NEW ZEALAND

TRADE SUMMARY

The U.S. trade deficit with New Zealand was $107 million in 2000, as compared to a U.S. bilateral trade surplus of $185 million in 1999. U.S. merchandise exports to New Zealand were $2 billion, up 2.1 percent from 1999. New Zealand was the United State's 41st largest export market in 2000. U.S. imports from New Zealand totaled $2.1 billion in 2000, a 19 percent increase from 1999.

U.S. exports of private commercial services (i.e., excluding military and government) to New Zealand were $1.2 billion in 1999, and U.S. imports were $1.1 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were $948 million in 1998, while sales of services in the United States by majority New Zealand-owned firms were $51 million.

The stock of U.S. foreign direct investment in New Zealand amounted to $6.1 billion in 1999. In comparison to 1998, U.S. direct investment in New Zealand increased by 0.5 percent. U.S. direct investment in New Zealand is largely concentrated in finance, manufacturing and wholesale.

OVERVIEW

New Zealand is a strong supporter of the rules-based multilateral trading system. The United States and New Zealand are close partners in the global effort to reduce trade and investment barriers, working together in the World Trade Organization (WTO), Asia Pacific Economic Cooperation (APEC) and other multilateral fora.

New Zealand maintains an open trade and investment regime, although New Zealand's commitments under the GATS Agreement of the WTO are limited as a result of New Zealand's screening program under the Overseas Investment Act. In addition, New Zealand has not joined the plurilateral WTO Government Procurement Agreement. Roughly 95 percent (by value) of New Zealand's imports enter duty-free and the average weighted applied tariff is 0.7 percent.

Under deregulation and privatization programs of the late 1980s and the 1990s, New Zealand became a growing destination for U.S. foreign direct investment. The New Zealand-U.S. commercial relationship also expanded rapidly. The Labour-Alliance coalition government elected in November 1999 and led by Prime Minister Helen Clark has maintained New Zealand's generally liberal trade orientation. It has given additional emphasis to negotiating bilateral and regional free trade arrangements, seeing them as a way to meet broader, multilateral trade goals. The new government, however, has halted the previous government's unilateral tariff reductions and has initiated new industry and export assistance programs.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Biotechnology

The Environmental Risk Management Authority (ERMA) is responsible for assessments of new organisms introduced into New Zealand. Review of items produced in New Zealand using modern biotechnology, referred to as "genetically modified organisms" (GMO), is now compulsory, and first applications under the full process of public notification and hearing have occurred. ERMA has approved field tests with strict controls for various products (including crops, livestock and forestry). Full commercial release of a GMO has yet to take place in New Zealand. Applications for GMO field trials have often evoked a large number of comments from both opposing and supporting groups.

In April 2000, the Government established a four-person Royal Commission on Genetic Modification. The Commission is to inquire into and report on the strategic options available to enable New Zealand to address

genetic modification now and in the future. It is to report to the Government by June 1, 2001. The Commission will hear evidence from over 100 parties, including those that are pro-biotechnology and anti-biotechnology, as well as from the United States and international organizations.

In May 2000, the Government negotiated with industry and research groups a voluntary moratorium on all applications for release into the environment of products created with the application of biotechnology. The moratorium also applies to new field tests with some limited exceptions. The moratorium will remain in effect approximately until August.

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 the Australia-New Zealand Food Authority (ANZFA) and listed in the standard. Biotech foods on the market when the standard went into effect are currently allowed to be sold under a temporary exemption (based on approval from foreign health agencies like the FDA and application for ANZFA review). By December 2000, ANFZA had approved seven foods produced from gene technology and was reviewing others.

On December 7, 2000, the Australia-New Zealand Food Authority (ANZFA) approved amendments to Standard 18 of the Food Standards Code that will require mandatory labeling requirements for foods produced using gene technology effective December 7, 2001. 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. Flavorings derived from modern biotechnology present in the final product in a concentration of no more than 1gm/kg (0.1 percent) or an ingredient or processing aid in which the food unintentionally has a GM presence of no more than 10gm/kg (1 percent) per ingredient do not need to be labeled. A food derived from an animal or other food producing organism that has been fed on biotech feed does not need to be labeled (i.e. meat). Also, highly refined oils where the processing has eliminated the detectable DNA derived from biotechnology would not require labeling. Businesses (including importers) are to exercise due diligence in meeting the standard, which means keeping a paper or audit trail, or in some cases testing. The U.S. Government will be monitoring these programs for their impact on U.S. trade interests.

Sanitary and Phytosanitary Measures

New Zealand maintains a strict regime of sanitary and phytosanitary control for virtually all imports of agricultural products. Opportunities for greater access to the New Zealand market remain limited for some U.S. agricultural products, while other products are subject to rigid pre-clearance and testing requirements. However, there has been improved access for some U.S. agricultural products in the past few years. Pears from several U.S. states were approved for access into New Zealand in November 1999. As a result, actual imports of U.S. pears into New Zealand have taken place. Several additional products are under review for phytosanitary approval.

