management Centre website when the ICN advises if the activity has contestable items. If so, shortlisted bidders must prepare VIPPs detailing ANZ content.¹⁵

From 2013 a 'contestability assessment' introduced focuses on procurement of 'contestable' goods and services where local suppliers compete with international firms, to promote local business opportunities without compromising value for money but to avoid the costs to bidders in completing VIPP plans on projects that by their nature will be delivered locally.¹⁶

No VIPP Plans are required for activities assessed with no or limited contestability procurements (no competitive international suppliers or local suppliers). The agency must still meet the VIPP's objectives and record the estimated local content of shortlisted suppliers. If assessed as a contestable procurement (competitive local and international suppliers), the standard VIPP process applies and shortlisted suppliers must provide an ICN-certified VIPP Plan. The Government can also declare projects and procurement as strategically significant to the VIC economy if over \$250 million or more, or have capital costs of at least \$100 million. The Government can then set minimum local content requirements and other conditions on the delivery of outcomes for local industry. During 2013-14 the eight declared strategic projects exceeded \$11 billion and committed to an average local content of over 84%.

In 2013-14, the contestability of 399 contracts, worth over \$5 billion, were assessed, of which 216 contracts (valued over \$2.5 billion) were found contestable and required shortlisted bidders to submit VIPP plans (Box 4). Of the rest that had no or limited contestability, 85% were found to be local by

¹⁵ VIPPs also contains details on number of new jobs created and existing jobs retained; introduction of new technology, opportunities for skills transfer and employee training; number of new apprentices/trainees engaged those retained.

¹⁶ The revised guidelines also enhanced details on suppliers' opportunities by requiring ICN Victoria to provide agencies and shortlisted bidders a list of 'contestable' goods and services on specific procurement activities, highlighting opportunities for local firms early in the procurement process by being included on the tender request. A new electronic VIPP with improved assistance features for businesses and agencies was also added, along with more robust monitoring and reporting requirements to demonstrate the local content outcomes achieved through the VIPP's implementation, including introducing post-contract verification process.

nature ie items tendered were only available locally with low international competition. The remainder were assessed to be international by nature with products or services being unavailable locally.

Box 4: Contestable Projects

Of the 216 'contestable' contracts requiring VIPPs 163 (worth \$1.68 billion) commenced in 2013-14. Successful bidders committed to using 84.1% local content on average, representing \$1.41 billion in local orders, creating 1,282 new jobs and retaining a further 5,103 existing jobs. The contracts are also expected to create 214 new, and retain 606 existing, apprenticeships/traineeships across Victoria. Activities covered included infrastructure works, purchase of medical equipment, construction of schools and supply of IT equipment. In 2013-14, 324 SMEs were reported to have prepared VIPP plans. During 2013-14, 128 contracts worth \$948 million were reported completed. Most contractors claimed to have at least achieved their local content commitments. Average local content commitment planned was 90.2%, and contractors reported an aggregated local content outcome of 90.2%. A total of 1,111 new jobs were created in Victoria.

(iii) Queensland (QLD)

QLD's procurement policy focuses on value for money, determined by price, non-price eg social and economic objectives (eg sustainability, regional development and employment, fitness for purpose, quality, service and support) and cost-related factors eg whole-of-life costs and transaction costs. Procurement policy aims to help regional development and competitive local businesses by encouraging agencies to buy locally. QLD had already removed its 20% price preferences on government procurement for ANZ local content.

Goods and services can be procured by several means, including open, selective and limited tendering. QLD's SME procurement policy, which includes ANZ businesses, aims at providing local industry full, fair and reasonable opportunities to obtain major work. The QLD procurement market is around \$6 billion annually.

Industry Capability Network Queensland (ICN Queensland)

This is a free government-subsidized service to increase local content and industry participation in procurement, working to reduce imports and maximise opportunities for local industry. It identifies Australia's best products, services, capabilities and capacity to competitively meet private and public sector procurement needs. ICN provides information to support government priorities for QLD jobs and building regions. It evaluates local capability across many industries to assist firms raise the local content of their tenders.

ICT SME Participation Scheme

This Scheme applies to ICT procurement by all agencies and assists ICT SMEs gain greater access to public contracts. Following recent revisions, any procurement must have at least one capable SME shortlisted in evaluating tenders, and at least two SME offers for contracts between \$150,000 and \$250,000 or apply an SME participation score.¹⁷ Larger contracts require an SME participation score and a Procurement Plan. Agencies can also now directly engage SMEs to provide innovative solutions up to \$500,000.

¹⁷ The SME participation score is used to rank tenders, whereby the score contributes 10% to the final tender score. The tenderer with the highest participation level is given a score of 10, with the remaining tenderer's scores being assigned as a proportion of 10. SME participation levels are calculated on the net proportion of the contract which is to be paid to SMEs.

Procurement Transformation Program (PTP)

A revised procurement policy, PTP, was released in 2013 that essentially reinforced previous arrangements. In place until end-2015, it aims to better implement the policy and design whole-of-government better-practice procurement processes. Procurement is still being used to advance the government's economic, environmental and social objectives.

Queensland Government Building and Construction Training Policy

This policy replaced the Indigenous Employment Policy for QLD Government Building and Civil Construction Projects (IEP), and the Building and Construction Contracts Structured Training Policy from July 2014.¹⁸ It supports employment and skills development in QLD's building and construction industry, and focuses on increasing the economic independence of indigenous people. All departments and statutory bodies must comply on public building projects of at least \$500,000 and civil construction projects of \$3 million or over. Eligible projects include those in specified indigenous areas.

For indigenous projects, the 10% share of the total labour hours required for training must be met by indigenous apprentices, trainees and workers. An extra amount, equivalent to 10% of the total labour hours (which equates to a minimum of 3% of the estimated project value for building projects and a minimum of 1.5% of the estimated project value for civil construction projects) must be allocated to an agreed Indigenous Economic Opportunities Plan. This sets minimum agreed outcomes and provides flexibility so the project's local economic opportunities can be maximised.

Procuring agencies can select building or civil construction projects outside specified indigenous areas as indigenous projects if they are proposed as indigenous projects; specifically for use and benefit of indigenous people; located in a specified priority regional area; or agreed between with the Director-General of DATSIMA.

Charter for Local Content

This provides all businesses with full, fair and reasonable opportunities to tender for procurement. It covers all goods and services, including construction, but excludes ICT. It does not mandate agencies to use local suppliers but provides a mechanism for them to effectively and efficiently consider a wide range of potential suppliers. The Charter supports agencies to embed local content within procurement seen to support the objective of value for money by also encouraging greater competition; providing market opportunities for local firms; and demonstrating equivalence with private sector best practice.

Procurements subject to the Charter include those with a government contribution exceeding \$5 million, or \$2.5 million in regional QLD; Public Private Partnerships for projects and capital asset acquisitions exceeding \$5 million; strategically significant purchases set by the procuring agency eg in an area of high unemployment or affected adversely by economic or other events eg natural disaster; and infrastructure projects with Commonwealth funding via the QLD Government exceeding \$20 million.

¹⁸ The IEP, introduced in 2001, applied to all civil construction, and building construction projects above \$250,000. It required at least 20% of total labour hours to be supplied by indigenous workers in nominated indigenous areas, with half of these hours to be accredited training. The Structured training Policy required a minimum of 10% of the total labour hours on any Government building or civil construction project (over \$250,000 for buildings or \$500,000 for civil construction) be met by indigenous workers, apprentices, trainees or cadets or used for the up-skilling of existing employees (to a maximum of 25%). It covered all QLD areas except the indigenous areas specified in the IEP.

(iv) South Australia (SA)

In 2013-14, the SA government procurement market was about \$4 billion, of which about 70% was services. Competitive tendering processes covered some 61% of contracts (89% by value); the rest was let mainly by direct negotiation (limited tendering). Most (96%) of all contracts were let to ANZ suppliers (98% by value); over two-thirds of total contracts were with SA suppliers (80% by value) and only 4% (2% by value) were let overseas. The share, by value, of contracts with SA suppliers rose from 42% in 2011-12 to 51% in 2012-13.

The State Procurement Board began overseeing procurement by public authorities in 2005 (State Procurement Act 2004). It facilitates strategic procurement by agencies; reviews policies, principles and procurement guidelines; develops, issues and reviews standards for electronic procurement; and investigates and reviews compliance with policies.

Procuring agencies are to obtain value for money; treat participants ethically and fairly; and ensure probity, accountability and transparency. Value for money involves determining the extent to which proposals will optimally deliver whole-of-life cost and quality (non-cost) factors, and contribute to government priorities.

The Industry Participation Policy (IPP)

A new IPP policy started in July 2012 was updated in 2014 to make local jobs, investment and supplier inputs critical to procurement. The Government is committed to ensuring that capable State SMEs receive full, fair and reasonable opportunities to be considered for major public and private works. The IPP is not intended to alter the prime goal of value for money, but to ensure this is assessed mindful of the contract's broader impact on SA, including to local industry, especially SMEs eg on employment; industry capability and capacity via investment; retention of state economic activity and additional value-adding activities, innovation; and supply chain development. The IPP does not mandate local content levels or preferential treatment of ANZ suppliers eg by price preferences.

The IPP covers all expenditure by public authorities prescribed under the *State Procurement Act 2004* exceeding \$22,000, including on infrastructure and construction; Public Private Partnership projects; Federally-funded infrastructure and construction projects managed by the SA Government; and private sector projects with significant SA Government support (over \$2.5 million cash and in-kind).

While no specific requirements exist for tenders under \$22,000, agencies are to use local businesses where possible and encourage winning tenderers to use local SMEs. For contracts between \$22,000 and \$220,000 where a minimum of three quotes are being sourced, at least one must be from SA. Between \$220,000 and \$4 million (\$1 million in regional SA) agencies are to use the Industry Capability Network (ICN) Gateway database.

For contracts of \$4 million and over, but below \$50 million (or \$1 million and above in regional areas), tenderers must submit standard Industry Participation Plans (IPP). These must identify how they will provide full, fair and reasonable opportunities for local SME's to compete for contracts or participate in major public and private sector projects, or more specifically to consider products and capabilities provided by local SME's; promote economic contribution to the state including employment and growth; and monitor and record SME involvement.¹⁹

For contracts of \$50 million and over and projects (regardless of value) declared by the SA Government as 'Strategic' (in accordance with the IPP criteria), tenderers must prepare a tailored IPP. It will include a detailed methodology to identify and consider local SME participation, and

¹⁹ While completing a standard IPP is voluntary on contracts between \$4 million and below \$10 million, firms not doing so will receive a zero score for the IPP weighted criteria. For contracts above \$10 million an IPP is mandatory.

information on additional economic benefits for the SA economy. It should also give opportunities to involve local SMEs in value-added research, design work and advanced services.

The IPP is considered through a weighted evaluation criterion in awarding tenders. The assessment criteria will vary depending on the nature of the procurement but will typically include the number of jobs and the value of investment in SA directly linked to the contract; the approach to consider SME involvement through supply chain opportunities; and the tenderer's record in meeting IPPs. The procuring agency sets the weighting subject to a general minimum 5%, and 10% for heavy and civil engineering construction; professional, scientific and technical services; non-residential construction; and electrical equipment.

In 2014, an Employment Contribution Test (ECT) was added for procurements above \$22,000 up to \$4 million in Adelaide, and \$1 million in regional SA. Agencies must first determine if the procured goods and/or services are available within SA. If so, all tenderers must provide the number of labour hours associated with the primary contract and any sub-contracts. For such procurements in Adelaide the ECT receives a minimum 5% weighting in the tender evaluation. In regional SA, it is intended that at least 15% of the jobs from the procurement will go to local people. On specific procurements a 15% weighting will apply, and can be higher in particular areas to provide greater flow-on regional economic benefits.

While the same IPP's weighting apply to procurements above \$50 million, a merit assessment is to determine the appropriateness of the minimum weightings. For these contracts the OIA will advise on the higher weightings (above the minimum levels) for the IPPs; help develop a template for a Tailored IPP; and initiate identifying SME opportunities.

In all procurements with an ECT or an IPP the agency or Government can raise the mandatory minimum weightings based on the proposal's merit eg potential exists for significant economic and social benefit to SA, or to specific regions, including employment, investment and supply-chain benefits. Factors to be considered in lifting the weighting include whether the activity is in an area or sector of the economy with high unemployment and/or low socioeconomic standing; a local supplier exists which may replace imports; can stimulate a local industry still developing or in decline; provides skills transfer or up-skilling of local workers; and offers capital investment with long term SA benefits.

(v) Western Australia (WA)

In 2012-13, Tenders WA recorded 4,760 agency-specific contracts, totalling \$7.58 billion (goods, services and infrastructure). About \$5 billion was spent on WA suppliers under the State's Buy Local Policy.

The State Supply Commission (SSC) delegates purchasing and contracting authority to agencies (State Supply Commission Act 1991). Procurement must achieve best value for money. Agencies must align its procurement with Government policies, objectives and strategies, and actively support whole-of-government initiatives. Cost and non-cost factors must be considered. The value for money test may vary in complexity depending on the purchase, from a simple price assessment for low value highly commoditized goods or services, to a detailed assessment.

Direct purchase and verbal quotations are allowed for procurement up to \$50,000 (\$20,000 before July 2014). Written quotations are needed for contracts up to \$250,000 (previously \$150,000). For contracts above \$250,000 (\$150,000 before July 2014) open and effective competition must provide suppliers with fair and equitable access while maintaining transparency and integrity. These minimum requirements may be waived eg buying from an indigenous business up to \$250,000 (\$150,000 before 1 July 2014) or from businesses primarily providing services of disabled persons.

Buy Local Policy

Operating this since 2001 it maximizes opportunities to develop both WA and Australian businesses while gaining value for money. The Policy has initiatives and price preferences to enhance local business opportunities in procurement. Agencies must give priority to indigenous tenderers and consider implementing indigenous employment strategies.

Agencies' requests for quotation or tender must reflect local business capability and recognise local content in evaluating bids. Tenders of \$750,000 and above must have a local content evaluation criterion with a minimum 20% weighting. Social, economic, environmental and regional development impacts are also to be considered. Agencies are encouraged to use a similar approach on smaller contracts. The intent is to select contractors supporting local WA businesses offering value for money tenders. A minimum local purchasing target of 80% applies.

Price Preferences

There are two price preferences, namely the Imported Content Impost (ICI) and the Regional Price Preferences (RPP). ICI requires agencies to apply a 20% price impost to non-ANZ goods and related services. Two RPPs apply, namely the Regional Business Preference (RBP) and Regional Content Preference (RCP). RBP applies to eligible regional businesses within a prescribed distance from a regional purchase or contract point of delivery to the total bid value. RCP applies, under certain circumstances, to all WA tenderers buying services or materials from regional businesses for use in regional contracts. RCP applies to the cost of services or materials bought from businesses located in the prescribed distance, and used to deliver the contract. Due to the ANZGPA, when bids received from inter-state or NZ suppliers are being considered the RCP and RBP do not apply.

The RBP and RCP price margins are 10% for the total cost of goods and services (up to \$50,000) and 5% (up to \$50,000) for Housing and Works Purchases. Chief Executive Officers can raise these caps on individual procurements where further support to regional businesses offers demonstrated economic benefits. In July 2013, RPP caps were raised to \$250,000 each, and the total maximum preference claimable to \$250,000 for goods and services, and \$500,000 for housing and works.

From December 2009, the application of these price preferences was amended to comply with Australia's PTAs, including with the US. Local content weightings for awarding tenders were removed on covered procurements for US and Chilean businesses ie such imported content is treated like ANZ content.

