NEW ZEALAND

TRADE SUMMARY

The U.S. trade deficit with New Zealand was $555 million in 2003, an increase of $86 million from $469 million in 2002. U.S. goods exports in 2003 were $1.8 billion, an increase of 2.0 percent from the previous year. Corresponding U.S. imports from New Zealand were $2.4 billion, up 5.3 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 $1.0 billion in 2002, and U.S. imports were $914 million. 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 $25 million in 200l.

The stock of U.S. foreign direct investment (FDI) in New Zealand in 2002 was $4.4 billion, roughly the same as in 2001. U.S. FDI in New Zealand is concentrated largely in finance, wholesale, and manufacturing sectors.

IMPORT POLICIES

In general, tariff rates in New Zealand are low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s and continued until the current Labor government, elected in 1999, decided to freeze further reductions until at least July 2005. The New Zealand government announced in September 2003 the resumption of unilateral tariff reductions, ending the six-year freeze on rates. On July 1, 2006, New Zealand plans to begin gradually reducing its highest tariff rates of between 17 percent and 19 percent to 10 percent by July 1, 2009. The top rates apply mostly to clothing, footwear, carpets, and certain autos and auto parts. *Ad valorem* tariffs on other goods also will gradually be reduced to 5 percent by July 1, 2008. The New Zealand government will conduct a review in 2006 to determine rates after July 1, 2009.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Biotechnology Commercial Release Moratorium

New Zealand's Parliament passed the New Organisms and Other Matters (NOOM) Bill 2003 on October 14, 2003, ending New Zealand’s moratorium on acceptance of applications for the commercial release of products produced through modern agricultural biotechnology into the environment. The new law puts in place a revised regulatory framework by amending the Hazardous Substances and New Organisms (HSNO) Act 1966, under which the moratorium was scheduled to sunset on October 29, 2003.

New Zealand's commercial release moratorium had precluded applications for the commercial planting of biotechnology crops, the commercial importation of biotechnology seeds, and the release into the environment of biotechnology animals. It did not, however, affect the use and sale of processed biotechnology foods and ingredients or veterinary medicines.

The NOOM Bill 2003 provides for a new conditional release category of approval for new organisms, including biotechnology products. This will permit New Zealand's Environmental Risk Management Authority (ERMA) to accept for review and its approval applications for release of biotechnology products with controls applied on a case-by-case basis. Under the provisions of the NOOM Bill, ERMA now will be able to approve a conditional release for biotechnology products that will allow field trial activity to expand from the limited scope of a fully contained trial to larger farm scale, encouraging ongoing research activity in New Zealand. Products from large-scale conditional field trials that ERMA

may now approve could be sold domestically if the terms of project approval do not explicitly preclude such sales.

Biotechnology Food Approval

Imported biotechnology foods can be offered for sale and consumption in New Zealand after being assessed and approved by Food Standards Australia New Zealand (FSANZ) under delegated authority of the New Zealand Food Safety Authority (NZFSA). In mid-1999, a mandatory standard for foods produced using modern biotechnology came into effect. The standard established under the Food Act 1981 prohibits the sale of food produced using gene technology, unless the food has been assessed by FSANZ and listed in the food code standard. FSANZ had received 26 applications for safety assessments of bioengineered foods as of December 2003. Of these, 22 had been approved, two applications were being processed, and two approval requests were withdrawn.

Biotechnology Food Labeling

Mandatory labeling requirements for foods produced using gene technology became effective in December 2001. Biotechnology labeling is required if a food in its final form contains detectable DNA or protein resulting from the application of biotechnology, with a few exceptions. Meeting New Zealand's biotechnology food labeling regulations places a burden on manufacturers, packers, importers, and retailers, particularly U.S. agricultural exports, which consist primarily of processed food. Wholesalers and retailers frequently demand biotechnology-free declarations from their supplier/importer, which passes liability in the event of biotechnology labeling non-compliance back to the importer. New Zealand food legislation requires businesses to exercise due diligence in complying with food standards, which usually is defined as maintaining a paper or audit trail similar to a quality assurance system. The NZFSA conducts periodic compliance audits. Individuals and companies found to be in non-compliance with biotechnology food labeling requirements may be assessed penalties under the Food Act 1981. The New Zealand government is reviewing authorized penalties stipulated under the act to make sure that they represent an adequate economic deterrent. New Zealand food retailers are discouraged from sourcing biotechnology food products, in part because of these regulations.

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 continue to make progress in addressing specific issues that negatively impact trade in products supplied by the United States.

Table Grapes. The New Zealand Ministry of Agriculture (MAF) issued a new Import Health Standard (IHS) for the import of table grapes from California that effectively reopened trade to U.S. exporters. The IHS contains specific mitigation measures, which were reached following consultations with the U.S. Department of Agriculture, to address the detection of post-border, black widow and other exotic spiders. As of December 2003, no significant biosecurity breaches were reported to the New Zealand government following the resumption of trade. The United States is requesting a modification of these mitigation measures that will reduce costs to U.S. exporters and New Zealand importers without compromising New Zealand’s biosecurity standards.

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 (PRRS), including the United States, to be cooked to a certain temperature, either before export or 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. New Zealand further modified its import regulations, allowing pig meat products from the United States to be microwave treated. The Ministry of Agriculture indicated that it remains willing to consider scientific evidence that would justify a review of its import health standard for pork meat.