Poultry

In November 2000, the Ministry of Agriculture (MAF) issued a revised risk assessment of chicken meat imports from the U.S. which concluded that disease risks to local flocks were higher than estimated earlier. It recommended strict safeguards which would be difficult if not impossible to meet for any uncooked U.S. chicken meat imports (no imports of uncooked chicken products from any nation are currently permitted). The MAF study also used revised data to conclude that imports of cooked chicken products require much more

stringent time/temperature requirements than applied earlier to eliminate disease transmission. This conclusion will likely end or reduce imports of some cooked poultry products from several nations, including a small amount of exports from the U.S. MAF plans to draft new import regulations in the first half of 2001 and will allow for consultations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Parallel Imports/IPR Laws

On May 16, 1998, the New Zealand government passed an amendment to the Copyright Act legalizing parallel imports (i.e., imports of goods subject to intellectual property rights protection which enter a country outside of distribution channels authorized by the holder of those rights). U.S. industries involved with copyrighted products such as film, music, software and books voiced concerns that allowing parallel imports has made it more difficult to detect and combat piracy and has eroded the value of their products' intellectual property rights in the New Zealand and third country markets. Related concerns have been expressed that New Zealand's current laws do not effectively deter copyright and trademark violations. As a result of these developments, the United States 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.

In a December 1999 post-election policy speech, the Labour-Alliance government pledged to introduce restrictions on certain parallel imports that would have begun to address many of the copyright concerns listed above. In particular, the government said it would ban, for up to two years after initial release, parallel imports of film, music, books and software in order to support the development of New Zealand's creative arts industries. USTR decided, therefore, not to place New Zealand on the Special 301 Watch List for 2000.

By the end of 2000, the government had not introduced legislation to amend the parallel import regime. Rather, it asked the Ministry of Economic Development to produce a discussion paper to study the issue further. This paper, released in December 2000, questioned whether the proposed restrictions on parallel imports would meet the government's cultural development objectives and invited additional comments from stakeholders. Thus, the parallel import regime remains in place and the intellectual property rights concerns raised by affected industries are still present.

The government has stated it intends to introduce legislation in 2001 to strengthen anti-piracy and anti-counterfeiting measures. The government has also said it is considering shifting the burden of proof in copyright infringement cases to the defendant and is planning to conduct publicity campaigns to raise awareness about the theft of intellectual property.

SERVICES BARRIERS

Local Content Quotas

The government has pledged to introduce format-specific quotas for local content on radio and broadcast television. No specific proposals had been put forward at the time of this report. Such an action could violate New Zealand's commitments under the WTO General Agreement on Trade in Services (GATS). Government officials have said they are sensitive to the WTO implications of any such quotas.

ANTI-COMPETITIVE PRACTICES

Telecommunications

Prospective entrants into New Zealand's telecommunications market have complained about the actions of the former monopoly provider Telecom New Zealand and the manner in which it continues to dominate certain aspects of the telecommunications marketplace. This has made it difficult for new entrants to compete effectively in all areas of the telecommunications marketplace. In part because of these same concerns, in February 2000, the Labour-Alliance government commissioned a Ministerial Inquiry into Telecommunications. The purpose was to ensure that "New Zealand has a telecommunications sector that delivers competitive and innovative services of a high quality, and these services are delivered on an ongoing and fair basis to all New Zealanders who need them." The Inquiry was led by three officials outside of government and they presented the Inquiry recommendations to the Government on October 2000. The government released its response to the report in December. That inquiry concluded that the current regulatory framework was not adequate for meeting the government's goals and recommended a number of measures to increase competition in the sector. The government has announced it will adopt some, but not all, of the inquiry's recommendations. Some of Telecom's competitors have welcomed the new proposals but noted they do not go far enough to ensure effective competition, particularly with regard to access to Telecom's local copper network (i.e., local loop unbundling). U.S. industry asserts that the lack of an independent regulatory authority to enforce competition law in this sector means that both the law and its enforcement have proven ineffective. Furthermore, the New Zealand government has not mandated local loop unbundling, which would permit more competition between the local switch and telephone users. Industry also expressed concern over implementation of the WTO Reference Paper, particularly with respect to ensuring a competitively neutral universal service program. Nonetheless, the commercial climate seems to be improving as evidenced by a series of agreements signed between Telecom and its competitors in 2000 to deal with several outstanding market issues.

State Trading Enterprises (STEs)

New Zealand maintains several agricultural producer organizations which enjoy statutory protection as monopoly sellers or which license sellers. Export monopolies remain in place for most boards but the boards are being reformed to become more commercial, a development which began under the National government's initiative in 1998. The current Labour-Alliance government has stated that it will not force reform on boards but will review any reform proposals supported by a majority of the industry that also are in the national interest. In December 2000, the leaders of the two largest dairy cooperatives, New Zealand Dairy Group and Kiwi Dairies, agreed to merge and form a new company that would include the New Zealand Dairy Board to form an integrated marketing and manufacturing business called Global Co. Dairy industry leaders would like the merger completed by June 1, 2001 without review or approval by the Commerce Commission (which did not approve as proposed an earlier dairy merger plan, in part due to concerns over its adverse impact on domestic competition). The proposed merger would remove the Dairy Board's sole right to export from the later of June 1, 2002 or 12 months from the date the amalgamation of the parties takes place. GlobalCo would also retain the economic benefit of the current trade quotas held by the New Zealand Dairy Board. The merger proposal is conditional on: (1) 75 percent dairy industry shareholder approval; (2) government approval to bypass the Commerce Commission and enactment of other enabling legislation; and (3) valuation of the two co-operatives. Government

officials have stated that they will be unlikely to meet the proposed merger deadlines and that the provision to bypass the Commerce Commission will have to be weighed carefully since it is a very significant request.

