



**NEW ZEALAND'S INITIAL OFFER IN THE  
WTO SERVICES NEGOTIATIONS:  
INVITATION TO MAKE YOUR VIEWS KNOWN**

The attached document provides information specifically on New Zealand's initial offer in the services negotiations. The initial offer has been tabled by New Zealand with the WTO in Geneva.

During February, submissions were invited on New Zealand's approach to the next stage of the WTO services negotiations (under the General Agreement on Trade in Services (the GATS)). Over two hundred submissions were received and consultations took place in Auckland, Christchurch, Dunedin, Hamilton, Rotorua and Wellington. But February didn't mark the end of consultations. It's an ongoing process, so we would welcome any views you would like to pass on as the negotiations develop. Your views will be given careful consideration in the development of New Zealand's approach to the negotiations.

**Any communications on New Zealand's approach to the services negotiations can be addressed to:**

- **The Services Unit, Trade Negotiations Division, Ministry of Foreign Affairs and Trade, PO Box 18901, Wellington; or**
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## **I OVERVIEW OF THE OFFER PACKAGE**

New Zealand's overall approach to the WTO services negotiations under the GATS, and to the preparation of this offer, has been undertaken on the basis that Article I.3 allows for a government to provide, regulate or fund (including through subsidisation) public services such as public education, public health and social welfare services, in the manner it determines best meets broader policy objectives. In this respect, such services should not be subjected to the same disciplines as private services with purely commercial objectives.

The following is an overview of New Zealand's initial offer which has been tabled in Geneva with the WTO Secretariat. Health, education and drinking water services are not included in New Zealand's initial offer. Sectors that are included are:

### **1 New commitments in the following (currently uncommitted) sectors:**

- integrated engineering services;
- consultancy services on urban planning and landscape architecture;
- management consulting and services related to management consulting;
- placement and supply of personnel
- photographic services
- convention services;
- interior design services;
- environmental consultancy services;
- credit reporting and collection agency services;
- postal services and courier services (with certain "carve-outs" i.e. limitations to the application of the commitment); and

### **2 Improved commitments in the following sectors:**

- engineering services (removal of residency requirements);
- veterinary services (include commitments on cross-border supply);
- computer services (include two sub-sectors not currently covered);
- services incidental to animal husbandry (remove limitation on herd testing in line with recent regulatory changes);
- telecommunications services (recast footnote in light of regulatory changes)
- construction services (include additional sub-sector and make consultancy services commitment on cross border supply);

- financial services (eliminate compulsory hail insurance provision as related to former Apple and Pear Board);
- maritime transport (include additional auxiliary and port services)
- air transport services (include additional auxiliary services)

3 **Horizontal commitments (i.e. obligations applying across all the sectors for which New Zealand has entered commitments):**

- Temporary entry of individual service suppliers (i.e. Mode 4 - “movement of natural persons”). (A narrowing of the labour market test for “specialist” intra-corporate transferees, extension of periods of stay and clarification of commitment on business visitors.)

4 **Most Favoured Nation (MFN) exemptions:**

- removal of MFN exemptions for superseded Kiribati and Tuvalu work schemes
- removal of MFN exemption relating to ships officers.

## **II WHAT ARE SECTORAL COMMITMENTS?**

### **General Obligations**

The GATS puts two sorts of obligations on its members. The first sort is general obligations, and these apply to all measures related to trade in services, whether members have made specific sectoral commitments or not. These general provisions include, for example, “Most Favoured Nation” (MFN) and transparency obligations. The MFN obligation requires that members extend the same treatment to all members’ services and service suppliers (although there are provisions to depart from MFN, for example in accordance with the Annex on Article II (MFN) Exemptions, and under comprehensive trade agreements such as that which New Zealand has with Australia). The transparency obligation requires Members to make publicly available legislation, regulation and policies relating to services. In becoming a GATS Member, New Zealand has made a commitment that these general obligations would apply to all trade in services.

### **Specific or sectoral commitments**

The second kind of obligation is specific. “Specific” or “sectoral” commitments are made by an individual WTO member in a particular sector or sub-sector. These are what the request/offer process focuses on. The Member will specify exactly the scope of a services sector or sub-sector and it will also in effect specify the nature of access that foreign services suppliers will have its market in that sector or sub-sector. This access involves commitments on one or both of the standard GATS obligations of **market access** and **national treatment** (see below). The nature of the access will also be defined by commitments on mode of supply (also see below).