Building Local industry Policy

This Policy maximizes procurement opportunities for local businesses and creates employment opportunities. An Industry Participation Plan (IPP) must be prepared for all public projects over \$20 million or where the capital equipment exceeds \$1 million.²⁰ It intends building a project-wide procurement strategy by providing WA industry with full, fair and reasonable opportunity.²¹ IPPs should describe the project's direct economic impact on WA industry via employment, skills transfer, strategic alliances and regional development; the type, number of and size of procurement packages and/or eligible goods; clearly state how the proposal will maximise use of competitive local business.

²⁰ An IPP may be needed on smaller projects eg if potential exists for low levels of local industry participation due to the firm being new to WA; the supply chain of the lead contractor excludes WA suppliers; involves skills or knowledge sets prioritized by WA; is in a region targeted for development; and potential exists for regional employment.

²¹ The IPP should try to ensure all project participants gain a greater knowledge of WA capabilities by brokering linkages between project proponents, the contractors involved in the project, domestic and global supply chains and WA industry. It needs to support longer-term industry development objectives by encouraging consortia building and strategic partnering among local firms, and by facilitating the integration of Australian industry into domestic and global supply chains. In addition the IPP should also address the economic impact of the project.

The Policy applies to all WA Government purchasing, including using a local content selection criterion with a 20% minimum 20% weighting in evaluating public tenders of \$750,000 or more. Special focus is to be given to promoting the local indigenous participation.

The Industry Capability Network WA, a joint industry government initiative, helps enhance global competitiveness of purchasers, while supporting local industry participation. It advises agencies on WA industry capacity and competitiveness. Since implementing the framework in July 2011, contracts worth some \$60 billion have been won by local suppliers.

(vi) Tasmania (TAS)

Procuring agencies must pursue value for money by obtaining the best price after weighing up the purchase's costs and benefits. Value for money factors are to be specifically included in the evaluation criteria, and can include the contribution to government policy objectives of supporting local and regional business by fostering industry development and job creation. Procurement must be impartial, open and encourage competitive offers using transparent non-discriminatory processes.

Agencies must ensure local businesses can participate in procurement, and adopt the Government's Buy Local Policy requirements. They do not provide preferences but must actively seek local bids and ensure that processes do not unnecessarily preclude local businesses from bidding or disadvantage local suppliers.

Procuring agencies can receive direct quotes to buy goods and services at or below \$50,000. They must seek at least three written quotations for larger contracts up to \$250,000, unless granted approval for direct/limited tendering for 'covered procurement' under Australia's PTAs, or for other procurement if the costs to the agency and suppliers of seeking quotations or calling public tenders would outweigh the value for money benefits, or where exceptional circumstances exist justifying the use of direct/limited tendering. Where local capability exists, at least one quotation must be sought from a TAS business. It is expected that direct/limited sourcing will be rare.

Agencies may directly procure from businesses mainly providing services to disabled people. If activated, the mandatory requirement to seek three written quotations or to call open tenders can be waived.

Buy Local Policy

This provides mandatory procurement planning requirements, a local benefits test, and industry participation plans (IPPs). On procurements exceeding \$50,000 agencies must submit a pre-procurement local impact assessment ensuring local suppliers can participate with success. For smaller contracts, the impact on local suppliers is to be assessed. Agencies must ensure the planning process and procurement specifications do not disadvantage local SME suppliers, and disaggregate all substantial procurement opportunities unless exempted.²² This may be granted where the benefits of aggregation clearly outweigh the potential negative impact on local SMEs or the local economy.

Suppliers must prepare IPPs for tenders exceeding \$5 million, and may be required on smaller projects over \$2 million. The agency must approve IPPs. For private sector projects over \$5 million with government support of \$500,000 or more, the funding agency must ensure an IPP is prepared. Executive Summaries of IPPs are published by Treasury.

Agencies must request suppliers provide a Local SME Industry Impact Statement for procurements of or above \$2 million, or \$5 million if the agency has decided that no IPP is required.²³ The

²² Any combined contract of \$250 000 or more. Under this level, disaggregation is at the agency's discretion.

²³ Local SMEs are ANZ businesses with below 200 employees.

evaluation criteria for contracts over \$50,000 must include the local SME industry impact statement or the IPP. While voluntary, suppliers not submitting these plans and IPPs will receive zero weighting. The weighting is set by the agency of at least 10%.

3. New Zealand (NZ) Government Procurement Policies

The NZ Government spends annually some NZ\$38-40 billion on goods and services, including infrastructure. Each agency conducts its own procurement. NZ started reforming government procurement in 2009 to achieve cost savings; build capacity and capability of procurers; enhance business participation; and improve governance, oversight and accountability. Aggregated procurement of selected common-use goods and services through “all-of-government” contracts was developed using “Centres of Expertise” in designated lead agencies. The Rules of Sourcing replaced the 2006 Mandatory Rules for Procurement by Departments from October 2013, and were reviewed in May 2014. Revised Rules are to be released shortly to align with internationally-recognised standards of the WTOGPA, which NZ has recently acceded, and commitments on government procurement in recent PTAs. The Rules on Sourcing are the Government’s standards of good practice for procurement planning, approaching the market and contracting. Centralized statistics on national government procurement do not appear to be readily available.

The procurement rules are administered by the Ministry of Business, Innovation and employment (MIBE). They apply to all Public Service departments, the NZ Police, the Defence Force and from February 2015 all Crown Agents including district health boards. The rules cover contracts of at least \$100,000 for goods and services (\$10 million or more for construction). They promote value for money, which means considering also non-price factors eg total cost of ownership and other direct benefits. Contracts are to be let either to the tenderer with the best value for money over the whole-of-life of the goods, services or works, or with the lowest price if price is the only criterion.

Government is committed to open, transparent and competitive procurement with no discrimination against suppliers (domestic or international) by origin. The first Rule covers the key procurement principles applicable to all contracts, namely to plan and manage procurement; be fair to all suppliers; get the right supplier; obtain best deal for all; and to play by the rules. Fairness means treating all suppliers equally i.e. non-discrimination; giving NZ suppliers a full and fair opportunity to compete; and making it easy for all suppliers (small to large) to bid. Social, environmental and economic effects must be considered.

Other Rules cover procurement integrity; no offsets; non-discrimination among suppliers based on foreign ownership or overseas business affiliations so that foreigners are treated no less favourably than NZ suppliers; protecting supplier’s information; requirements to openly advertise, unless exempted (Box 5);²⁴ agencies annual submission to the MBIE of Strategic Procurement Outlooks and Procurement Plans. These rules help provide open and fair competition that supports innovation, and helps create a productive NZ supply base. Certain opt-out procurements apply from the rules but are still subject to the procurement principles.²⁵ Open tendering is the default method for procurements over \$100,000.

²⁴ If exempt from open advertising, the agency must use either a closed competitive process (with a limited number of known suppliers) or a direct source process (with a known supplier). Such exemptions cannot be used to avoid competition, protect domestic suppliers, or to discriminate against any domestic or international supplier.

²⁵ Valid opt-out procurements include procurements between government departments, NZ Police or NZ Defence Force unless an open tender process is used; overseas for consumption abroad; for overseas offices; non-contractual arrangements; buying land or buildings; under conditional grants; funded by international aid, grant, loan or other assistance or that must comply with an international organisation’s procedure where that procedure is inconsistent with the Rules; certain types of public health, education and welfare services; Government’s central financial control functions; and procurement necessary to protect military and essential security and national defence interests as well as

Box 5: Exemptions from Open Advertising (Tender)

These cover emergencies and if:

- After an open tender advertised within the last 12 months where the contract's core requirements are unchanged and no responses compliant with the pre-conditions or requirements (including quantity), or were only from suppliers verified to have colluded,;
- Only one supplier exists of the goods, services or works and no reasonable alternative or substitute exists due to technical reasons preventing real competition, or procurement is of (i) intellectual property or associated (including patents or copyrights) or other exclusive rights or (ii) a work of art;
- Goods, services or works are additional to original requirements and necessary for complete delivery where (i) the original contract was openly advertised (ii) changing supplier is impossible for economic or technical reasons, and would significantly inconvenience or substantially duplicate agency costs;
- Buying a prototype for research, experiment, study or original development, including limited production or supply necessary to (i) perform field tests and incorporate the findings, or (ii) prove the good, service or works can be supplied in large numbers to an agreed quality (excluding production or supply to establish commercial viability or to recover research and development costs).;
- Goods purchased on a commodity market;
- Very short term purchases in exceptionally advantageous conditions (but not from regular suppliers);
- Contracts awarded to design contest winners where it is organised consistent with the Rules and the judges know they will be awarded a contract, and have no conflict of interest;
- Agency does not need to openly advertise contracts awarded by an established Panel of Suppliers; and
- Agency receives an unsolicited unique proposal for goods, services or works not otherwise readily available in the market that aligns with government objectives, and is value for money.

NZ maintains procurement measures to accord more favourable treatment to the Maori population, including meeting the Government's obligations under the Treaty of Waitangi. It also appears that limited price preferences of between 2% and 5% were applied by a few local governments to home suppliers on procurement, but it is unknown if they still exist (APEC, 2003). The NZ Government has no direct control over the procurement by local authorities, which varies. Central Government departments are directed to obtain from suppliers information on any local content they offer, but is intended only to enable agencies to consider any commercial and practical value for money advantages of local supply. Agencies are still expected to obtain the best value for money supplier, either domestic or international, based on their judgement of all costs and benefits (APEC, 2003).

With the possible exception of some relatively minor local government procurement and preferential schemes for the indigenous population, the NZ procurement market has been open without discrimination to foreign suppliers, due to unilateral policy decisions.

This situation contrasts sharply with the less transparent and more restrictive arrangements emerging in recent years in Australia, especially at the State level.

4. Role of Trade Agreements

ANZ belong to an increasing number of discriminatory bilateral and regional PTAs (so-called Free Trade Agreements or their equivalent) with government procurement commitments. Both have created a network of overlapping or criss-crossing PTAs with themselves and trading partners belonging to several agreements.

Also while the WTOGPA is a multilateral plurilateral agreement within the WTO, it is like a series of PTAs because it applies 'conditional MFN' and discriminates between WTO GPA

(Contd.) _____

maintaining international peace and human health eg arms, ammunition, war materials, peace-keeping deployment, and measures to protect: public morals, order or safety; human, animal or plant life or health, intellectual property, or relating to goods, services or works of persons with disabilities, philanthropic or not-for-profit institutions, and prison labour.

members and other WTO Members. Moreover, while not a conventional ie binding trade agreement the Asia Pacific Economic Cooperation (APEC) can be considered a trade agreement. Most ANZ PTAs are with other APEC economies.

Government procurement commitments in ANZ’s trade agreements tend to use a positive list identifying those entities covered by the commitments (subject to minimum threshold values) and a negative list of measures and types of procurement that are excluded from the commitments, including national treatment. With the exception of APEC, they are also discriminatory as they are based on conditional MFN.

(a) Asia Pacific Economic Cooperation (APEC)

This is a voluntary trade agreement comprising a large number of Asian and Pacific economies, including the US and China, formed in 1989. APEC was based on the concepts of ‘open regionalism’, namely non-discrimination and concerted unilateralism. This, however, no longer is the case, especially given the proliferation of PTAs in the region and the widespread support that now exists to negotiate a discriminatory APEC PTA.

APEC’s Non-binding Principles on Government Procurement were endorsed in 1999, including by ANZ. These cover key principles of value for money, open and effective competition, accountability and due process, fair dealing, and non-discrimination (Table 2). While conceptually covering all central and sub-central government procuring entities, the principles are non-binding. APEC economies had to choose to unilaterally apply them. Many APEC principles reflected those of the WTOGPA, although usually less prescriptively.

Table 2: Summary of APEC Non-Binding Principles on Government Procurement

Feature	Description
Value for Money (VfM)	Procurement to achieve best VfM on a whole-of-life basis using comparative analysis of all relevant costs & benefits. Lowest price not necessarily best VfM. Must also consider factors like market maturity; performance history of prospective suppliers; relative risk of proposals; financial considerations; & contract options. Market approaches must specify relevant conditions for participation & evaluation criteria to properly identify, assess & compare costs & benefits fairly & equitably over the procurement cycle.
Open & Effective Competition (OEC)	Competition important for due process, fair dealing & VfM. OEC requires conducting an appropriate competitive process open & accessible to all suppliers. Bidding should be predictable & enable new entrants. Procurement procedures to encourage competition & non-discrimination, & to effectively address any limits identified to competition.
Accountability & Due Process	Governments must be accountable for procurement & officials answerable through clear lines of accountability & use of open & transparent processes. Due process & transparency important. Safeguards for individual rights; aggrieved suppliers to have rights to a fair hearing. Independent scrutiny facilitates accountability & due process.
Fair Dealing (FD)	FD is conducting business openly with full disclosure & no conflicts of interest or self-dealing by officials. Procurement to be fair, reasonable & equitable with integrity. Commercially sensitive information to be secure. Ethical behavioural standards.
Non Discrimination (ND)	ND prevents bias for/against businesses or products. Suppliers assessed on ability to meet requirements using legal, commercial, technical & financial capacities, not excluded or denied equitable treatment due to their degree of foreign affiliation or ownership, location or size. Bids awarded on published criteria.
Transparency	Transparency assures procurements processes are appropriate & that policy & legislative obligations are met. It involves taking steps to support appropriate scrutiny of procurements.

ANZ helped formulate the APEC principles, which generally reflected and supported unilateral reforms implemented by from the mid-1980s. Thus, these principles were by and large common elements of their procurement arrangements, at least at the central level. Some Australian states especially and NZ local governments still maintained discriminatory price preferences against imported non-ANZ content. This reflected APEC's voluntary nature and that the principles did not formally commit to national treatment or MFN.

(b) WTO Government Procurement Agreement (WTOGPA)

The WTOGPA is a plurilateral agreement formed among a sub-set of WTO members in 1996. A revised WTOGPA came into force in April 2014, but the practical value of these revisions would appear limited. Its key principles are conditional non-discrimination (national treatment on covered procurement and conditional MFN ie only between WTOGPA parties thus discriminating against non-parties), transparency, value for money, open and effective competition, including on the use of non-open tendering (Table 3).

Unlike APEC, the WTOGPA is binding on and between those WTO Members that have joined, about to increase from 43 to 45 economies. It is thus a discriminatory agreement centred on conditional MFN. Its national treatment obligation that effectively banned price preferences for non-developing countries is also conditional in that it only applies to covered procurement specified by each signatory ie the purchase of goods and services above the relevant threshold values specified for included procuring entities unless specifically exempted/excluded, of which there are many. Each party nominates the central, sub-central and other agencies along with the goods, services and construction services covered. Moreover, the offsets prohibition only applies to covered procurement.

As Australia and until now NZ never joined the WTOGPA it had little direct impact on reforming their government procurement systems. NZ felt that the WTOGPA concessions were discriminatory, and that the regulatory burdens imposed by its procedural requirements placed overly prescriptive rules and guidelines on procuring agencies. Australia argued that the WTOGPA departed from the MFN principle; allowed bilateral agreements between signatories that carved out sensitive sectors; and set prescriptive procedural requirements at odds with State practices eg preferential price preferences. These criticisms against the WTOGPA remain equally valid today.

(i) Australia

The Australian Department of Foreign Affairs and Trade (DFAT) announced in November 2014 that Australia would work towards WTOGPA accession, implying that membership was highly likely (DFAT, 2014). Its view is that current arrangements are substantially compliant with the WTOGPA so that joining would require only a few changes (eg implementing effective, timely, transparent and non-discriminatory review procedures for suppliers and certain processes for pre-qualification and limited tendering) (DFAT, 2014).

