NEW ZEALAND

TRADE SUMMARY

The U.S. trade deficit with New Zealand was $468 million in 2002, an increase of $380 million from $89 million in 2001. U.S. goods exports in 2002 were $1.8 billion, a decrease of 14.0 percent from the previous year. Corresponding U.S. imports from New Zealand were $2.3 billion, up 3.8 percent. New Zealand is currently the 41st largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to New Zealand were $1.2 billion in 2001, and U.S. imports were $1.3 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were $869 million in 1998, while sales of services in the United States by majority New Zealand-owned firms were $24 million in 2000.

The stock of U.S. foreign direct investment (FDI) in New Zealand in 2001 was $4.0 billion, up from $3.9 billion in 2000. U.S. FDI in New Zealand is concentrated largely in finance, manufacturing, and wholesale sectors.

IMPORT POLICIES

Tariffs

New Zealand maintains generally low tariff rates, which are largely the result of an ambitious economic reform program begun in the mid-1980s, including a series of unilateral tariff cuts. More than 99 percent of New Zealand's tariff lines are bound, with the simple average bound rate at 12 percent and the simple average applied rate at 3.7 percent. Most applied rates range from 6 percent to 7 percent. New Zealand's highest tariffs apply to textiles, clothing and footwear, carpets, and certain motor vehicles and parts. New Zealand maintains no tariff rate quotas. New Zealand has continued to reduce tariffs under WTO zero-for-zero agreements on beer, pulp, paper, paper products and printed matter. New Zealand currently provides duty free treatment to goods from Australia, Pacific Island Forum countries, Singapore and the Least Developed Countries. It also provides preferential treatment to goods from Canada, the United Kingdom, and Less Developed Countries.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Biotechnology

In October 2001, the New Zealand Government released its response to the July 2001 report of the Royal Commission on Genetic Modification. While it supported the report's overall strategy of preserving opportunities to exploit the economic benefits of genetic research, it stated concerns about potential health, safety and environmental aspects of the issue and that it wanted to take a precautionary approach. The U.S. Government discussed its concerns over New Zealand's biotechnology policies during a Trade and Investment Council meeting in May 2002 and the two sides will continue to discuss this issue.

Commercial Release Moratorium

In 2001, the New Zealand Government imposed a two-year constraint period during which no applications will be accepted for commercial release of any genetically modified organisms (GMOs), except for medicines or in accordance with emergency procedures. The commercial planting of genetically modified (GM) crops, the release of GM animals and the commercial importation of GM seeds also are prohibited during this period. The moratorium does not affect the use and sale of processed GM foods and ingredients. The moratorium was imposed as a provisional measure to give the Government of New Zealand a fixed period of time to allow further research into the environmental implications of releases, the implementation of regulatory changes, and to undertake other work recommended by the Royal Commission. It is scheduled to expire on October 29, 2003.

The New Zealand Ministry for the Environment released a discussion paper in September 2002 that solicited public comment regarding the Hazardous Substances and New Organisms (HSNO) Act of 1996, which is the principal legislation regulating genetic modification. The Ministry requested public feedback by November 15, 2002, on issues related to liability, coexistence, 'valued' species, ethical and spiritual matters, and a new conditional

release category. It intends to take these comments into account as it drafts new legislation on this issue, which will be introduced into Parliament before the moratorium expires. The New Zealand Government has made it clear, however, that it will not propose legislation to further extend the moratorium. Industry groups have expressed concern that issues raised in the discussion document may lead to the imposition of non-science based regulatory guidelines that could significantly tighten compliance requirements for applications for the release of GMOs. Such a development would stifle biotechnology research and commercial applications and trade in New Zealand. The U.S. Government will continue to monitor developments on this issue closely.

Field Trial Restrictions

The New Zealand Government lifted the voluntary moratorium covering GM field trials, or research in containment, in November 2001. The HSNO Act was amended to reduce some requirements for low-risk GM research, usually done under strict laboratory conditions. The United States supports the application of a science-based risk evaluation methodology for regulating field trials, including the proposed conditional release category in the Ministry for the Environment's September 2002 discussion document.

GM Food Approvals

In mid-1999, a mandatory standard for foods produced using modern biotechnology came into effect. The standard prohibits the sale of food produced using gene technology, unless the food has been assessed by Food Standards Australia New Zealand (FSANZ) and listed in the food code standard. A transitional exemption to the general prohibition on the sale of bioengineered foods was added to the food standard which allowed imported GM foods to stay on the market where: (1) an application was made to FSANZ for its approval before April 20, 1999; and (2) evidence existed that the food item in question was permitted to be sold by a food regulatory agency, such as the Food and Drug Administration, in another country excluding Australia. FSANZ has received 23 applications for safety assessments of bioengineered foods as of December 31, 2002. Of these, 20 have been approved, two applications for approval were withdrawn, and one remains in the approval process.