A “market access” commitment means that certain market access restrictions will not be introduced in the sector or sub-sector concerned. These are:

- limitations on the number of service providers;
- limitations on the total value of service transactions or assets;
- limitations on the total number of service operations or quantity of service output;
- limitations on the number of employees in a sector or by a supplier;
- restrictions or requirements as to the specific type of legal entity or joint venture through which a service supplier may supply the service;
- limitations on the participation of foreign capital in terms of maximum percentage
- limitations on foreign shareholding or the total value of individual or aggregated foreign investment.

A “national treatment” commitment means that in the relevant sector, the committed Member agrees to treat foreign services and services providers no less favourably than domestic services and services providers.

“Market access” and “national treatment” commitments are made either on individual services sectors, or at the “horizontal” level, where they apply in overarching fashion to all the sectors where the Member has agreed to make specific commitments. WTO members are free to pick and choose the service sectors on which they are willing to make market access and national treatment commitments.

When WTO members make particular sectoral commitments to extend national treatment and market access, they are free to attach reservations limiting these commitments. Reservations limit the degree of adherence to the two obligations a Member is willing to guarantee. For example, when New Zealand made a commitment on engineering services during the Uruguay Round, a national treatment reservation was

included, as at that time domestic regulation required that some services could only be provided by registered engineers and a registration required residency in New Zealand. This made meeting the obligation easier for New Zealanders – a difference in national treatment, which accordingly was reflected in the scheduled commitment as a national treatment reservation. Members are also able to limit the coverage of a commitment through the definitions they use for services sectors. (For example, New Zealand’s Uruguay Round specific commitment on education is made only on “primary, secondary and tertiary education delivered in private institutions”). Either of these two mechanisms is a useful way to tailor the scope of specific commitments to fit Members’ domestic regulatory frameworks.

### **The Four Modes Of Supply**

In scheduling specific commitments, Members must also look at the way services are delivered (or the “modes of supply”) as commitments on market access and national treatment are given in respect of four such modes.

With services trade, borders are less clearly defined than in the case of the trade in goods. When a New Zealand services supplier provides services to an overseas customer, whether that customer is inside New Zealand or overseas, that service is being exported. Four methods, or “modes” for delivering services have been identified by the WTO:

Mode 1: Cross Border Trade: the service is supplied by a provider physically located in one territory, to a consumer in another (for example, an architect in New Zealand providing plans and advice to a client in Singapore, through one or more medium of communication, eg internet/phone/fax/mail);

Mode 2: Consumption Abroad: a customer travels to another territory to consume a service, (for example, a tertiary student from Hong Kong travelling to New Zealand to study, which is a New Zealand export, or a tertiary student travelling to the US to study, which is a New Zealand import);

Mode 3: Commercial Presence: where a foreign services supplier establishes a presence in another territory to provide a service, through incorporation, branch offices, a joint venture or other form of business entity (for example, a New Zealand engineering firm establishing a branch in China to provide engineering services to Chinese customers);

Mode 4: Movement of Natural Persons: the temporary movement of services suppliers (for example, a New Zealand professor of law visiting the United States for several months to give a series of lectures at the invitation of a local university).

When a member decides to offer a specific commitment in a sector, it must analyse its domestic regulatory framework to decide where market access and national treatment exceptions may lie, and in relation to which mode of supply. For example, in the case of New Zealand’s engineering commitment mentioned earlier, the national treatment

limitation relating to the residency requirement on registration was scheduled as a limitation on Mode 1 supply (because the reserved services could only be supplied from overseas, to the extent that were possible, by a New Zealand-registered engineer – who needed to be ordinarily resident in New Zealand to be registered); on Mode 3 (because an engineer seeking to establish commercial presence in New Zealand to provide reserved services would need to be resident in order to be registered); and on Mode 4, (because a foreign engineer transferred by her firm to New Zealand would need to be registered and resident in New Zealand to provide the reserved services). The reservation does not, however, apply to Mode 2, as the residency requirement for registered engineers does not affect New Zealanders travelling abroad to consume engineering services.