Table 3: Summary of Key Provisions of the WTOGPA

Provision	Details
Coverage & scope	Measures affecting covered procurement, defined as buying goods & services, including construction, specified by each Member for non-commercial sale or resale by any contractual means (eg purchase, lease, rental, hire purchase) exceeding the specified threshold values by a non-excluded procurement entity. Members nominate the central, sub-central & other agencies covered (positive list).
Exclusions	Acquisition or rental of immovable property eg land, existing buildings; non-contractual agreements or any form of assistance eg cooperative agreements, grants, loans, equity infusions, guarantees & fiscal incentives; purchases of fiscal agency or depository services, liquidation & management services for regulated financial institutions or services related to the sale, redemption & distribution of public debt, including loans & government bonds, notes & other securities; public employment contracts; procurement specifically for foreign aid & assistance, under an international agreement for stationing troops or to jointly implement by the signatories a project or particular procedures or conditions of an international body, or funded by foreign grants, loans or other assistance.
Security & general exemptions	Action necessary to protect (a) essential national security or defence eg buying arms, ammunition or war materials. Cannot be used to discriminate arbitrarily or unjustifiably between Members where identical conditions prevail or as a disguised trade restriction (b) public morals, order or safety (c) human, animal or plant life or health (d) intellectual property or (e) goods or services of disabled persons, philanthropic institutions or prison labour.
General principles	Non-discrimination (national treatment) & conditional MFN: For covered procurement, each Member to accord immediate and unconditional treatment to goods, services & suppliers to each other (and among each other) no less favourable than the treatment of domestic goods, services & suppliers. Cannot treat local suppliers less favourably based on foreign affiliation or ownership or discriminate against a locally established supplier based on the goods or services offered by that supplier for a particular procurement are goods or services of any other Member. Effectively bans price preferences (except for developing countries as violating national treatment).
Conduct	Transparent & impartial manner; avoid conflicts of interest & prevent corrupt practices.
Rules-of-origin	For covered procurement must apply the same rules-of-origin to goods or services from another Those applied in the normal course of trade with that Member.
Prohibited	Offsets (except for developing countries)
Procurement forms	Open & selective tendering, & limited tendering (cannot be used to avoid competition, discriminate against suppliers of other Members or to protect domestic suppliers) where (i) in the initial open tender no conforming tenders were submitted or suppliers satisfying conditions requested participation, or the tenders colluded (ii) a certain supplier can provide the goods or services & no reasonable alternative or substitute exists due to is for (a) a work of art (b) patents, copyrights or other exclusive rights (c) no competition for technical reasons (iii) for additional deliveries by the original supplier beyond the initial procurement if (a) changing suppliers is impossible for economic or technical reasons eg requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial contract (b) would significantly inconvenience or substantially duplicate costs; (d) only as strictly necessary due to extreme urgencies from events unforeseeable so that goods or services were unavailable in time using open or selective tendering; (e) goods purchased on a commodity market; (f) to procure a prototype or a first good or service developed in the course of, and for, research, experiment, study or original development, including limited production or supply to incorporate field testing results and to show the good or service can be supplied in quantity to acceptable quality standards (excludes production or supply to establish commercial viability or to recover research and development costs); (g) very short term purchases under exceptionally advantageous conditions for unusual disposals eg liquidation, receivership or bankruptcy; (h) or where contracts are awarded to design contest winners provided it is organized consistently with the GPA's principles eg publication of a notice of intended procurement and judged independently.
Awarding contracts	Unless shown not in the public interest, contracts to be awarded to suppliers assessed capable of fulfilling the contract's terms & that based solely on the documentation's evaluation criteria has submitted the most advantageous tender or the cheapest if price is the sole criterion.

Thus Australia's position on joining the WTOGPA has changed even though it still has the same weaknesses. This possibly reflects an 'agreement addiction' that now seems to exist in Australian trade policy setting which focuses on non-transparently negotiating non-MFN PTAs, including

discriminatory arrangements on procurement.²⁶ This has made joining a conditional MFN and highly selective plurilateral WTOGPA politically attractive, even though as with PTAs in general the real benefits to Australia are debatable. Governments have seemingly changed the onus of proof from one of joining a trade agreement only if there are proven economic benefits to joining a trade agreement regardless. This is despite the Productivity Commission's conclusion that economic benefits are being oversold, based on publicly non-contested DFAT-commissioned dodgy economic modelling results, without any appreciation of the possible adverse impacts PTAs are having on Australia's past unilateral trade policy successes, and to the multilateral trading system generally.

Australia's possible accession is unlikely to significantly change its procurement arrangements. There are many general exemptions allowed in the WTOGPA, and acceding to it will almost certainly see Australia negotiating substantial carve outs to enable continuation of discriminatory measures on non-covered procurement, including procurement benefiting SMEs and local content generally. Moreover, even for covered procurement the emergence of murky non-transparent measures and procedures in government procurement, especially by the States, are leading to more obscure and distorting forms of discrimination in practice that are very difficult to identify and curb.

Australian DFAT claims that Australia has a world class government procurement system based on the principles of value for money, and non-discrimination that is already open to foreign competition is at best misleading. As this paper shows, Australian State and Commonwealth procurement has gone backwards in recent years, with less transparent schemes being implemented to raise local content, especially for SMEs. These murky arrangements help hide the extent to which government procurement schemes discriminate in practice against imported content. Such negative outcomes may also reflect the attention given by the WTOGPA and PTAs to banning price preferences as Australia positions itself by introducing other less transparent and more 'legally' acceptable measures to discriminate in favour of local suppliers. Of course this is de-reform. And if Australia is doing this it seems highly likely that other countries will be doing likewise.

Unfortunately, DFAT's misleading claims, which overlook the potential for significant bias towards local content in State and Commonwealth government procurement, indicates that Australia will not be using its likely WTOGPA membership as a vehicle for significant domestic reform. Most probably, the best outcome is likely for Australia to recycle in its accession negotiations its PTA commitments, especially from AUSFTA, which as shown below have also not promoted reform. Again other countries acceding to the WTO eg China will also probably follow the same defensive approach.

DFTA's pre-occupation with exports at the expense of domestic reform of Australia's discriminatory government procurement arrangements favouring local content is evident in material so far released. It discusses only the benefits to Australian exporters of joining the WTPGPA. DFAT states that the Chinese government procurement market is around US\$1.5 trillion and that as it is acceding to the WTOGPA Australia by joining would gain valuable future access to this market. However, based on experience such benefits appear largely illusory and must be kept realistic given what these negotiations are likely to achieve.

Unless Australia is to use its accession to the WTOGPA in a way to reform its increasingly non-transparent restrictive government procurement arrangements than the economic benefits to Australia are likely to be modest at best.

Thus, decisions to enter trade agreements, including the WTOGPA, should be based on proper and independent assessments of the economic impact on Australia of negotiated outcomes. This is

²⁶ A common bureaucratic ploy for avoiding difficult or sensitive decisions is to refer the issue to a committee. This gives the pretence that a decision has been taken when that is not the case – a so-called 'Clayton's' decision i.e. the type of decision made when not actually making a decision. One could easily be excused in thinking that the same motivation undermines many government decisions to rush into negotiating international agreements, including PTAs.

not done in Australia. Any such purported analysis is based on dodgy studies controlled by DFAT, usually done in advance based on ambitious liberalization outcomes that fall well short of actual negotiated outcomes, especially on market access abroad. By the time the details of negotiated outcomes are released publicly the negotiations have been concluded and signed.

Thus in considering whether to join the WTOGPA (as with PTAs generally) it would be highly desirable if greater transparency of negotiated positions, including by Australia, occurred throughout the negotiations. A good starting point would be to have the question of Australia's accession to the WTOGPA referred to a public inquiry by the independent Productivity Commission, the Government's main advisor on trade and micro-reform initiatives. While DFAT and the Government would argue that such transparency would harm Australia's negotiating positions, this is really a ruse for maintaining rigid domestic control over the negotiations. Their non-transparency (and discrimination) is appealing to governments. It enables them to make unconstrained/unchallenged inflated claims of economic benefits during the negotiations and to help secure a 'trophy' that they can boast about achieving. Greater transparency would not only lead to better decision making in terms of Australian welfare by enhancing public scrutiny throughout the negotiations but also help prevent potentially damaging speculation being publicly developed which may be an incorrect understanding of what is happening in the negotiations. It could therefore muster public support for beneficial good PTAs, thus helping rather than hindering the government's negotiations and ensuring that there are no hidden surprises in the final deal.

(ii) New Zealand

NZ formally applied for accession to the WTOGPA in September 2012, which was in October 2014 (Table 4). Its offers largely reflect its commitments negotiated in NZ PTAs.

The areas of possible relatively minor discrimination against foreign suppliers in government procurement, such as for indigenous population and by local government, are excluded from covered procurement. Also, some other types of government procurement have been excluded from coverage. To what extent these exist to provide cover for existing discriminatory or preferential practices in NZ, as opposed to simply being included in the negotiations for future 'negotiating coin' or to allow some future backsliding in these areas to introduce discriminatory practices, is unknown. Trying to gauge the openness of a country's trade regime based on commitments in trade agreements is dangerous. Such commitments usually do little to improve the transparency of a country's trade regime.

Moreover, while price preferences and other more obvious discriminatory measures appear minimal in NZ, it is unknown whether the Government's efforts to redress the perceived disadvantages faced by domestic firms, especially SME's, in submitting competitive tenders and to promote local content, provide an advantage over imported content. For example, Departments must include in their internal documentation justification, signed off by senior management, the rejection of any NZ tender for contracts of NZ\$100,000 and above (WTO, 2009). The Industry Capability Network NZ freely helps NZ firms, departments and public bodies identify major procurement opportunities currently or that would otherwise be imported that can be met competitively locally. As the Australian vase shows, such schemes can become murky and provide obscure discrimination in procurement against imported content that is difficult to identify.

Nevertheless, subject to these qualifications, the NZ Government procurement market seems relatively open and non-discriminatory. If so, the main advantage for NZ of joining the WTOGPA would be to lock in via international commitments its unilateral liberal procurement policies. This is a positive outcome that could help limit backsliding. However, if there is significant 'water' in the commitments or areas of procurement excluded from the WTOGPA backsliding is facilitated. Also, since NZ has not backslid in its procurement policies without these international commitments the additional real value provided by the WTOGPA would seem overstated. Experience has shown that

the enforceability of these commitments in the WTO has been weak with very few dispute cases mounted. The best insurance against backsliding in procurement policies, as for other trade-related policies, is a firm unilateral commitment by governments to trade openness as good domestic economic policy irrespective of what protectionist policies other countries may follow.

Table 4: Summary of NZ's Commitments under the WTOGPA

Feature	Description
Coverage	
Central	Ministries of/for Primary Industries, Business, Innovation & Employment, Culture & Heritage, Defence, Education, Education Review Office, Environment, Foreign Affairs & Trade, Health , Justice, Māori Development, Pacific Island Affairs, Social Development, Transport, & Women's Affairs; Canterbury Earthquake Recovery Authority; Departments of Conservation, Corrections, Inland Revenue, Internal Affairs & Prime Minister and Cabinet; Crown Law Office, Government Communications Security Bureau; Land Information NZ; NZ Customs Service; Serious Fraud Office; State Services Commission; Statistics NZ; The Treasury; NZ Defence Force. & NZ Police.
Sub-central	District Health Boards of Auckland, Canterbury, Capital & Coast, Counties Manukau, Hutt, Mid-Central, South Canterbury, Waikato, Waitemata, Bay of Plenty, & Southern; City Councils of Auckland, Wellington, & Christchurch*; & Regional Councils of Waikato, Bay of Plenty, Greater Wellington, & Canterbury*. Procurement by the listed District Health Boards through their agent healthAlliance Limited is covered.
Other	Accident Compensation Corporation, Careers NZ, Civil Aviation Authority, Energy Efficiency & Conservation Authority, Housing NZ Corporation, Maritime NZ, NZ Antarctic Institute, Fire Service Commission , NZ Qualifications Authority, NZ Tourism Board, NZ Trade & Enterprise, NZ Transport Agency, Sport NZ, Tertiary Education Commission, Education NZ, Airways Corporation of NZ Ltd, Meteorological Service of NZ Ltd, KiwiRail Holdings Limited, & Transpower NZ Ltd.
Procurement by covered entities excluded	<i>Sub-central</i> : covers only procurement by specified Councils of goods, services & construction for transport projects funded, at least partly, by the NZ Transport Agency. <i>Other</i> : This Agreement does not cover procurement by Accident Compensation Corporation of pension fund management, public insurance & fund placements, investments & financial services related to securities or trading on an exchange; by Sport NZ of goods & services containing confidential information related to enhancing competitive sport performance; & by Transpower NZ Ltd of electrical stringing services, tower painting services, & projects funded directly by private sector customers where those projects would not be undertaken except for the funding provided by those customers.
Threshold values	<i>Central entities</i> : goods SDR 130,000, services SDR 130,000, construction SDR 5,000,000; <i>Sub-central entities</i> : goods SDR 200,000, services SDR 200,000, construction SDR 5,000,000; <i>Other entities</i> : goods SDR 400,000, services SDR 400,000, construction SDR 5,000,000.
Procurement excluded outright	Research & development; public health, education, & welfare services; under contracts for construction, refurbishment or furnishing of chanceries abroad; outside NZ territory for overseas consumption; commercial sponsorship arrangements; a covered entity on behalf of a non-covered entity; a covered entity covered from another covered entity, unless tenders are called; for developing, protecting or preserving national treasures of artistic, historic, archaeological value of cultural heritage; & measures deemed necessary to accord more favourable treatment to Māori to meet obligations under the Treaty of Waitangi, provided measures are not used as a means of arbitrary or unjustified discrimination against other Members or as a disguised trade restriction (the Treaty's interpretation, including as to the nature of the rights and obligations arising under it, are excluded from the Agreement's dispute settlement provisions).

The MBIE and the Ministry of Foreign Affairs and Trade jointly prepared a National Interest Analysis (NIA) of NZ's membership of the WTOGPA (Box 6). However, this so-called analysis is far too general to be of much use in determining policy, and falls well short of what is needed for good policy analysis. The NIA, better called a Statement, only assumes NZ suppliers will be able to access the procurement markets of WTPGPA parties upon accession. It does not examine the actual degree increased openness in these markets for NZ nor the extent to which these opportunities will be realized by NZ exporters. Instead, large numbers of the size of procurement markets in WTOGPA members are given and summed, giving the mis-leading impression that a significant share of these markets will be opened.

Box 6: Summary of NZ National Interest Analysis on Joining the WTOGPA

The NZ sees accession to the WTOGPA contributing to its Business Growth Agenda, specifically to increase exports to '40% of GDP by 2025', which is seen as 'necessary to lift economic growth and living standards.'

The main benefit to NZ identified from membership is to secure for NZ businesses 'legally guaranteed binding access to procurement markets of the existing WTOGPA Members, worth an estimated USD\$1.7 trillion annually, as well as 'access to the government markets of new members without having to increase the access that NZ would have to provide.' Other benefits identified include:

- Address 'some existing barriers overseas for NZ businesses accessing procurement sales eg some firms wanting to bid for US government contracts cannot always do so directly, being required to substantially transform their product in the US or sell it through a US intermediary';
- position NZ to seek 'further access to procurement in future free trade negotiations';
- provide 'opportunities to participate and influence the evolution of the WTOGPA'; and
- provide mechanism for NZ and its businesses to resolve procurement disputes with WTOGPA parties.'