Food Labeling

Mandatory labeling requirements for foods produced using gene technology became effective in December 2001, pursuant to Food Standards Australia New Zealand (FSANZ)-approved amendments to Standard 1.5.2 of the Food Standards Code. The amendments require labeling if a food in its final form contains detectable DNA or protein resulting from the application of biotechnology, with a few exceptions. The following do not require labeling: (1) flavorings derived from modern biotechnology present in the final product in a concentration of no more than 1gm/kg (0.1 percent); or (2) an ingredient or processing aid in which the food unintentionally has a GM presence of no more than 10 gm/kg (1 percent) per ingredient. In addition, a food derived from an animal or other food-producing organism that has been fed on bioengineered feed does not need to be labeled (i.e., meat). Finally, highly refined oils or sugars where the processing has eliminated the detectable DNA derived from biotechnology do not require labeling. Businesses (including importers) must exercise due diligence in meeting the standard, including recordkeeping or audit trail, or if necessary, testing. Partly in response to these new mandatory labeling regulations, some supermarkets in New Zealand may be encouraged to source only products with GM-free ingredients. The U.S. Government will continue to raise its concerns over the mandatory labeling program with New Zealand Government officials.

Sanitary and Phytosanitary (SPS) Measures

New Zealand maintains a strict regime of SPS control for virtually all imports of agricultural products. The United States and New Zealand have held discussions on New Zealand's highly conservative regulatory approach as well as on specific SPS issues. The two sides made progress in 2002 in addressing some of the regulations tightened in 2001 that negatively impacted trade in products supplied by the United States.

Table Grapes. On September 6, 2002, the New Zealand Ministry of Agriculture (MAF) issued a new Import Health Standard (IHS) for the import of table grapes from California which effectively re-opened trade to U.S. importers. The IHS contains specific mitigation measures, which were finalized after consultations with the U.S.Department of Agriculture to address the detection of post-border, black widow and other exotic spiders. By November 2002, MAF also accepted the use of corrugated plastic and collapsible plastic returnable boxes, after reviewing information provided by USDA demonstrating that fumigation efficacy is not diminished by these packing materials. As of January 2003, no biosecurity breaches were reported to the New Zealand Government following the resumption of trade.

Pistachios. The United States has had concerns about New Zealand's aflatoxin testing regime for imported pistachios. The United States and New Zealand held consultations in November 2002 and discussed ways to improve the consistency of the testing regime. The consultations appear to have addressed U.S. concerns.

Pork Meat. In June 2002, New Zealand modified its regulations imposed a year earlier requiring pork meat products imported from countries with porcine reproductive and respiratory syndrome (PRSS), which includes the United States, to be cooked to a certain temperature, either before export of after import in special facilities in New Zealand. The cooking requirement results in a darker meat color, which tends to be negatively received by consumers. Last year's regulatory modification allows pig meat products from the United States to be microwave treated. New Zealand also has indicated that it would be willing to undertake a full review of its import health standards for pork meat, if appropriate, based on the results of a PRSS study now being undertaken by Canada. Canada initiated the study because its pork meat exports have been impaired by New Zealand's new import health standard.

Poultry Meat. New Zealand implemented measures that suspended the importation of poultry meat from various nations, including the United States, in late 2001 because of the risk of introducing infectious bursal disease (IBD). U.S. exporters currently are unable to sell uncooked poultry meat to New Zealand while cooked poultry meat is restricted to canned products. The United States and New Zealand held a meeting in November 2002 to discuss the prohibition. New Zealand indicated its willingness to review the current prohibition based on submissions for its consideration of favorable scientific evidence by interested importers. The United States will continue to urge New Zealand to address U.S. concerns on this issue.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The New Zealand Government amended the Copyright Act in 1998 to legalize parallel imports of certain copyrighted goods, including films, video, music, software and books. U.S. industries, particularly producers and distributors of film, music and software, have voiced concerns that allowing parallel imports makes it more difficult to detect and combat piracy, and erodes the value of their products in New Zealand and in third country markets. Related concerns were expressed that New Zealand's current laws did not effectively deter copyright and trademark violations. Trademark violations were not a criminal offense, and the maximum penalty for copyright violations was three months imprisonment.

As a result of these developments, the U.S. Trade Representative conducted an out-of-cycle Special 301 review of New Zealand's intellectual property regime and placed New Zealand on the Special 301 Watch List in April 1999. The United States maintained New Zealand on the Watch List in April 2002, because of concerns over parallel import legislation and other issues.

The United States and New Zealand discussed these concerns at a Trade and Investment Council meeting in May 2002. New Zealand took a number of actions in 2002 to strengthen its IPR regime. The Trade Marks Act of 2002, approved by Parliament in November 2002, made proscribed trademark infringements a criminal offense punishable by up to five years imprisonment. This Act also amended the Copyright Act of 1994 by increasing the maximum penalty for proscribed copyright infringements from three months to five years imprisonment.