On April 1, 2000, the commercial assets of the New Zealand Kiwifruit Marketing board were corporatized into a company, ZESPRI Group Ltd. In November, the growers approved production-weighted voting to create a cooperative style mechanism within a commercial operating structure. ZESPRI maintains monopoly Kiwifruit export control (except to Australia). On April 1, 2000 the apple and pear industries were also restructured (based on legislation approved in 1999). On that date, ENZA, the Apple and Pear Marketing Board, became ENZA Limited, a company with shares issued to growers pursuant to legislation approved in 1999. Two large corporate interests subsequently initiated a share raid of small growers and established de facto control of the ENZA Board. ENZA still controls most exports, but an independent export permits committee has been created to approve export applications from exporters other than ENZA. In the 1999/2000 season the committee approved independent applications for about 10 percent of New Zealand's apple export crop. The government is reviewing options for changes to the regulations for the 2001-2002 season, including full export deregulation and return to a single desk export model.

OTHER BARRIERS

Pharmaceutical Management Agency (PHARMAC)

PHARMAC was established in 1993 as a limited liability company to manage the purchasing of pharmaceuticals for the national health care system. Recent government legislation made PHARMAC a stand-alone Crown entity structured as a statutory corporation. PHARMAC administers a Pharmaceutical Schedule that lists medicines subsidized by the government and the reimbursement paid for each pharmaceutical. The schedule also specifies conditions for prescribing a product listed for reimbursement. At its creation, PHARMAC was exempted from New Zealand's competition laws, an exemption upheld in a 1997 high court ruling in a case brought against PHARMAC by New Zealand's Researched Medicines Industry (RMI) Association.

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 decisions have a major impact on which prescription medicines will be sold in New Zealand and, to a large extent, at what price they will be sold.

The concerns raised by pharmaceutical companies regarding PHARMAC generally relate to a lack of transparency, predictability and accountability in the agency's operations. Pharmaceutical suppliers complain that it is difficult to add new products to PHARMAC's schedule and that the methodology used to determine the government reimbursement levels lacks transparency. In many areas, such as changes to the pharmaceutical schedule or the adoption of new decision criteria, PHARMAC's proposed new operating procedures require it to consult with interested parties only "when it considers it appropriate" and using only "steps as it considers appropriate."

Concerns have also been raised by pharmaceutical industry representatives about PHARMAC's continued exemption from the Commerce Act's competition provisions. They argue that PHARMAC needs only a limited exemption from these laws given recent changes in its operating

framework, and that continuing the full exemption allows the agency to engage in practices that are not allowed in other economic sectors and that constitute barriers to market access for the pharmaceutical industry. PHARMAC generally will 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. Pharmaceuticals can also be de-listed if a competing product is selected to serve the market as the result of a tender, or if a cheaper alternative becomes available and the manufacturer of the original product refuses to discount its price to that of the lower-priced alternative.

A further complaint relates to PHARMAC's handling of confidential business information and concerns that such information could be provided to competitors in the context of negotiating supply contracts. This last point was highlighted by a Court of Appeals decision against PHARMAC in 2000 for its release of confidential information regarding an upcoming contract to an existing supplier's competitor.

A final issue relates to PHARMAC's failure to differentiate between patented and non-patented medicines in setting a reference price, a practice the industry claims erodes the value of the patented medicine's intellectual property.

The government commissioned an independent review of PHARMAC's operating policies and procedures (OPPs) in 2000. One of the conclusions reached by the reviewers was the importance of establishing a better relationship between PHARMAC and other stakeholder groups in New Zealand (a view shared not only by the pharmaceutical industry but also by the Pharmaceutical Society and the New Zealand Medical Association). The review recommended a number of steps to improve the relationships, including improved consultation procedures, the establishment of a Consumer Advisory Committee and regular meetings with major stakeholders.

On other matters, one of the review's major recommendations was to separate the OPPs from PHARMAC's supply contracts so as to make the contracts stand-alone legal documents. Currently, the OPPs are incorporated into contracts by reference, which the review noted could lead to a lack of certainty because it incorporates into the contracts a wide range of additional powers. Industry is concerned that amendments made by PHARMAC to the provisions of the OPPs could have the effect of changing unilaterally the terms of existing contracts between PHARMAC and pharmaceutical companies. PHARMAC has not committed itself to adopting this recommendation. Regarding the Commerce Act exemption, the review noted the arguments made on both sides of the issue and recommended a further examination of the issues involved. The pharmaceutical industry strongly supports such a review. In December 2000, however, the government passed legislation that allowed for the continuance of PHARMAC's wide exemption from the Commerce Act.