Disadvantages identified of joining the WTOGPA are:

- *Reduced scope for flexible procurement practices* - by placing 'some constraints on NZ's ability to develop 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'. However, 'ability to support local suppliers in other ways than through preferential policy is not constrained by the WTOGPA,' eg efforts by the MBIE to 'develop the tendering capabilities of businesses 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 WTOGPA accession';
- *Precedent effect* - as NZ's WTOGPA offers a broader range of government entities than in its PTAs raises the possibility that negotiating partners in future PTAs may seek similar access. In general, it is in NZ's interests to promote liberalization of government procurement markets in order to increase exports, but these will need to be weighed up against the demands of negotiating partners';
- *Less negotiating coin for future PTAs* - WTOGPA accession could 'mean that there is less available access that NZ could offer in a future PTA with a WTOGPA party';
- *Disputes* - accession 'could give rise to legal proceedings within NZ courts against a covered entity. As NZ already provides rights of redress to foreign tenderers through NZ courts, the risk of any increase in legal proceedings by an aggrieved supplier from a WTOGPA party is considered minimal.'

Moreover, the flawed mercantilism export bias of the NIS is clear. Benefits are seen entirely as increasing NZ exports from greater overseas market access while liberalizing its own procurement market to overseas exporters is seen as a disadvantage, or cost, of joining the WTOGPA. The NIA also states as a positive economic outcome that WTOGPA membership will not constrain NZ's ability to support local suppliers using non-preferential measures and other initiatives eg research grants or other incentives. This highlights the mis-placed emphasis on trade negotiation outcomes. Also, as NZ has negotiated access on this basis, it is only logical to expect that other WTOGPA parties have done likewise. Thus it is even less likely that WTOGPA accession will open up significantly Members' government procurement markets to foreigners generally, including to NZ exporters.

Indeed, the NZ Government's stated objective of increasing exports to 40% of GDP by 2025 is economically flimsy. While a business growth agenda based on enhancing the efficiency of the NZ economy may well lead to increased export competitiveness and greater export share of GDP, it is a mistake to assume that higher exports per se automatically raise living standards. This depends on many factors, such as whether exports to new markets are diverted from existing markets, and where the resources to produce these exports come from. If, for example, the exporting activity is relatively inefficient and/or such sales are assisted so that resources are attracted from more efficient activities,

including possibly other exporting activities, national welfare is likely to be reduced. Moreover, the main determinant of the size of a country's traded sector is its exchange rate and associated, including macro, economic policies. With floating exchange rates any efforts to substantially raise exports would significantly appreciate the NZ\$ to reduce the competitiveness of exports and import-competing activities and make imports more competitive, thus working against achieving the export target (unless the increased exports are associated with a corresponding rise in imports and/or net capital outflow). Simply put, there is no sacrosanct policy ratio of exports/trade to GDP for any country - the appropriate size should depend on the underlying economic fundamentals, not on government fiat.²⁷

Given the inadequacy of the NIA it would have been better for the Government to have referred a study on WTOGPA accession to its Productivity Commission for an independent and transparent evaluation of the real economic costs and benefits. However, as in Australia it seems the Government's main micro-economic reform advisor, which was modelled on the Australian version with statutory independence, is by Government choice being left out of such decisions and not being given an opportunity to conduct transparent public policy analysis in these trade areas.

Also, like in Australia, the public examination of treaties, including trade agreements, suffers from weaknesses. Their parliamentary examination is left until the treaties have been negotiated, when details are made public for the first time. This is far too late to have any influence on the negotiations. This evaluation of what's been negotiated is only done when the government has already decided to sign off on the treaty, thus tainting the parliamentary examination and any subsequent government or departmental assessment. It would be almost impossible for any such report to be overly critical of the agreed treaty negotiated, or to conclude that it is a bad agreement not in the country's national economic interests. The NIA was not done until November 2014 after NZ's offer was accepted, and not released publicly until January 2015.

(c) Australian Preferential Trade Agreements (PTAs) and Other Arrangements

Australia has embarked on an aggressive policy of negotiating PTAs since 2000, both bilaterally and plurilaterally. Some contain government procurement provisions. The general provisions of these agreements include conditional non-discrimination ie national treatment applying only to covered procurement, subject to many exclusions/exemptions, and extended only to the PTA Parties – so-called 'conditional' MFN. Australia's most recent PTA, with China, however, contained no specific government procurement provisions.

Australia's offers on covered procurement in PTAs have become very repetitive and stereotyped, and have done little to advance much needed reforms. Indeed, despite these provisions PTAs have been negotiated to facilitate development of murky measures in State and Commonwealth procurement to discriminate in favour of local content and industrial development, especially of SMEs. Australian procurement, especially by the States, has become more restrictive. Australia unfortunately has not used PTAs to reform its government procurement market, where most economic benefits would accrue.

(i) Australian and New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)

ANZCERTA came into force in 1983. It called for ANZ to eliminate price preferences for domestic procurement, and to remove procurement offsets. It called for a single Tasman procurement market. ANZCERTA provided impetus for including NZ in the ANZ Government Procurement Agreement

²⁷ Export targets are sometimes advocated as a means of galvanising national effort to achieve a particular goal such as increasing growth. But experience shows the ever present danger that once set, if they are not achieved through appropriate efficiency enhancing policies at home e.g. removing the anti-export bias of protection, governments are pressured by vested interests to implement economically costly policies e.g. using trade agreements primarily to achieve foreign market access for exporters rather than promoting self-liberalization to be seen to be meeting the targets.

subsequently negotiated to achieve the Tasman procurement market, and to ensure national treatment. Those States with price preferences for domestic firms extended them to NZ suppliers by including their content as local content.

(ii) Singapore Australia Free Trade Agreement (SAFTA)

Entering into force in July 2003, SAFTA's government procurement provisions reflect some of the WTOGPA rules (Table A1). The key principle of non-discrimination (national treatment) applies to covered procurement, subject to exclusions. No minimum value thresholds apply to procurement by covered entities. Open and limited tendering is allowed. Procurement must achieve value for money.

Substantial procurement excluded from covered procurement include procurement to promote industry development eg to assist SMEs, and for Australia to promote regional employment & training for indigenous people. Also excluded is procurement from own entities if no other supplier was invited to tender, unless the entity submitted a tender under open tendering; proprietary items to ensure integrity of machinery, equipment or systems or of a work, health or safety nature specified in industrial agreements, unless items are available from several sources and open tendering used; and for foreign aid. Moreover, the coverage of procurement entities is limited, especially for Australia.

Other exclusions from covered procurement are purchases to protect essential security interests of arms, ammunition or war materials, or indispensable for national security or defence; necessary measures to protect public morals, order or safety, or human, animal or plant life or health; intellectual property; relating to handicapped persons, philanthropic institutions, or prison labour; and conservation of exhaustible natural resources. Rules-of-origin also restrict government purchases between the two markets, as the WTOGPA does not cover goods imported from each other that do not meet the origin requirements that are applied 'in the normal course' of trade between the Parties.²⁸

SAFTA has had minimal impact on Australia's procurement system, especially at the central level. While it may have had some implications for the price preferences for domestic suppliers run by some States, it still left opportunities for these to be applied on non-covered procurement eg promoting SMEs and indigenous opportunities, and adopting murky non-price measures to encourage local content, including by the Commonwealth, with discrimination becoming hidden in procurement procedures and processes.

(iii) Australia United States Free Trade Area (AUSFTA)

AUSFTA became effective from 2005. Many procurement commitments cover procedures eg on the use of selective and limited tendering, timing and evaluation of tenders, and review provisions. In other areas, such as on specific measures and coverage of covered procurement, it contains pretty standard provisions in accordance with standard templates used to negotiate PTAs.²⁹ It lists general principles applying to covered procurement eg conditional non-discrimination ie national treatment only on covered procurement between the Parties (ie conditional MFN). It covers entities at various government levels above minimum thresholds. There are many general and specific exceptions. As the coverage has been broadened so have the exclusions (Table A2).

Generally excluded by both Parties are necessary measures to protect public morals, order or safety, or human, animal or plant life or health; intellectual property; relating to goods and services of handicapped persons, of philanthropic or not for profit institutions, or of prison labour (must not arbitrarily or unjustifiably discriminate between Parties under the same prevailing conditions, or act as a disguised trade restriction).

²⁸ This assessment is based on interpreting that the reference to 'in the normal course' of trade refers to that occurring under the PTA.

²⁹ There are essentially two templates. The NAFTA template followed, for example, by the US, and the GATS-based template followed mainly by developing countries.

Australia specifically excluded procurement benefiting SMEs; measures protecting national treasures of artistic, historic, or archaeological value, for indigenous health/welfare and for their economic and social advancement; plasma fractionation services and government advertising services; buy national requirements on articles, supplies, or materials used in construction. National treatment is not extended to Australian Industry Involvement programs and its successors; Australian Reward Investment Alliance of investment management, investment advisory, or master custody and safekeeping services for managing and investing the assets of Government superannuation funds. Buying motor vehicles by List A enterprises and telecom services by the War Memorial are also excluded.

Also specifically excluded from covered procurement are certain types of procurement by covered State entities above the minimum thresholds. These cover health, welfare and education (ACT, NSW, QLD, SA, TAS); utility services (ACT); QLD, SA, TAS government advertising); motor vehicles (VIC, ACT, NSW, QLD, SA); NT set-asides for Charles Darwin University under Government Partnership Agreements; procurement by a covered entity for a non-covered entity (NSW, QLD, VIC).

The US has also followed suit and made many similar exemptions at all government levels from covered procurement.

Given the many exemptions, both general and specifically negotiated by both parties, the extent to which AUSFTA has liberalized respective markets in government procurement is largely illusory. Also, rules-of-origin mean that covered procurement excludes goods failing these requirements, so that they are a non-tariff measure on government procurement.

AUSFTA has not significantly impacted on the core elements of Australia's government procurement arrangements, except requiring procedural changes eg on non-open tendering. While having some implications for remaining State price preferences favouring domestic suppliers, they still had plenty of opportunities to apply them non-covered procurement eg promoting SMEs and adopting other less transparent non-price measures to encourage industry development and local content, including by the Commonwealth.

(iv) Others

AUSFTA's government procurement provisions set the basis of Australia's commitments in subsequent FTAs. These are the Australia-Chile Free Trade Agreement (ACFTA), effective March 2009; the Japan Australia Economic Partnership Agreement (JAPEPA), effective in January 2015; and the Korea Australia Free Trade Agreement (AKFTA), effective in December 2014.

These agreements essentially repeat the principles for covered procurement negotiated in AUSFTA (Tables A3, A4 and A5, respectively), including on conditional non-discrimination (national treatment only on covered procurement and conditional MFN). However, like AUSFTA the comprehensive exemptions maintained by Parties to these PTAs, including on rules-of-origin, mean they have had minimal impact on reforming their procurement policies.

In Australia, while they had some implications for the remaining State price preferences, they were left with plenty of scope to apply them on non-covered procurement eg promoting SMEs and to adopt other murky non-price measures to promote industry development, local content and indigenous businesses, including by the Commonwealth.

(d) NZ Free Trade Agreements (Called Closer Economic Partnership)

Several of these partnerships (PTAs) negotiated by New Zealand, both bilaterally and plurilaterally, contain provisions on government procurement.

(i) Agreement Between NZ and Singapore on a Closer Economic Partnership (NSCEP)

NSCEP entered into force from 2001. It calls for establishing a single government procurement market to maximise competitive opportunities and reduce costs. Both parties committed to implementing the APEC Non-Binding Principles on Government Procurement on transparency, value for money, open and effective competition, fair dealing, accountability and due process, and conditional non-discrimination with national treatment subject to exceptions and applied only on covered procurement, and conditional MFN.³⁰ Suppliers in principle are to compete equally and transparently, with no preferential schemes or other forms of discrimination by origin (Table A6). Value for money is the primary determinant, based on competition and non-discrimination, taking into account whole-of-life costs and benefits eg fitness for purpose, quality, performance and price.

Included is covered procurement by mainly central agencies below 50,000 SDR. Also excluded is procurement funded primarily from special industry levies, community groups or special grants or public donations; generally inter-governmental activities; proprietary items to ensure machinery or equipment integrity; emergencies eg natural disasters, or urgent requirements of UN peacekeeping or humanitarian operations; of proprietary equipment of a work, health or safety nature specified in industrial agreements; defence procurement of a strategic nature and for national security; and under development assistance programmes. Rules-of-origin applied to covered procurement is also a non-tariff measure.

NSCEP had minimal impact on reforming NZ's procurement system. It had already voluntarily adopted and applied the APEC Non-Binding Principles on a non-discriminatory basis to almost all procurement (the main exception being relatively minor local government procurement) for all trading partners under its unilateral reforms to open the economy to foreign competition.

(ii) NZ Thailand Closer Economic Partnership Agreement (NTCEP)

NTCEP entered into force from July 2005. It has very weak government procurement provisions, simply reaffirming a 'desire' to implement to the extent possible the APEC Non-Binding Principles on transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination as well as the APEC Transparency Standards for Government procurement on a 'conditional' MFN basis (Table A7). It established a working group to meet regularly to, inter alia, review these provisions. It was to report to the CEP Joint Commission within 12 months of the Agreement's entry into force with recommendations on the commencement of bilateral negotiations to expand these provisions. No such provisions on government procurement have been added, and NTCEP has had no impact on NZ's government procurement arrangements.

(iii) Trans-Pacific Strategic Economic Partnership Agreement (P4)

P4 came into force in 2006 with Brunei, Chile and Singapore. Government procurement provisions cover purchases by a positive list of government entities above thresholds of 50,000 SDR for goods and services and 5,000,000 SDR for construction, subject to substantial general and specific exemptions (Table A8). Its objective is to base procurement on the key principles of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and conditional non-discrimination via a commitment to national treatment but only for non-excluded

³⁰ APEC's Non-Binding Principles were formulated on the basis that any exceptions to national treatment would be minimal and that APEC economies would adopt these voluntarily according to 'unconditional' MFN ie no discrimination between APEC and non-APEC economies.

covered procurement and between the P4 parties ('conditional' MFN).³¹ Rules-of-origin applied to covered procurement also acts as a non-tariff measure.

The P4 made no changes to NZ's procurement system.

(iv) NZ-Hong Kong, China Closer Economic Partnership Agreement (NHKCEP)

NHKCEP entered into force from 2011. It largely repeated NZ's commitments in the P4, including exceptions along with conditional non-discrimination based on national treatment subject to exceptions and applying only to the parties (conditional MFN)(Table A9). It had no impact on NZ's procurement system.

5. Using Government Procurement as Industry Policy

The WTO noted in its 2011 Trade Policy Review of Australia that (WTO, 2011):

'Australia has continued to use government procurement as an instrument of economic policy aimed at fostering industrial development in certain sensitive areas (e.g. real estate property or accommodation, R&D services, and motor vehicles) that are exempt from the mandatory procurement procedures applying to procurement above certain thresholds. The target of sourcing at least 10% of purchase value from small and medium-sized enterprises (SMEs), as well as preference margins for local suppliers and local-content requirements by certain state governments have been maintained and, in certain areas, reinforced but applied in line with FTA commitments.'

That this situation has not changed, and probably worsened, is confirmed in the latest 2015 WTO Trade Policy Review (WTO, 2015), which states (WTO, 2015):

Australia has continued to use government procurement as an instrument of economic policy aimed at fostering industrial development in certain sensitive areas that are exempt from mandatory rules applying to procurement above certain thresholds. Procurement rules were amended, inter alia, to redefine procurement methods and adjust to new legislation's terminology. The target of sourcing at least 10% of purchase value from small and medium-sized enterprises (SMEs), as well as preference margins for local suppliers and local-content requirements by certain state governments have been maintained and, in certain areas, revised. However they are applied in line with RTA commitments. Foreign participation in the bidding may require the submission of an Australian Industry Participation Plan.