In order to support the creative arts, the New Zealand Government introduced legislation in December 2002 to prohibit the parallel importation of films and video for a period of nine months from a title's first international release. This decision addressed many of the film industry's concerns over parallel importing. The New Zealand Government said it would continue to review the situation with regard to parallel imports of music, software and books. The same legislation includes provisions to put the onus of proof in certain copyright infringement cases on the defendant to rebut the presumption that an imported work is an infringing copy. Such a provision could make it easier to challenge suspected copyright violations in court.

The Patents Act 1953 was amended in December 2002 to provide that it is not a patent infringement for a person to make, use, exercise or vend an invention for purposes related to gaining regulatory approval in New Zealand or other countries. This amendment was passed quickly and not as part of the ongoing and thorough review of the Patents Act. The pharmaceutical industry in particular has expressed strong concerns over this "springboarding" legislation, including it rapid passage, which did not allow adequate opportunity for public comment. The New Zealand Government also indicated in December 2002 it will consider the issue of providing extended patent life protection for pharmaceuticals as part of its ongoing review of the Patents Act 1953.

The United States is continuing to monitor development in IPR issues closely.

SERVICES BARRIERS

Local Content Quotas

The United States has raised concerns over the New Zealand Government's pledges to introduce local content quotas for radio and broadcast television. Government-imposed local content quotas on radio and television could violate New Zealand's audio-visual commitments under the WTO General Agreement on Trade in Services (GATS). Radio and industry broadcasters have responded by agreeing to develop voluntary content targets, but only after the New Zealand Government made clear it would impose quotas on a mandatory basis if voluntary ones were not forthcoming.

INVESTMENT BARRIERS

Investment Screening

New Zealand screens certain types of foreign investment through the Overseas Investment Commission (OIC). The OIC must give its assent before any overseas person may acquire or take control of more than 25 percent of businesses/property worth more than NZ$ 50 million ($25 million); land over 5 hectares and/or worth more than NZ$ 10 million ($5 million); and land in certain sensitive or protected areas. The OIC is charged with considering whether or not overseas persons have the necessary experience to manage the investment. Any application involving land in any form (roughly 70 percent of applications received) must also meet a national interest test, which includes criteria such as job creation, introduction of new technologies, export development, residential intentions and a catchall provision of "such other matters as thought fit." The United States has raised concerns about the continued use of this screening mechanism, with the national interest test. New Zealand's commitments under the GATS Agreement of the WTO are limited as a result of New Zealand's screening program.

OTHER BARRIERS

Pharmaceutical Management Agency (PHARMAC)

The U.S. Government continued to raise concerns with New Zealand about pharmaceutical issues and the actions of the Pharmaceutical Management Agency (PHARMAC). PHARMAC is a stand-alone Crown entity structured as a statutory corporation. It administers a Pharmaceutical Schedule that lists medicines subsidized by the government and the reimbursement paid for each pharmaceutical under the national health care system. The schedule also specifies conditions for prescribing a product listed for reimbursement. New Zealand does not directly restrict the sale of non-subsidized pharmaceuticals in New Zealand. However, private medical insurance companies will not cover non-subsidized medicines, and doctors are often reluctant to prescribe non-subsidized medicines for their patients.

Thus, PHARMAC's Pharmaceutical Schedule decisions have a major impact on the ability of pharmaceutical companies to sell their products in the New Zealand market.

The pharmaceutical industry alleges PHARMAC's exemption from certain Commerce Act competition provisions allows it to exert de facto monopsonistic power over the pharmaceutical market. It can affect the industry's ability to access the market by conditioning the listing of new medicines on the willingness of companies to accept discriminatory pricing policies. For example, PHARMAC will generally not apply a subsidy to a new medicine unless it is offered at a price lower than currently available subsidized medicines in the same therapeutic class, or unless the producer is willing to lower its price on another medicine already subsidized in another class. PHARMAC says it operates in a competitive manner and cites as a justification for maintaining the exemption the need to avoid costly and fruitless industry litigation.

The United States also has serious concerns relating to the transparency, predictability and accountability of PHARMAC's operations. U.S. pharmaceutical suppliers report that the methodology used to determine Pharmaceutical Schedule decisions lacks transparency. The Boards of PHARMAC and the Researched Medicines Industry Association of New Zealand have been meeting to discuss these concerns.

There was growing awareness in New Zealand in 2002 that many of the difficulties related to the pharmaceutical market in New Zealand are due to the low level and rigid structure of PHARMAC's budget. PHARMAC's Chairman noted in his agency's 2002 Annual Review that "PHARMAC would find it extremely difficult, if not impossible, to ensure the adequacy of pharmaceuticals available to the population if reasonable increases in subsequent annual budgets were not made." The pharmaceutical industry has supported an examination of the way pharmaceuticals are funded in the government's budget and commissioned research related to this topic. The U.S. Government will continue to closely monitor developments in this sector.