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. Discussions between the United States and New Zealand on this issue continue.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In October 2003, the New Zealand Parliament enacted a ban on the parallel importation of films, videos and DVDs for the initial nine months after a film's international release. The ban applies only to film media, not to parallel importation of music, software and books. It is scheduled to sunset in five years, unless extended.

The new legislation, which amended the Copyright Act 1994, also makes it easier to challenge copyright violations in court by shifting the burden of proof in certain copyright infringement cases to the defendant, who must prove that an imported film, sound recording or computer software is not a pirated copy.

The ban, however, fails to roll back all the provisions of the New Zealand government's 1998 amendment to the Copyright Act, which had legalized parallel imports of films, videos, music, software and books. Whereas the new legislation addressed many of the U.S. film industry's concerns about parallel importing, other U.S. industries, particularly producers and distributors of 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.

In June 2003, the New Zealand government proposed amendments to the 1994 Copyright Act to make it more consistent with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The amendments are intended to reflect developments in digital technologies and international developments in copyright law, and are expected to be introduced in 2004. If this legislation passes, the New Zealand government will determine whether to accede to the WCT and WPPT treaties.

New Zealand also took a number of actions to strengthen its IPR enforcement regime. To deter counterfeiting and copyright piracy the Trade Marks Act 2002, which entered into force in August 2003, creates new criminal offenses for counterfeiting trademarks and increases the penalties for pirating copyright goods. For those offenses, the act provides for penalties of up to NZ $150,000 (US $97,065) in fines or up to five years' imprisonment.

The pharmaceutical industry is concerned about an amendment, enacted in December 2002, to the Patents Act 1953. The amendment provides 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 an ongoing and thorough review of the Patents Act. The pharmaceutical industry has expressed strong concerns over this "springboarding" legislation, including its rapid passage, which did not allow adequate opportunity for public comment.

In June 2003, the New Zealand government issued a discussion paper about the possibility of extending the patent term for pharmaceuticals. In a submission to the New Zealand government, the pharmaceutical

industry group, Researched Medicines Industry Association of New Zealand, contended that New Zealand's effective patent life for pharmaceuticals had been substantially eroded and recommended adoption of a supplementary protection certificate arrangement, similar to those used in a number of OECD and European Union countries. This would effectively extend patent protection.

The United States continues to monitor developments in IPR issues closely.

SERVICES BARRIERS

Local Content Quotas

Radio and television broadcasters have adopted voluntary local content targets, but only after the New Zealand government made it clear that it otherwise would consider mandatory quotas. While New Zealand government officials have said they are sensitive to the implications of quotas under the WTO General Agreement on Trade in Services (GATS), they reserve the right to impose them.

INVESTMENT BARRIERS

Investment Screening

New Zealand screens certain types of foreign investment through the Overseas Investment Commission (OIC). The OIC must approve foreign acquisition or control of more than 25 percent of businesses/property worth more than NZ $50 million (US $32.4 million); land over 5 hectares and/or worth more than NZ $10 million ($6.5 million); and land in certain sensitive or protected areas. The OIC is charged with considering whether overseas persons have the necessary experience to manage the investment. Any application involving land in any form (roughly 70 percent of applications received) also must meet a vague national interest test. The United States has raised concerns about the continued use of this screening mechanism. New Zealand's commitments under the GATS Agreement of the WTO are limited as a result of New Zealand's screening program.

In November 2003, amid a growing public outcry about foreigners buying coastal properties, the New Zealand government called for a review of the OIC's powers. The review is to consider several questions, including whether compliance costs for business transactions could be reduced and whether criteria for approval should be extended to include historical, cultural and environmental factors. The review is intended to lead to the introduction of new legislation in June 2004.

OTHER BARRIERS

Pharmaceuticals

The U.S. Government continued to raise concerns with New Zealand about its pharmaceutical sector policies, which do not appropriately value innovation and diminish the contribution of New Zealand to research and development of innovative pharmaceutical products. The Pharmaceutical Management Agency (PHARMAC), which accounts for 73 percent of expenditures on prescription drugs in New Zealand, is a stand-alone Crown entity structured as a statutory corporation. It administers a Pharmaceutical Schedule that lists medicines subsidized by the New Zealand 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 the country. However, private medical insurance companies will not cover non-subsidized medicines, and doctors are

often reluctant to prescribe non-subsidized medicines for their patients, who would have to pay out-of-pocket costs. Thus, PHARMAC's Pharmaceutical Schedule decisions have a major impact on the availability and price of non-subsidized medicines and the ability of pharmaceutical companies to sell their products in the New Zealand market.

The United States 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 (RMI) have been meeting to discuss these concerns. The U.S. Government will continue to closely monitor developments in this sector.

The New Zealand government has indicated its intention to create with Australia a Trans-Tasman Therapeutic Goods Administration, which may extend to New Zealand the same regulatory regime now in place in Australia for medical devices, prescription, over-the-counter, dietary and nutritional supplements, and cosmetics such as sun creams. Except for prescription pharmaceuticals, New Zealand does not currently regulate these products and is considering what type of certification it will require. U.S. companies have expressed concerns that the new requirements may be overly burdensome and costly and may serve to discourage imports of these products from the United States.