Despite government procurement commitments in PTAs Australia still uses Commonwealth and State procurement policies to meet industry policy and other localization objectives eg regional development, local content, especially for SMEs, and assisting the development and employment opportunities, including indigenous people. Thus, after reforming government procurement in the 1980s to remove inter-state price preferences, reform stalled. Indeed, it has gone backwards by replacing more transparent price-preferences with murky and discretionary mechanisms promoting localization. These policies need reforming and PTAs are not contributing; indeed they are entrenching these negative developments by excluding such measures from commitments. Unfortunately, governments are assessing the economic value of PTAs by the ambiguous extent to which they open foreign markets instead of the degree to which they promote self-liberalization, where most of the gains to Australia are available.

Unlike Australia, NZ procurement has seemingly in practice remained relatively open and non-discriminatory on an 'unconditional' MFN basis, and not significantly used as an industry policy measure.

³¹ Brunei was given two years to negotiate its government procurement schedule, and until then is not entitled to the procurement commitments of Chile, Singapore and NZ.

a. Price Preferences

The ANZGPA did not end price preferences for Australian content, despite the commitment for non-discrimination and national treatment. Instead, the State price preferences were extended equally to NZ suppliers by including them in Australian content. This made Australia's government procurement system more discriminatory against non-NZ suppliers. Thus, the ANZ single procurement market was achieved by adding greater discrimination against other countries, thereby raising the likelihood of diverting government purchases from more efficient non-Tasman suppliers, to Australia's economic cost.

Australian PTAs similarly have not resulted in Australian States removing their price preferences. The NSW's response, for example, was to remove them for large enterprises and instead to focus preferences on SMEs, which with industry policies, are exempt from covered procurement. It subsequently removed these price preferences on SMEs, but not because they had to under PTA commitments. WA, the only state currently with price preferences, including for SMEs, removed their application for businesses located in the US or Chile for 'covered procurements.' Thus, the imported content impost is not applied to any portion of a bid that comprises goods or services imported from NZ, the US or Chile. Again, rather than removing price discrimination outright, Australia's procurement regime in WA became more discriminatory against non-PTA parties. To the extent that these price preferences were used to assist SMEs (and possibly industry development) they would have been in any event excluded from Australia's PTA commitments.

National treatment obligations in PTAs only apply to covered procurement, thus leaving plenty of scope to apply such price preferences. Also, national treatment does not require their removal but rather that they be extended uniformly to PTA partners. Thus embedding national treatment into PTAs does not necessarily mean the end of price preferences.

b. What Are Replacing Price Preferences?

Australia, with the exception of WA, has removed price preferences favouring domestic suppliers. However, they are being replaced by murkier and more (economically) costly forms of discrimination, thereby going backwards. These non-transparent and discretionary measures may have a greater impact on prices and resource allocation than price preferences. This is similar to the substitution of tariffs with non-tariff measures that has accompanied reduced tariffs under the WTO.³²

This highlights a general weakness of trade agreements. Governments will always fashion their commitments to provide leeway to assist domestic industries if the political economy at home necessitates providing selective industry assistance. The evidence supporting the argument that trade negotiations can successfully address this problem by mounting pressure from exporters benefiting via enhanced market access abroad to counter the demands by other sectors for import protection, has proved thin. Similarly, there is little evidence globally that trade agreements have positively reduced non-tariff measures 'on the ground' rather than simply 'on paper'. Hence the crucial role of unilateralism in liberalizing trade, including of government procurement policies.

All States and the Commonwealth now operate extensive buy local arrangements as integral parts to their procurement. They require tenderers to prepare various plans eg industry participation plans that must be submitted in the tender outlining proposed actions to provide Australian firms, especially SMEs, with supply opportunities. State and Commonwealth Government objectives, such as promoting regional development and local industries, including SMEs, are to be taken into account in determining value for money. In some states eg SA, WA and Tasmania, such plans for local content

³² As the world and trade agreements have focused on reducing transparent tariffs easily cut by negotiations, application of formulae and verified, NTM use rose as governments were encouraged to move out of tariffs, economically the least costly form of protection, into non-transparent and economically more damaging trade restrictions.

use must be given significant minimum weightings in the tender evaluation, with wide discretion to raise them where considered appropriate. While it is claimed that these procurement arrangements are not designed to favour local industries over those from other states and abroad, and are still to meet value for money, the reality is more obscure and dubious.

While value for money is still in principle the over-arching goal, it has become increasingly broadened to incorporate government local content and regional development objectives, especially promoting SMEs, which are often contradictory.³³ Increasingly, evaluating contracts is being interpreted in practice as value for money subject to meeting governments' industrial development goals. Thus discrimination persists, now more discretionary and disguised.

Published procurement figures show that almost all Commonwealth and State contracts are still let to local industries, including SEMs, using almost entirely local content. Moreover, this is increasing not falling. In State procurement, almost all contracts are supplied by ANZ firms, including own-state suppliers using own state-local content. For example, most (96%) of all SA procurement contracts let in 2012-13 were let to ANZ suppliers (98% by value); over two-thirds of total contracts were with SA suppliers (80% by value) and only 4% (2% by value) were let overseas. The share, by value, of contracts with SA suppliers rose from 42% in 2011-12 to 51% in 2012-13.

While this may be partially explained by the natural advantages of dealing with easily accessible local suppliers and in many cases by their efficiency, the extremely high share of local participation and content is suspicious. It adds credence to the case that a significant contributing factor is the hidden and discretionary discrimination that still abounds, and is worsening, in Australian procurement policies. It would be in Australia's national interest to reform such discrimination at all government levels.

c. Effectiveness of Trade Agreements in Opening Government Procurement markets

ANZ's experience with trade agreements not opening their procurement markets to international competition is not unique. Considerable international evidence suggests this is also the case internationally. Empirically it seems that neither the WTOGPA nor PTAs have substantially reduced governments' propensity to 'buy national', thus highlighting the difficulty of regulating non-transparent areas via international treaties (Rickard and Kono, 2011 and 2014). Another study based on Switzerland and Japan found that foreign access in services procurement has not risen since negotiation of the WTOGPA (Shingal, 2011).

This is not surprising as trade agreements are usually negotiated intentionally to have minimal impact on self-measures, focusing instead on getting other parties to liberalize policies. In such circumstances it is little wonder that the impact of trade agreements on promoting self-liberalization is minimal, even though this is where the main economic gains would accrue. Trade agreements rarely lead domestic reforms; at best they can follow unilateral reforms and help lock them in, but even in this role they are imperfect. This seems to certainly be the case for Australian government procurement, and PTAs generally.

Not only is the coverage of commitments inadequate, enforceability is also lacking. The loopholes and ambiguity in government procurement commitments under PTAs and the WTOGPA, together with the non-transparent and discretionary measures often utilized to protect government procurement which make them hard to detect and objectively qualify, undermines enforceability. Thus, it is not surprising that there have been few formal WTO disputes among WTOGPA parties; mounting these

³³ For example, SMEs are commonly likely to be at a cost disadvantage compared to large firms because they simply lack economies of scale and hence would be unable to come first on a simple ranking of value for money. Thus one way of discriminating in favour of SMEs would be for the procurement agency to let smaller individual contracts instead of aggregating them into one large contract so as to lessen their cost disadvantage.

challenges is difficult and likely to fail. The same applies in PTAs. Moreover, informal discussions and consultations under the WTOGPA and PTAs, to the extent they occur is also likely to lead to minimal improvements.

d. Motivation for Making Commitments on Government Procurement in Trade Agreements Flawed Economically

Australia's motivation for making government procurement commitments in trade agreements, including PTAs, is based on the flawed notion that obtaining greater access to overseas procurement markets is what trade policy is primarily about. However, evidence shows clearly that what of most economic gain to a country is opening its own policies to foreign competition. Australia should use its trade negotiations to do this, including on government procurement, if PTAs are going to be of significant benefit. Otherwise trade agreements will continue to be more about achieving non-economic factors, and continue to be oversold by governments on the economic benefits.

Since all parties approach trade negotiations, including on government procurement, from a mercantilist perspective, they inevitably under-perform in opening markets. Consequently broad and misleading statements and estimates of export benefits actually realized are advanced that do not reflect reality and the many exceptions to covered procurement included in PTAs. They rank poorly compared to unilateral reforms as part of a country's domestic micro-economic agenda. Unilateralism must therefore remain the 'main game in town' in setting a country's trade measures, which are ultimately domestic policy. The danger is that with greater focus on trade negotiations governments will lose sight of the far greater benefits that can arise from self-liberalization, and effectively make this conditional on obtaining overseas market access.

Mercantilists, of which there are many among trade officials and politicians, would argue that Australia is benefiting substantially in its government procurement negotiations by getting better access to foreign procurement markets. They would argue that getting market access abroad without self-liberalizing in negotiations is a win/win situation. But mercantilists are never correct economically. They fail to appreciate that the main economic gains to Australia accrue from self-reform, and assumes that trading partners with which it is negotiating PTAs are somehow less successful than Australia in negotiating to retain trade restrictions protecting their procurement market. The negotiations are based on the mistaken view that outcomes are a zero-sum game and hence trade negotiators must 'outsmart' each other to try and maximize benefits at the expense of trading partners.

Unfortunately, Australia is assessing trade agreements not on the extent to which they promote unambiguous national-welfare enhancing self-liberalization where most gains arise, but on the extent to which they promote ambiguous marketing opening abroad, which is usually largely illusory and/or of uncertain economic benefit.

e. The Main Restrictions to Government Procurement Often Lie Elsewhere

Often the main restrictions on foreigners accessing a country's government procurement markets in practice have little to do with government procurement arrangements. A major example is with services, which are increasingly being procured by governments.

To tender for government projects foreign suppliers must first be able to trade their services with the country. For example, if foreign investment barriers restrict them from establishing commercial presence (mode 3 under the GATS) then they will be unable to access the government procurement market. Similarly, restrictions on foreign suppliers exporting services cross-border (mode 1) or by temporarily moving persons (mode 4) can also hinder their capacity to competitively supply services.

Thus, while ever these restrictions to trade in services exist no amount of government procurement reform will open the market to foreign suppliers.³⁴ Liberalising trade in services, especially mode 3, in these cases should be the main priority. Again evidence shows that trade agreements, including PTAs, achieve little actual services liberalization, and that unilateral reforms offer the best way forward.

PTAs also introduce non-tariff measures on government procurement trade via rules-of-origin. Goods not meeting the PTA rules-of-origin set on trade between parties are not covered by commitments on government procurement.

f. Will NZ's Accession to and Australia's Probable Membership of the WTOGPA Help?

In terms of promoting self-liberalization of government procurement policies the answer is highly unlikely. As accession will become no more than a means of exchanging concessions with minimal impact on actual government procurement practices of the parties, realized economic gains to ANZ are likely to be minimal, despite government claims of large benefits via increased exports from opening overseas procurement markets.

For example, Australian DFAT indicates joining the WTOGPA would provide meaningful and legally binding market access abroad, especially to China on its accession, even though it also states that Australian firms are not automatically disqualified from participation in WTOGPA Member markets. While such market access benefits are tantalizing to governments, and industry, in reality such export gains from trade agreements are often illusory at worst, and at best highly overstated. In the case of AUSFTA, for instance, DFAT claimed at the time that it gave Australian suppliers access to the US federal procurement market, worth at least US\$535 billion annually, and would open 31 state governments to Australia. However, such access was seriously constrained by many exceptions negotiated by the US (as did Australia). The AUSFTA study commissioned by DFAT to highlight AUSFTA's economic gains to Australia assumed unrealistically that its suppliers would achieve 30% as much penetration in the US market as Canadian businesses, thereby providing export benefits to Australia of \$200 million annually. However, a more realistic estimate would have been to reduce these benefits to about one-eighth, or about \$25 million annually (Dee, 2004). It is unsure even if these more modest amounts have been realized.

Thus, Australia will achieve little in way of economic benefits from joining the WTOGPA unless it uses these negotiations to reform its worsening government procurement arrangements, where most gains lie. Since it has not done this in its PTAs, largely because it is virtually impossible given the mercantilism approach inherent in trade negotiations, there is no reason to believe it will happen in any WTOGPA negotiations. Australia will almost certainly base its negotiated WTOGPA offers on its PTA commitments, most notably AUSFTA. Thus, the same coverage weaknesses and significant exclusions will continue allowing non-transparent and discretionary Australian government procurement practices to discriminate in favour of industrial development and local content.

Indeed, if joining the WTOGPA, like signing PTAs in general, were subject to a proper benefit cost analysis they would probably fail, at least on economic gains. Many of the advertised benefits such as market access abroad would be heavily discounted, and other claimed gains such as helping Australia adopt liberalizing measures on an unconditional MFN basis because by their nature they cannot be applied discriminatorily, would be ignored completely, while many of the costs would be magnified, such as failure to enhance self-liberalization.

At least NZ's government procurement policies seem relatively open in comparison, so that locking in its unilateral openness may have some benefits. However, to the extent that it used the negotiations

³⁴ While the GATS recognizes this link, its commitments on MFN, national treatment and market access do not apply to government procurement of services (GATS' Article XIII). Multilateral negotiations on government procurement in services under the GATS were to be held by 1997 but these have not occurred.

to maintain some discriminatory practices, joining the WTOGPA represents a lost opportunity for further reform.

g. Proliferation of 'Red Tape'

Many of the disciplines included in PTAs and WTOGPA commitments on government procurement cover methods and procedures to be followed during the tendering cycle. These cover, for example, publication of tender information, minimum time limits when issuing tenders, rules governing the form of tender, and publication of tender awards. While stipulating such procedures and processes and applying some minimum standards may be useful, applying them is not costless. They add significant 'red tape' that can make the tendering cycle more cumbersome and costly for governments and bidders. Thus a balance is needed, with the worst of all outcomes possibly occurring. Trade agreements are imposing such costs without much opening of procurement markets to foreign competition.

The complexity and cumbersomeness of Australian procurement systems have also increased, especially at the State level, largely coinciding with the shift from relatively straightforward means of discriminating locally, such as price preferences, with hidden discretionary measures involving local content plans and weightings to be applied in awarding contracts to still attain in principle best value for money but also having to take of account other often contradictory objectives, like promoting regional industry development, especially for SMEs. Such arrangements compound 'red tape' and make tendering more costly for suppliers and procurement entities.

6. Conclusions

ANZ trade agreements have by-and-large had minimal impact on government procurement policies. Reforms in both countries substantially pre-date their PTAs. These reforms can be traced back to the mid-1980s when, for example, Australia unilaterally removed inter-state price preferences, including NZ, to form a single procurement market, and a few States and the Commonwealth removed them against imported content.

Those States that maintained price preferences extended them to NZ content. Thus, the single Tasman market was achieved by Australia extending discriminatory practices to protect NZ content, at the expense of non-ANZ suppliers. NZ, having seemingly no significant price preferences or other discriminatory practices continued to practice national treatment with minimal exceptions on an unconditional MFN basis. NZ took substantial steps unilaterally to reform its government procurement market without using trade agreements and conditional MFN.

These reforms were reflected in the APEC Non-binding Principles on Government Procurement in which ANZ participated. By the late 1990s they had adopted government procurement arrangements, at least at the central level, considered consistent with these principles. Price preferences operated by some States, however, remained inconsistent, but permitted owing to APEC's non-binding nature.