One of a range of services issues that lie outside GATS disciplines is “services supplied under Governmental authority”. The GATS specifically excludes from its coverage all services provided in the exercise of governmental authority, which are defined under Article 1:3(c) as those supplied neither on a commercial basis nor in competition with one or more service suppliers (for example; national defence). Under the GATS it remains the right of governments to maintain publicly funded government services. The GATS does not override the Government’s commitment to ensure that publicly funded government services, (whether at the central, regional or local level) remain so. The GATS does not require public services provided on a commercial or competitive basis to be privatised or liberalised. Public services can and do co-exist with private suppliers, as for example health and education services in New Zealand.

The GATS also specifically recognises the right to regulate and to introduce new regulations in order to meet policy objectives (again, whether at the central or local level). This includes areas such as quality standards – provided these do not constitute disguised barriers to trade which would nullify specific commitments on market access or national treatment already made.

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### **III RECOMMENDED COMMITMENTS BY SECTOR**

We note that unless otherwise indicated, commitments listed below relate only to Mode 1 (cross-border supply of services), Mode 2 (consumption of services abroad) and Mode 3 (commercial presence). The only Mode 4 commitments (relating to the movement of natural persons) are those applied “horizontally” i.e. to all committed sectors (see the entry under “Horizontal Commitments”).

## **BUSINESS SERVICES: Professional Services**

### **Engineering Services**

New Zealand already has commitments on Engineering Services. We have offered to improve these commitments by removing a “national treatment reservation”. This reservation took into account a legislative requirement that only a New Zealand resident could register as an engineer. Legislation has been revised and from 1 January 2004 residency will no longer be a prerequisite for registration.

### **Integrated Engineering Services**

New Zealand has offered to enter into a new commitment giving market access and national treatment for Integrated Engineering Services (under the same regulatory framework now applying to Engineering Services).

### **Urban Planning Consultancy and Landscape Architecture Consultancy Services**

New Zealand has offered to enter into a new commitment giving market access and national treatment on consultancy services related to urban planning and landscape architecture.

### **Veterinary Services**

New Zealand already has commitments on Veterinary Services. We have offered to improve these by adding market access and national treatment commitments on distance delivery of services (i.e. Mode 1 – cross border supply of services). Distance supply of Veterinary Services had been considered technologically unfeasible when the original GATS commitments were entered into, but with technical advances this is no longer the case.

## **BUSINESS SERVICES: Computer and related services**

New Zealand already has market access and national treatment commitments on Computer and Related Services. We have offered to improve these by entering into new commitments on two previously uncommitted sub-sectors: the maintenance and repair services of office machinery and equipment; and other computer services, giving market access and national treatment.

## **BUSINESS SERVICES: Other Business Services**

### **Management consulting and Services related to management consulting**

New Zealand has offered to enter into a new commitment giving market access and national treatment on: management consulting; and services related to management consulting.

### **Services incidental to agriculture, hunting and forestry**

New Zealand already has market access and national treatment commitments on Services Incidental to Animal Husbandry, but these include a market access reservation in connection with herd testing. Recent changes in the dairy sector remove the need for this reservation. New Zealand has therefore offered to improve its commitment on Services Incidental to Animal Husbandry by removing the reservation.

### **Placement and supply services of Personnel**

New Zealand has offered to enter into new commitments giving market access and national treatment on the Placement and supply services of Personnel.

### **Photographic Services**

New Zealand has offered to enter into new commitments giving market access and national treatment on Photographic Services.

### **Convention Services**

New Zealand has offered to enter into new commitments giving market access and national treatment on Convention Services.

### **Credit Reporting and Collection Agency Services**

New Zealand has offered to enter into new commitments giving market access and national treatment on the Credit Reporting and Collection Agency Services.

### **Interior Design Services (CPC 87907)**

New Zealand has offered to enter into new commitments giving market access and national treatment on Interior Design Services.



## **COMMUNICATIONS SERVICES**

### **Postal Services and Courier Services**

New Zealand has offered to enter into new commitments giving market access and national treatment on Postal Services and Courier Services, including the following elements:

- A definition tailored to New Zealand circumstances;
- Preservation of the government's right to take action in the event that entry to the market of a foreign monopoly provider resulted in an unfair competitive situation for New Zealand postal operators;
- Preservation of the government's right to set criteria which favour a New Zealand supplier in respect of designation as the national postal administration for representation at the Universal Postal Union, and the associated right to issue official New Zealand stamps;
- Reference to the provision of a universal service within New Zealand;
- Reference in the cover sheet to the need for other WTO Members to offer commensurate commitments in order for New Zealand to maintain its offer.