While NZ has continued to unilaterally maintain this relatively open government procurement market the opposite is the case for Australia. Its procurement system still has major areas needing reform, both at the Commonwealth and State level. One state, WA, still retains price preferences, although not in regard to covered procurements with trading partners under PTAs. States have ensured their procurement arrangements are consistent with PTA commitments, but in a way that has not reformed procurement policies.

Indeed, Australia's procurement system has gone backwards, especially at the State level. While price preferences have largely been eliminated (not because of PTAs) they have been replaced with murky less transparent discretionary measures designed to promote industry development and local content, especially involving SMEs. Such open-ended discriminatory measures are difficult to

evaluate and are highly likely to be more distortionary and economically inefficient than price-preferences that are transparent, work directly through the price system and caps the assistance potentially provided to domestic suppliers. Accompanying these changes has been also increased complexity and ‘red tape’ in government procurement arrangements, especially at the state level, which has made contracting more costly for tenderers and procuring entities.,

Australia’s PTAs have not prevented these backward developments. Instead, they have entrenched them by negotiating commitments based on ‘conditional liberalization’ whereby the national treatment obligation only applies to covered procurement, which excludes Australia’s use of government procurement policies to promote industry development and local content, especially by SMEs and indigenous businesses.

Australia has unfortunately negotiated its PTAs to minimize their impact on government procurement policies, both centrally and at the state level. PTAs, including in NZ, are being incorrectly assessed using a mercantilist approach highlighting the (ambiguous) economic benefits of increased exports due to opening foreign markets rather than the extent to which they promote self-liberalization, where most of the gains to Australia would flow. Reforming its government procurement policies, irrespective of what other countries do, would yield most economic benefits to Australia, and hence should be priority. However, as evidence repeatedly shows PTAs achieve little actual liberalization of non-tariff measures in practice, especially when the fine print is read and other restrictions are taken into account. This is because PTAs are negotiated on the basis that offering self-liberalization is a ‘cost or concession’ to receive the benefits of increased market access abroad.

Thus, Australia’s PTAs have played a minimal role in promoting much needed reform to government procurement. It still uses these policies to achieve industry policy and local content objectives, both at the State and Commonwealth levels, undermining national welfare. Reforming these policies requires unilateral reforms – PTAs will not achieve this.

ANZ’s PTA offers are repetitive, which for Australia regurgitates wide-ranging general and specific exemptions to benefit SMEs and promote local content generally to allow its murky discretionary discriminatory policies.

ANZ had not joined the WTOGPA because they considered it a bad agreement due to conditional MFN, major exclusions from covered procurement and overly-prescriptive approaches to government procurement. However, while the WTOGPA still suffers from these weaknesses (as do ANZ PTA commitments) NZ has just acceded to it with offers closely resembling those in its PTAs. NZ’s WTOGPA commitments have primarily locked in its unilateral and unconditional MFN openness, although there are still exceptions to national treatment that may accommodate some discretionary policies, especially by local government. If this covers substantial exemptions in practice, than WTOGPA membership, as with its PTAs, represent lost opportunities for NZ to further reform its government procurement system. Australia announced in November 2014 that it would most likely follow suit.

Australia’s announced in November 2014 that it would most likely try and accede to the WTOGPA. Such membership is highly likely to follow its approach in PTAs to exclude from commitments discretionary discriminatory procurement measures and to entrench policies favouring industrial development and local content, especially for SMEs and the indigenous population. Commitments will almost certainly repeat PTA offers, especially AUSFTA, thus promoting no domestic reform in areas that matter, while increasing ‘red tape’. Australia seems set on erroneously assessing accession based on achieving (dubious) export gains from greater market access to foreign procurement markets rather than on whether it advances self-liberalization of procurement policies, where most gains unambiguously lie.

The failure of trade agreements to open ANZ procurement markets is reflected internationally. Studies have shown that government procurement commitments in PTAs and the WTPGPA have not

opened procurement markets. Hence inflated assessments of the extent to which trade agreements will create exports to foreign procurement markets must largely be discounted to maintain reality.

Given the politicization of PTAs in ANZ and the governments' fetish to negotiate them, which reflect international developments, a serious policy shortcoming in domestic processes is their severe lack of transparency of such negotiations. ANZ experience in negotiating trade agreements highlights the secrecy with which governments and trade ministries conduct the negotiations. Trade ministries holding consultations with interested stakeholders, especially the private sector, achieve little and inadequately address these transparency concerns. By the time the negotiated agreement and its contents, including the country's offers, is released for public scrutiny and assessment, also by parliament, the government has 'signed off' on it. There are no sensible reasons why such details, including the government's offers, cannot be released publicly during the negotiations to enable public scrutiny. Such transparency would produce better decision outcomes on national welfare and make governments and trade ministries more accountable for their negotiations. After all trade policy is domestic economic policy. Their secrecy primarily reflects flawed mercantilism that it will produce better results. This is untrue and in reality secrecy is kept to allow trade ministries and governments to keep control over the negotiations by avoiding public scrutiny.

As trade ministries have vested interests in negotiating trade agreements, experience shows that they cannot be relied upon to professionally assess their economic assessments on the national welfare implications. Efforts in ANZ, as elsewhere, have highlighted that so-called independent studies commissioned by trade ministries on the gains from trade agreements are flawed and biased towards government views. Once the decision to conduct such a study is made these are always supportive of the agreement. The public NIA prepared by NZ on WTOGPA accession was highly inadequate, as was the study commissioned by DFAT to assess the gains to Australia of AUSFTA, including the export benefits to Australia on the perceived government procurement access to the US.

It is therefore disappointing that ANZ governments have not let their primary trade and other micro-economic advisors, the Productivity Commission, to play any role in assessing the national welfare effects of trade agreements, especially PTAs, on their economies. Without this constraint, the ANZ governments are given free rein to exaggerate and oversell the economic benefits of trade agreements, including on government procurement. Hopefully Australia will enable the Productivity Commission to conduct an independent study on its WTOGPA accession.

If, as appears probable, governments are going to persist in pursuing PTAs, it is vital that these discriminatory arrangements do not come at the expense of the WTO and more importantly unilateral trade reforms, both of which are based on the key principle of non-discrimination (unconditional MFN). However, experience suggests achieving this is easier said than done. PTAs tend to displace these other superior approaches to reform, as the government procurement example in ANZ highlights.

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Appendix Tables

Table A1: Summary of Key Government Procurement Provisions of SAFTA

Feature	Description
Coverage	Law, regulation, procedure or practice regarding procurement by covered entities, & by contractual means eg purchase, lease, rental, hire purchase. Entities covered via positive list.
General Principles	NT for goods, services, & suppliers, including local foreign-owned/affiliated firms. Cannot discriminate against local firms based on the goods & services supplied from the other Party. No discrimination in favour of corporate bodies with government shareholding. Parties to follow competitive neutrality using reasonable measures to ensure that governments at all levels provide no competitive advantage to businesses based on government ownership.
General Exclusions	Goods & services from own entities if no other supplier invited to tender, unless the entity tendered under open tendering; proprietary items ensuring integrity of machinery, equipment or systems or of a work, health or safety nature specified in industrial agreements, unless available from several sources & open tendering used; foreign aid; overseas to consume abroad; asset management & financial advisory services pertaining to government reserves; & to promote industry development eg to assist SMEs.
General Exceptions	Action or not disclosing information necessary to protect essential security interests in procuring arms, ammunition or war materials, or indispensable for national security or defence. Necessary measures to protect public morals, order or safety, or human, animal or plant life or health; intellectual property; of handicapped persons, of philanthropic institutions, or of prison labour; conservation of exhaustible natural resources;
Tendering processes	Open or limited tendering allowed.
Awarding contracts	Ensure tendering procedures provide mechanisms to eliminate conflicts of interest; achieve value for money; conducted fairly & non-discriminatorily.
Rules-of-origin	Those applied in the normal course of trade between the parties.
Thresholds	None
Australia	
General exclusions	Promoting employment & training for indigenous people in such regions (not to arbitrarily or unjustifiably discriminate between Parties or be a disguised trade restriction).
Central entities	A number of Commonwealth Departments, including Defence, and Financial Management & Accountability Act Agencies.
Singapore	
Entities	A number of ministries, departments, Organs of State, & statutory boards.

Table A2: Summary of Key Government Procurement Provisions of AUSFTA

Feature	Description
Coverage	Goods & services (including construction ³⁵ , unless excluded) by contractual means (eg purchase, rental or lease), build-operate-transfer & public works concession contracts, exceeding the relevant threshold values by an entity not excluded from coverage. Defence procurement is covered by the 1995 memorandum between the two Governments on reciprocal defence procurement.
General Principles Prohibited	NT for goods, services & suppliers, including local foreign-owned/affiliated firms. Cannot discriminate against local firms based on the goods & services supplied from the other Party.
General Exclusions	Offsets. ³⁶ Procurement funded by any assistance eg grants, loans, equity infusions, fiscal incentives, subsidies; from own entities & by or between procuring entities; foreign aid; research & development; overseas to consume abroad; by fiscal agency or depository services, liquidation & management services for regulated financial institutions, & sale/distribution services for government debt.
General Exceptions	Necessary measures to protect public morals, order or safety, or human, animal or plant life or health; intellectual property; of handicapped persons, philanthropic or not for profit institutions, or of prison labour (must not arbitrarily or unjustifiably discriminate between Parties or act as a disguised trade restriction).
Rules-of-origin Country Exceptions	Those applied in the normal course of trade between the Parties.
Australia	
National	Preferences benefiting SMEs; measures protecting national artistic, historic, or archaeological treasures; indigenous health/welfare & their economic/social advancement; plasma fractionation services; government advertising services; buy national requirements on construction articles, supplies or materials. NT not extended to Industry Involvement Program & successors.
Central entities	Procurement by/of many specified defence-related & other goods by defence department & Defence Material Organization seen essential for security, covering design, development, integration, test, evaluation, maintenance, repair, modification, rebuilding & installation of military systems & equipment; Government-owned defence facilities; space services; services supporting military forces overseas; Defence Intelligence Organisation, Defence Signals Directorate, & Defence Imagery and Geospatial Organisation.
Central entities (other)	Australian Reward Investment Alliance of investment management, investment advisory or master custody & safekeeping services for managing & investing assets of Government superannuation funds. Motor vehicles by List A government enterprises & telecom services by the War Memorial.
States	Procurement of health, welfare & education (ACT, NSW, QLD, SA, TAS); utility services (ACT); government advertising (QLD, SA, TAS); motor vehicles (VIC, ACT, NSW, QLD, SA); set-asides for Charles Darwin University under Government Partnership Agreements (NT); by a covered entity for a non-covered entity (NSW, QLD & VIC).
United States	
National	Procurement by/of set asides for small or minority businesses (eg any form of preference like exclusive rights to provide goods & services, & price preferences); transportation services as part of, or incidental to, a procurement contract; covered entity on behalf of non-covered entities at a different level of government; specified basic telecommunications network & services eg public voice & data services; maintenance, repair, modification, rebuilding & installation of goods/equipment as well as of equipment for ships; non-nuclear ship repair; government-owned facilities; facilities of the energy department & the National Aeronautics & Space Administration; research & development facilities; utilities; transportation, travel & relocation services: services supporting military forces overseas; dredging services; buy national requirements on construction articles, supplies or materials.
Central	Procurement by/of defence department of many specified defence-related & other equipment eg buses,

³⁵ Australia requires tenderers for construction to meet the National Code of Practice for the Construction Industry and related implementation guidelines of central & regional governments.

³⁶ Australia to phase-out NSW & QLD non-compliant offset & preference schemes, along with non-compliant parts of the NT's *Building Northern Territory Industry Participation* program, within 3 years from the date of the Agreement's entry into force. Any QLD measure providing for inclusion of offsets in procurements & non-compliant parts of VIC Industry Participation Policy also to be phased out over the same period.

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entities	hand & measuring tools, textiles/clothing/footwear, war materials, ammunition, & other goods & services essential for security; & defence department facilities.
Central entities (other)	Procurement by/of energy & national security departments to safeguard nuclear materials or technology (<i>Atomic Energy Act</i>), or oil bought for the Strategic Petroleum Reserve; agriculture department of goods for agricultural support or human feeding programs; shipbuilding of the National Oceanic & Atmospheric Administration (NOAA); by the Transportation Security Administration, Coast Guard; Federal Aviation Administration; General Services Administration of hand tools, measuring tools, cutlery & flatware; Rural Utilities Service (sole List B government enterprise for federal buy national requirements set as funding conditions for all power generation projects); & excludes all other aspects of its procurement eg restrictions on financing for telecommunications. Restrictions attached to Federal funds for airport projects by List A & List B government enterprises exempt.
State entities	Procurement by/of Office of Fish & Game, & construction (Arkansas); beef, compost or mulch (Georgia); software & construction (Hawaii); construction, automobiles or aircraft (Kansas); construction (Kentucky); services (Mississippi & Tennessee); public authorities & public benefit corporations with multi-state mandates, transit cars, buses, or related equipment (New York); construction (Oklahoma); boats, automobiles, buses, or related equipment (Rhode Island); beef (South Dakota); preferences for motor vehicles, travel agents, & rubberized asphalt paving made from scrap tyres by a state facility (Texas); & fuel, paper products, boats, ships & vessels (Washington); & for those many entities identified with pre-existing restrictions, construction-grade steel, motor vehicles & coal. Preferences or restrictions in programs promoting development of distressed areas or businesses owned by minorities, disabled veterans, or women; restrictions to promote states' environmental quality (provided not a disguised trade barrier); restrictions attached to Federal funds for mass transit and highway projects; & printing.
Tendering Procedures	Open tendering. Selective tendering allowed provided invited as many domestic & other party suppliers consistent with efficient procurement, & used either an appropriate multi-use list of suppliers, or a list of suppliers responding to an invitational notice to apply, or a list of suppliers responding to a notice requesting expressions of interest provided notice published & contains information required & invites all interested suppliers (unless the notice stipulates the number invited may be limited); or a list of all licensed suppliers, or one determined by the appropriate body to comply with specific legal requirements independent of the procurement process, provided that (a) licensing requirements or need to comply with specific legalities is essential (b) appropriate body maintains the full list of such suppliers & it is accessible & (c) all listed suppliers are invited to tender. Limited tendering allowed (provided not used to avoid competition, protect domestic suppliers, or discriminate against other Party suppliers) if no responses received to a prior notice, invitation to participate or tender or conformed to the essential requirements, or no supplier met the conditions; items only available from a certain supplier & no reasonable alternative or substitute exists due to (a) covers works of art (b) protect patents, copyrights, or other exclusive rights, or proprietary information (c) competition is absent for technical reasons; for additional deliveries by the original supplier to replace parts, extend, or continue services for existing equipment, software, services, or installations, where changing suppliers would compel buying item not interchangeable with existing equipment; commodities; a prototype or an item for limited trial or developed at its request in the course of, and for, a particular research, experiment, study, or original development; as strictly necessary to meet emergencies from unforeseen events; new construction services of repeated similar services initially awarded by open tender, or by selective tender complying with these provisions if the initial procurement notice stated limited tendering may be used; purchases in exceptionally advantageous short-term cases eg unusual disposal, unsolicited innovative proposals, liquidation, bankruptcy, or receivership; or for contracts awarded winners of a design contest consistent with these provisions & judged independently.
Multiple thresholds	(a) central entities – G&S = A\$80,000 or US\$79,507; construction = A\$7,767,000 or US\$7,864,000 (b) regional government entities – G&S = A\$551,000 or US\$558,000; construction = A\$7,767,000 or US\$7,864,000 (c) government enterprises – G&S = A\$402,000 or US\$397,535 for List A agencies & US\$629,000 ³⁷ for List B agencies; construction = A\$7,767,000 or US\$ 7,864,000. ³⁸

³⁷ Australia listed no List B agencies.

³⁸ Thresholds adjusted biennially, starting 1 January 2006.

Table A3: Summary of Key Government Procurement Provisions of ACFTA

Feature	Description
Coverage	goods/services (including construction ³⁹) by any contractual means (eg purchase, rental or lease, build-operate-transfer contracts and public works concessions contracts) equal to or above specified value thresholds conducted by specified procuring entity, and subject to the conditions specified in Annex 15-A.
General principles	Positive list of central & sub-central entities. Goods, services and suppliers to receive NT, including for locally established foreign-owned or affiliated suppliers, irrespective of degree of foreign affiliation or ownership. Cannot discriminate against a locally established supplier on the basis that the goods or services it supplies for a particular procurement are from the other Party.
Prohibited	Offsets
General exclusions	(a) under non-contractual agreements or any form of assistance eg grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements and sponsorship arrangements (b) by direct foreign aid (c) funded by international grants, loans or other assistance (d) public employment contracts (e) financial service (f) of goods & services procured from another entity or with a regional or local government, where no other supplier has been asked to tender (g) overseas procured goods & services for consumption abroad (h) funded by grants &/or sponsorship payments received from a person other than a procuring entity (i) by fiscal agency or depository services, liquidation & management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes, derivatives & other securities (j) rental of land, existing buildings or other immovable property or rights thereon where not part of procurement of construction.
General exceptions	If not applied to arbitrarily or unjustifiably discriminate or a disguised trade restriction measures necessary to protect (a) public morals, order or safety (b) human, animal, or plant life or health ⁴⁰ (c) intellectual property (d) or relating to goods & services of handicapped persons, of philanthropic or not for profit institutions, or of prison labour. Actions considered necessary to protect essential security indispensable to national security or defence.
Multiple thresholds	(a) central entities - goods & services of A\$87,000 or CLP\$35,911,000, construction of A\$9,570,000 or CLP\$3,940,806,000 (b) non-central entities - goods & services of A\$679,000 or CLP\$279,557,000, construction of A\$9,570,000 or CLP\$3,940,806,000 (c) other - goods & services of A\$436,000 or CLP\$ 179,558,000 ⁴¹ , construction of A\$9,570,000 or CLP\$ 3,940,806,000. ⁴²

³⁹ Chile has excluded construction services intended for Easter Island. Australia requires as a condition to receiving NT & participating in procurement of building and construction services compliance with the National Code of Practice for the Construction Industry & related implementation guidelines of central & sub-central governments, & their successor policies & guidelines. Buy national requirements on articles, supplies or materials acquired for use in construction services contracts covered by this Chapter shall not apply to goods of either Party.

⁴⁰ Covers environmental measures.

⁴¹ Australia has excluded procurement of motor vehicles for these specified entities.

⁴² Thresholds to be adjusted biannually, starting 1 January 2010, to align with the adjusted thresholds for equivalent procurement categories listed in respective FTA with the US.

Tendering procedures

Only open or selective tendering. To ensure effective competition under selective tendering, largest number of domestic & tenderers from the other Party to be invited consistent with the procurement system's efficient operation, & selected in a 'fair and non-discriminatory' manner. Limited tendering only allowed (provided not aimed at avoiding competition, protecting domestic suppliers or to discriminate against suppliers of the other Party) if (a) in response to a prior notice, invitation to participate, or invitation to tender (i) no tenders were submitted (or that conformed to the essential documentary requirements) or no suppliers requested participation (ii) no suppliers satisfied participatory conditions (b) where, for works of art, or to protect exclusive rights eg patents, copyrights, proprietary information, or where competition is absent for technical reasons, goods/services can only come from a certain supplier & no reasonable alternative or substitute exists (c) for additional deliveries by the original supplier (or authorised agent) to replace parts, extensions, or continuing services for existing equipment, software, services or installations, where changing supplier would compel procurement of goods/services not compatible with existing equipment, software, services, or installations (d) for goods purchased on a commodity market (e) to procure a prototype or a first good/service intended for limited trial as part of a particular contract for research, experiment, study, or original development (f) extra construction services not in the initial contract but come within the objectives of the original tender documentation have under unforeseen circumstances become necessary to complete the construction services (limited to 50% of the total value of the initial contract (g) for new construction services repeating similar services that conform to a basic project of an initial contract awarded using of open or selective tendering, & where the subsequent use of limited tendering for such services has been stated in the notice of intended procurement concerning the initial construction (h) for purchases under exceptionally short-term advantageous conditions eg from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy or receivership & not for routine purchases from regular suppliers (i) where a contract is awarded to the winner of a design contest provided (i) the contest has been organised consistently with the Agreement & (ii) judged by an independent jury (j) where essential due to extreme urgency from unforeseen events unforeseen by the procuring entity the goods/services could not be timely procured by open or selective tendering.

Australia National

Any preference benefiting SMEs, and measures to (a) protect national treasures of artistic, historic, or archaeological value (b) for the health & welfare of indigenous people or for their economic and social advancement. NT exception applied to the Australian Industry Involvement Program & its successors. Specifically excluded is procurement by Department of Defence & DMO, Defence Intelligence Organisation, the Defence Signals Directorate or the Defence Imagery & Geospatial Organisation, as well as design and all activities associated with military systems and equipment; operation of Government-owned facilities, space services, & services supporting military forces overseas; the Australian Reward Investment Alliance of investment management, investment; advisory or master custody and safekeeping services for managing and investing the assets of Australian Government superannuation funds; health & welfare services⁴³; & of telecom services by the Australian War Memorial; research & development services, plasma fractionation services or government advertising services.

⁴³ ACT, NSW, SA, VIC have excluded the procurement of health & welfare services, education services, utility services or motor vehicles; NSW, QLD have excluded procurement by a covered entity on behalf of a non-covered entity; NT has excluded set-asides on behalf of the Charles Darwin University pursuant to Partnership Agreements between the NT Government and Charles Darwin University; QLD, SA have also excluded procurement of government advertising; TAS has excluded the procurement of health & welfare services, education services or advertising services. VIC has excluded procurement of motor vehicles

Table A4: Summary of Key Government Procurement Provisions in JAEP

Feature	Description
Coverage	Goods/services (including construction, unless noted otherwise) by any contractual means (including purchase, rental, or lease), build-operate-transfer contracts, & public works concessions contracts equal to or exceeding the relevant threshold values by a covered entity not excluded from coverage.
General Principles	G&S, & suppliers receive NT, including for locally established foreign-owned or affiliated suppliers irrespective of degree of foreign affiliation or ownership. Cannot discriminate against locally established suppliers on the basis the goods/services supplied are from the other Party.
Prohibited	Cannot seek, take account of, impose or enforce any offset ie any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts eg use of domestic content, technology licensing, investment, counter-trade.
General Exclusions	Non-contractual agreements or any form of assistance eg grants, loans, equity infusions, fiscal incentives, subsidies; goods/services from own entities & by or between procuring entities; directly for foreign aid; research & development; overseas (including construction) to consume abroad; public employment contracts; acquisition or rental of land, existing buildings, or other immovable property or rights thereon; under an international agreement for stationing troops or relating to the joint implementation of a project; fiscal agency or depository services, liquidation & management services for regulated financial institutions, or services related to the sale, redemption & distribution of public debt, including loans & government bonds, notes, derivatives & other securities; under the particular procedure or condition of an international organisation, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with these provisions.
General Exceptions	Action considered necessary to protect essential security interests indispensable for national security or for national defence purposes. Necessary measures to protect public morals, order or safety, or human, animal or plant life or health ⁴⁴ ; intellectual property; relating to G&S of handicapped persons, of philanthropic or not for profit institutions, or of prison labour (must not arbitrarily or unjustifiably discriminate between Parties under the same prevailing conditions, or act as a disguised trade restriction.
Country Exceptions Australia	
National	NT & non-discrimination not extended to the Australian industry capability program and its successor programs and policies. Blood & related products, including plasma derived products & plasma fractionation services; government advertising services; health & welfare services; legal services; telecommunications; education services; financial services; & transport services. Excludes any form of preference benefiting SMEs; measures protecting national treasures of artistic, historic, or archaeological value; measures for the health/welfare of Indigenous people, & their economic & social advancement; & financial advisory & asset management services pertaining to reserves held, including for the purposes of funding retirement benefits. Suppliers of construction services must comply with the National Code of Practice for the Construction Industry & related implementation guidelines at all government levels.
Central entity (mainly defence-related)	Many specified defence-related & other goods by Department of Defence & Defence Material Organization judged essential for security; covering the design, development, integration, test, evaluation, maintenance, repair, modification, rebuilding & installation of military systems & equipment; operation of Government-owned defence facilities; space services; services supporting military forces overseas; G&S procured by, or on behalf of, the Defence Intelligence Organisation, the Defence Signals Directorate, the Defence Imagery and Geospatial Organisation.
Central entities (other) States	Motor vehicles (including by 'other' entities) & telecom services by the Australian War Memorial. Health & welfare services (ACT); education services & motor vehicles (NSW); by a covered entity on behalf of a non-covered entity (NSW, QLD, VIC); set-asides on behalf of the Charles Darwin University pursuant to Partnership Agreement with state government (NT); by departments, or parts of departments, which deliver health, education, training and/or arts (QLD); health services, education services, training services, arts services, welfare services, government advertising & motor vehicles (QLD); health & welfare services, education services, advertising services, or motor

⁴⁴ Covers essential environmental measures to protect human, animal or plant life or health.

	vehicles (SA); health & welfare services, education services, or advertising services (TAS); & motor vehicles (VIC).
Japan	
National	Contracts awarded to co-operatives or associations under laws & regulations existing when the FTA entered into force. A positive list of specified services covered, including of telecomm services, thereby excluding many services.
Central entities (mainly defence-related)	A positive list of goods covered by the Ministry of Defence, thus excluding most defence-related products.
Central entities (other)	Na
'Other' entities	Contracts awarded by Group A entities for purposes of their daily profit-making activities exposed to competitive markets (cannot be used to circumvent GP provisions). Procurement related to operational safety of transportation; could disclose information incompatible with the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights; for safety-related activities aimed at utilising & managing radioactive materials & responding to emergencies of nuclear installation; related to geological & geophysical survey; advertising services, construction & real estate services; & ships jointly privately owned.
State entities	G&S related to operational safety of transportation; electricity production, transport or distribution; contracts awarded for purposes of their daily profit-making activities where subject to competitive markets (cannot be used to circumvent the GP provisions).
Tendering Procedures	To be non-discriminatory & transparent. Open, selective or limited tendering allowed. For selective tendering, to invite as many domestic & other party suppliers consistent with efficient procurement & considering market conditions. Suppliers to participate to be selected in a fair and non-discriminatory manner. For selective tendering, may use a list of qualified suppliers or a multi-use list established under these provisions. Limited tendering allowed (provided not used to avoid maximum competition, protect domestic suppliers, or discriminate against other Party suppliers) if no responses received to a prior notice, invitation to participate or tender or conformed to the essential requirements, or no supplier met the conditions, or all tenderers colluded; G&S only available from a certain supplier & no reasonable alternative or substitute exists due to (a) covers works of art (b) protect patents, copyrights, or other exclusive rights, or proprietary information (c) competition is absent for technical reasons; for additional deliveries of G&S by the original supplier to replace parts, extend, or continue services for existing equipment, software, services, or installations, where changing suppliers would compel buying G&S not interchangeable/interoperable with existing equipment or would cause significant inconvenience or substantial duplication of costs for the procuring entity; commodities; a prototype or a G&S for limited trial or developed at its request in the course of, and for, a particular research, experiment, study, or original development ⁴⁵ ; as strictly necessary to meet emergencies from unforeseen events; new construction services of repeated similar services initially awarded by open tender, or by selective tender complying with these provisions if the initial procurement notice stated limited tendering may be used; purchases in exceptionally advantageous short-term cases eg unusual disposal, unsolicited innovative proposals, liquidation, bankruptcy, or receivership; or for contracts awarded winners of a design contest consistent with these provisions & judged independently.
Awarding contracts	Supplier most capable of fulfilling the contractual terms & based solely on the criteria & requirements specified in the notices & tender documents, submitted the most advantageous, best value or overall greatest value tender; or where price is the sole criterion, the lowest price.
Multiple thresholds depending on particular entity:	
Australia	(a) central entities – G&S = 130,000 SDR; construction = 5,000,000 SDR (b) regional government entities – G&S = 355,000 SDR; construction = 5,000,000 SDR (c) government enterprises – G&S = 450,000 SDR; construction = 5,000,000 SDR. ⁴⁶
Japan	(a) central entities – Goods = 100,000 SDR; Services, construction = 4,500,000 SDR, architectural, engineering & other technical services = 450,000 SDR, other = 200,000 SDR (b) regional government

⁴⁵ May include limited production or supply in order to incorporate the results of field testing & to demonstrate that the G&S is suitable to produce or supply in quantity to acceptable quality standards.

⁴⁶ Thresholds to be adjusted biennially, starting 1 January 2016.

entities – Goods = 200,000 SDR; Services, construction = 15,000,000 SDR, architectural, engineering & other technical services = 1,500,000 SDR, other = 200,000 SDR (c) other entities – Goods = 130,000 SDR; Services, construction = 4,500,000 SDR or 15,000,000⁴⁷, architectural, engineering & other technical services = 450,000 SDR, other = 130,000 SDR.⁴⁸

Table A5: Summary of Key Government Provisions of KAFTA

Feature	Description
Coverage	G&S, including construction ⁴⁹ (unless noted otherwise) by any contractual means (including purchase, rental, or lease), build-operate-transfer contracts, & public works concessions contracts equal to or exceeding the relevant threshold values by a covered entity not excluded from coverage. Parties affirm the Memorandum of Understanding on Defence Industry Cooperation between respective defence ministries of 2001, including amendments or extensions. They recognise that the benefits & responsibilities established under the MOU will continue.
General Principles	G&S, & suppliers receive NT, including for locally established foreign-owned or affiliated suppliers irrespective of degree of foreign affiliation or ownership. Cannot discriminate against locally established suppliers on the basis the goods/services supplied are from the other Party.
Prohibited	Cannot seek, take account of, impose or enforce any offset ie any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts eg use of domestic content, technology licensing, investment, counter-trade.
General Exclusions	Non-contractual agreements or any form of assistance eg grants, loans, equity infusions, fiscal incentives, subsidies; goods/services from own entities & by or between procuring entities; directly for foreign aid; research & development; overseas (including construction) to consume abroad; public employment contracts; acquisition or rental of land, existing buildings, or other immovable property or rights thereon; under an international agreement for stationing troops or relating to the joint implementation of a project; fiscal agency or depository services, liquidation & management services for regulated financial institutions, or services related to the sale, redemption & distribution of public debt, including loans & government bonds, notes, derivatives & other securities; under the particular procedure or condition of an international organisation, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with these provisions.
General Exceptions	Action considered necessary to protect essential security interests indispensable for national security or defence purposes. Necessary measures to protect public morals, order or safety, or human, animal or plant life or health ⁵⁰ ; intellectual property; relating to G&S of handicapped persons, of philanthropic or not for profit institutions, or of prison labour (must not arbitrarily or unjustifiably discriminate between Parties under the same prevailing conditions, or act as a disguised trade restriction. The Australian industry capability program & successor programs & policies.
Country Exceptions	
Australia	
National	NT & non-discrimination not extended to the Australian industry capability program and its successor programs and policies. Blood & related products, including plasma derived products & plasma fractionation services; government advertising services; health & welfare services; legal services; telecommunications; education services; financial services; & transport services. Excludes any form of preference benefiting SMEs; measures protecting national treasures of artistic, historic, or archaeological value; measures for the health/welfare of Indigenous people, & their economic & social advancement. Suppliers of construction services must comply with the National Code of Practice for the Construction Industry & related implementation guidelines at all government

⁴⁷ 15,000,000 SDR for all Group A entities except 4,500,000 SDR for Japan Post Holdings Company Limited, Japan Post Company Limited, Japan Post Bank Company Limited, Japan Post Insurance Company Limited, and Management Organization for Postal Savings and Postal Life Insurance. All Group B entities 4,500,000 SDR.