### **Telecommunications Services**

New Zealand already has market access and national treatment commitments on Telecommunications Services. New Zealand has offered to improve these commitments by recasting a footnote (on "dominant suppliers") to the Basic Telecommunications Reference Paper, which sets out some high-level competition principles for the sector, to reflect recent regulatory changes.

## **CONSTRUCTION AND RELATED ENGINEERING SERVICES**

### **Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator**

New Zealand already has market access and national treatment commitments on Construction and Related Engineering Sectors. We have offered to improve these by entering into a new commitment giving market access and national treatment on a previously uncommitted sub-sector: Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator. New Zealand has offered to extend existing commitments to cover distance delivery, to clarify that New Zealand considers that consultancy services in this sector can now feasibly be supplied on a cross-border basis.

## **ENVIRONMENTAL SERVICES**

### **Environmental Consultancy Services**

New Zealand has offered to enter into new commitments giving market access and national treatment on environmental consultancy services, except consultancy on drinking water. No other commitments are being offered in this sector.

## **FINANCIAL SERVICES**

New Zealand already has market access and national treatment commitments on Financial Services. New Zealand has offered to improve its existing commitments by removing a reservation related to compulsory hail insurance for apple and pear growers. Changes to New Zealand's regulatory environment mean that this reservation is no longer relevant.

## **TRANSPORT SERVICES**

### **Maritime Transport Services**

New Zealand already has market access and national treatment commitments on Maritime Transport Services. We have offered to improve these by entering into new commitments on previously uncommitted sub-sectors:

- Maritime Cargo-Handling Services on Mode 2) (i.e. consumption of services abroad) and Mode 3) (commercial presence). Mode 1) (cross border provision of services) would be unbound except for no limitation on transshipment and/or use of onboard cargo handling equipment.
- Customs Clearance Services for Modes 2) and 3). Mode 1) would be unbound.
- Container Station and Depot Services for Modes 2) and 3). Mode 1) would be unbound.
- Maritime Agency services for Modes 1), 2) and 3).

An additional commitment has also been offered, covering non-discriminatory access to (i.e. use of, not ownership or control of) port services including pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth and berthing services, other port-based operational services essential to ship operations, including communications, water and electrical supplies.

## **Air Transport Services**

### **Aircraft Repair and Maintenance**

New Zealand already has commitments with regard to Air Transport Services. It is proposed that New Zealand improve these by offering new commitments on Aircraft Repair and Maintenance Services.

### **Other auxiliary services**

New Zealand has also offered to make new commitments on air cargo and baggage handling services, ramp handling, storage and warehousing, airport management services, airport operation services (excl navigation aids), other supporting services for air transport (excl fire fighting and fire prevention services).

## **HORIZONTAL COMMITMENTS**

### **Movement of Natural Purposes**

New Zealand already has “horizontal” commitments (applying to all committed sectors) on the temporary entry of individual service suppliers i.e. “movement of natural persons” (or Mode 4). New Zealand has offered to improve these commitments in the following ways:

- To amend the commitment on specialists as intra-corporate transferees to reflect that the labour market test will not apply in respect of occupations on the Occupational Shortages List (which can be revised or amended by NZIS at any time);
- To extend the existing commitment on executives, managers and specialists in respect of periods of stay - to an initial three year stay plus a further three years providing that the need for the worker still exists;
- To recast the existing commitment on business visitors to clarify that it permits temporary entry for the purpose of establishing commercial presence.

## **MOST FAVOURED NATION EXEMPTIONS**

New Zealand has two Most Favoured Nation (MFN) exemptions relating to Kiribati and Tuvalu work schemes. These schemes no longer exist, and so New Zealand has offered to remove these exemptions. New Zealand has a further MFN exemption relating to a nationality requirement for ships’ officers. Again, domestic changes mean that this exemption is no longer relevant. New Zealand has offered to remove this exemption; provided that certain prerequisites are met.