⁴⁸ Thresholds to be adjusted every even-numbered year.

⁴⁹ Australia may require tenderers for construction to comply with National Code of Practice for the Construction Industry and related implementation guidelines at central & regional government.

⁵⁰ Covers essential environmental measures to protect human, animal or plant life or health.

	levels.
Central entity	Motor vehicles, many specified defence-related & other goods by Department of Defence & Defence Material Organization; covering the design, development, integration, test, evaluation, maintenance, repair, modification, rebuilding & installation of military systems & equipment; operation of Government-owned defence facilities; space services; services supporting military forces overseas; G&S procured by, or on behalf of, the Defence Intelligence Organisation, the Defence Signals Directorate, the Defence Imagery and Geospatial Organisation.
Other entities	Motor vehicles & services (other than construction) excluded.
States	Health & welfare services, education, utility or motor vehicles (ACT); health, welfare , education services & motor vehicles (NSW); by a covered entity on behalf of a non-covered entity (NSW, QLD, VIC); set-asides on behalf of the Charles Darwin University pursuant to Partnership Agreement with state government (NT); by departments, or parts of departments, which deliver health, education, training and/or arts (QLD); health services, education services, training services, arts services, welfare services, government advertising & motor vehicles (QLD); health & welfare services, education services, advertising services, or motor vehicles (SA); health & welfare services, education services, or advertising services (TAS); & motor vehicles (VIC).
Korea	
National	Excludes any set-asides for SMEs in accordance with the Act Relating to Contracts to Which the State is a Party and its Presidential Decree, and the procurement of agricultural, fishery and livestock products in accordance with the Grain Management Act, the Act on Distribution and Price Stabilization of Agricultural and Fishery Products, and the Livestock Industry Act. Set-asides for SMEs under the Act on Private Participation in Infrastructure are also excluded. Exempted is procurement to maintain public order, of blood-related products (including plasma-derived), in furtherance of human feeding programs. & for airports. A positive list of specified services covered, thereby excluding many services.
Central entities	A positive list of goods covered by the Ministry of National Defence & Defence Acquisition Program Administration, thus excluding most defence-related products for essential security reasons. Only services, including construction, listed in Section E & F, & procurement by the Public Procurement Service covered. Excludes procurement by the National Police Agency & Korea Coast Guard to maintain public order. Excludes set-asides for SMEs under the Act on the Management of Public Institutions & the Rule on Contract Business of Public Institutions & Quasi-Governmental Institutions, the Local Public Enterprises Act and the Enforcement Regulations of the Local Public Enterprise Act.
'Other' entities	Services (other than construction) excluded.
Sub-regional entities	None
Tendering Procedures	Open, selective or limited tendering allowed. For selective tendering, to invite as many domestic & other party suppliers consistent with efficient procurement & considering market conditions. Suppliers to participate to be selected in a fair and non-discriminatory manner. Limited tendering allowed (provided not used to avoid maximum competition, protect domestic suppliers, or discriminate against other Party suppliers) if no responses received to a prior notice, invitation to participate or tender or conformed to the essential requirements, or no supplier met the conditions, or all tenderers colluded; G&S only available from a certain supplier & no reasonable alternative or substitute exists due to (a) covers works of art (b) protect patents, copyrights, or other exclusive rights, or proprietary information (c) competition is absent for technical reasons; for additional deliveries of G&S by the original supplier to replace parts, extend, or continue services for existing equipment, software, services, or installations, where changing suppliers would compel buying G&S not interchangeable with existing equipment or would cause significant inconvenience or substantial duplication of costs for the procuring entity; commodities; a prototype or a G&S for limited trial or developed at its request in the course of, and for, a particular research, experiment, study, or original development ⁵¹ ; as strictly necessary to meet emergencies from unforeseen events; new construction services of repeated similar services initially awarded by open tender, or by selective tender complying with these provisions if the initial procurement notice stated limited tendering may be used; purchases in exceptionally advantageous short-term

⁵¹ May include limited production or supply in order to incorporate the results of field testing and to demonstrate that the goods and services is suitable to produce or supply in quantity to acceptable quality standards.

	cases eg unusual disposal, unsolicited innovative proposals, liquidation, bankruptcy, or receivership; or for contracts awarded winners of a design contest consistent with these provisions & judged independently.
Awarding contracts	Supplier determined to satisfy participatory conditions & whose tender evaluated the most advantageous or best value for money, in accordance with specified requirements & criteria.
Multiple thresholds depending on particular entity:	
Australia	(a) central entities – G&S = 130,000 SDR; construction = 5,000,000 SDR (b) sub-central government entities – G&S = 355,000 SDR; construction = 5,000,000 SDR (c) other entities – Goods = 450,000 SDR; construction = 15,000,000 SDR. ⁵²
Korea	(a) central entities – G&S = 130,000 SDR; Services, construction = 5,000,000 SDR (b) sub-central government entities – G&S = 200,000 SDR; Services, construction = 15,000,000 SDR (c) other entities – Goods = 450,000 SDR; Services, construction = 15,000,000 SDR.

Table A6: Summary of Key Government Procurement Provisions of NSCEP

Feature	Description
Coverage	Goods & services, including construction. Procurement covers eg purchase, hire, lease, rental, exchange & competitive tendering & contracting (outsourcing) by government-controlled bodies eg departments & statutory authorities. Best endeavours, consistent with good commercial practice to apply provisions to regional or local governments or authorities, & to services by non-governmental bodies exercising powers delegated by central, regional or local governments or authorities.
General Principles	Establish single procurement market to maximise competitive opportunities & reduce costs of doing business by adopting APEC Non-Binding Principles of transparency, value for money, open & effective competition, fair dealing, accountability & due process, & non-discrimination; ensuring suppliers can compete equally & transparently with no preferential schemes or discrimination based on origin.
General Exclusions	May be agreed for covered government bodies.
General Exceptions	Procurement of joint bodies with any other State or separate customs territory not in the Agreement; bodies funded primarily from special levies on particular industries, by community groups or from special grants or public donations. No government body is intended to be granted full exemption. When considering applications for partial exemptions, governments are to exercise authority with due diligence. Excludes internal procurement from its own bodies where no other supplier asked to tender, unless tenders are invited, irrespective if the body submits a tender; proprietary items required to ensure machinery or equipment integrity, but only as they relate to biased specifications, unless such items available from a number of sources &/or tenders are invited. All provisions apply except as they relate to biased specifications; urgent procurement of goods & services in emergencies eg natural disasters, or to meet urgent requirements of UN peacekeeping or humanitarian operations; of proprietary equipment of a work, health or safety nature specified in industrial agreements (only as they relate to biased specifications), unless such items available from a number of sources &/or tenders are invited (all provisions apply except as they relate to biased specifications); defence procurement of a strategic nature & for national security; under development assistance programmes.
Prohibited Rules-of-origin	Offsets Those applied in the normal course of trade between the Parties.
Awarding contracts	Value for money primary determinant, based on competition & non-discriminating. This is best available outcome for money; test involves comparing the whole-of-life costs & benefits eg fitness for purpose, quality, performance, price, delivery, accessories & consumables, service support & disposal.
Threshold	Above 50,000 SDR.

⁵² Thresholds to be adjusted biennially, starting 1 January.

Table A7: Summary of Key Government Procurement Provisions of NTCEP

Feature	Description
General Principles	Reaffirm desire to promote & implement to the extent possible the APEC Non-Binding Principles on transparency, value for money, open & effective competition, fair dealing, accountability & due process, & non-discrimination; & the APEC Transparency Standards. Working Group established to regularly discuss relevant issues & to review provisions. It was to report to the CEP Joint Commission within 12 months of the Agreement's entry into force recommending the commencement of bilateral negotiations. Procurement disputes do not apply to these provisions unless mandated in by future negotiations.

Table A8: Summary of Key Government Procurement Provisions of P4

Feature	Description
Coverage	Procurement of goods & services by a positive list of agencies exceeding minimum thresholds.
Objective	Conduct procurement using key principles of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination.
General principles	Goods, services, & suppliers receive national treatment, including for local foreign-owned or affiliated firms. Cannot discriminate against local firms based on the goods/services from the other Party.
Prohibited	Offsets
Rules-of-origin	Those applied in the normal course of trade between the Parties.
General exclusions	Inter-agency procurement, unless tenders are called; non-contractual agreements; any form of assistance to persons or governmental authorities eg foreign assistance, grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, sponsorship arrangements; funded by international grants, loans or other assistance with inconsistent conditions to the Agreement; of goods & services for consumption abroad; acquisition of fiscal agency or depository services, liquidation & management services for regulated financial institutions, & sale & distribution services for government debt; & hiring of government employees or other long-term staff & related employment measures.
General exemptions	Procurement necessary to protect essential security for purchasing arms, ammunition or war materials, or indispensable for national security or defence. Necessary measures to protect public morals, order or safety, or human, animal or plant life or health; intellectual property; relating to goods & services of handicapped persons, of philanthropic or non-profit institutions, or of prison labour (must not arbitrarily or unjustifiably discriminate between Parties or act as a disguised trade restriction).
Tendering methods	Open or selective tendering. Limited tendering allowed (cannot be used to avoid competition, protect domestic suppliers) if no responses received to a prior notice, invitation to participate or tender or conformed to the essential requirements, or no supplier met the conditions; goods & services only available from a certain supplier & no reasonable alternative or substitute exists due to covering works of art or protecting patents, copyrights; no competition for technical reasons; further deliveries by the original supplier to replace parts, extend, or continue services for existing equipment, software services, or installations, where changing suppliers would compel buying goods & services not interchangeable with existing equipment; commodities; a prototype or item for limited trial or developed at its request in the course of, and for, a particular research, experiment, study, or original development; as strictly necessary to meet unforeseen emergencies; extra construction services under the original tender's objectives that for unforeseeable circumstances are necessary to finish the construction services (total value not to exceed 50% of the main contract); purchases in exceptionally advantageous short-term cases eg unusual disposal unsolicited innovative proposals, liquidation; commodities; contracts awarded to winners of a design contest consistent with these provisions & judged independently; new construction services of repeated similar services initially awarded by open, or by selective tender complying with these provisions if the initial procurement notice stated limited tendering may be used.
Awarding tenders	Unless determined not to be in the public interest, to the supplier determined fully capable of undertaking the contract and offering best value for money or be the most advantageous in terms of the essential requirements and evaluation criteria set forth in the tender documentation.
Specific exemptions	
New Zealand	
National	Procurement by a covered entity for a non-covered entity; of research & development; construction, refurbishment or furnishing of chanceries abroad; & of public health, education & welfare services.
Chile	
National	Procurement by a covered entity for a non-covered entity; all financial services of covered entities.

Singapore	
National	Procurement by a covered entity for a non-covered entity; of services (including construction) not in a positive list; construction contracts for chanceries abroad and headquarters buildings by the foreign affairs ministry; internal Security & Criminal Investigation Departments, the Security Branch & Central Narcotics Bureau of the home affairs ministry & that has security considerations.
Multiple thresholds	Goods & services = 50,000 SDR; construction = 5,000,000 SDR.

Table A9: Summary of Key Government Procurement Provisions of NZHK

Feature	Description
Coverage	Goods & services, including construction unless indicated otherwise, by contractual means eg purchase, hire purchase, rental, lease, build-operate-transfer contracts & public work concessions by covered entities exceeding relevant value thresholds. Positive list of central government entities covered & excludes defence-related entities (no sub-regional entities).
General Principles	Procurement to accord with the fundamental principles of the APEC <i>Non-Binding Principles on Government Procurement</i> of transparency, value for money, open and effective competition, fair dealing, accountability and due process, & non-discrimination, to facilitate competitive opportunities. Goods, services & suppliers receive NT, including for local foreign-owned or affiliated suppliers. Cannot discriminate against locally established suppliers based on goods/services supplied from the other Party.
General Exclusions	Procurement from own entities unless tenders are invited; foreign aid; overseas to consume abroad; non-contractual agreements; any form of assistance to persons or governmental authorities eg cooperative agreements, sponsorship arrangements, grants, loans, subsidies, equity infusions, guarantees, fiscal incentives & governmental provision; international agreement on stationing troops or to jointly implement a project; under an international organisation, or funded by international grants, loans, or other assistance; acquisition of fiscal agency or depository services, liquidation & management services for regulated financial institutions, or services related to the sale, redemption & distribution of public debt eg loans government bonds, notes & other securities; hiring of government employees & related employment measures; by a covered entity for a non-entity.
General Exceptions	Action or not disclosing information considered necessary to protect essential security interests for buying arms, ammunition or war materials, or to indispensable for national security or defence. Necessary to protect public morals, order or safety, or human, animal or plant life or health; intellectual property; relating to goods & services of disabled persons, of philanthropic institutions, or of prison labour.
Specific exemptions	
New Zealand	
National	Procurement (including construction) to construct, refurbish, furnish chanceries abroad; for not-profit institutions (cannot arbitrarily or unjustifiably discriminate between Parties or a disguised trade restriction)
Central entity	Research & development; public health, education & welfare services.
Hong Kong	
National	All consultancy & franchise arrangements eg build-operate-transfer contracts & public works concession contracts; air mail; statutory insurances eg 3 rd party liability for vehicles & vessels, & employer's employee liability insurance; & buying office or residential accommodation by the Government Property Agency.
Central entities	A positive list of covered services eg certain telecoms & financial services. ⁵³
Tendering Procedures	Open or selective tendering. Limited tendering (cannot be used to avoid competition or protect domestic suppliers) if no responses received to a prior notice, invitation to participate or tender or conformed to the essential requirements, or no supplier met the conditions; items only available from a certain supplier & no reasonable alternative or substitute exists due to covering works of art or protecting patents, copyrights; competition is absent for technical reasons; further deliveries by the original supplier to replace parts, extend, or continue services for existing equipment, software services, or installations, where changing suppliers would compel buying goods & services not interchangeable with existing equipment;

⁵³ Suppliers of telecoms may require licensing under the Telecommunications Ordinance and be established in Hong Kong under the Companies Ordinance.

	<p>commodities; a prototype or an item for limited trial or developed at its request in the course of, & for, a particular research, experiment, study, or original development; as strictly necessary to meet unforeseen emergencies; extra construction services under the original tender's objectives that due to unforeseeable circumstances are necessary to complete the construction services (total value cannot exceed 50% of the main contract); purchases in exceptionally advantageous short-term cases eg unusual disposal, unsolicited innovative proposals, liquidation; commodities; contracts awarded to design contest winners consistent with these provisions & judged independently; & new construction services of repeated similar services initially awarded by open, or by selective tender complying with these provisions if the initial procurement notice stated limited tendering may be used.</p>
Awarding contracts	Supplier determined fully capable of undertaking the contract & whose tender offers the best value for money; or the lowest price; or is the most advantageous in terms of the essential requirements & evaluation criteria contained in the tender documentation.
Multiple thresholds	
New Zealand	Goods & services = 130,000 SDR; Construction = 5,000,000 SDR
Hong Kong	Goods & services = 130,000 SDR; Construction = 5,000,000 SDR

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