NEW ZEALAND

TRADE SUMMARY

The U.S. trade deficit with New Zealand was $65 million in 2001, an improvement of $44 million since 2000. U.S. goods exports to New Zealand were $2.1 billion, up 8.3 percent from 2000. New Zealand was the United States' 41st largest export market in 2001. U.S. imports from New Zealand totaled $2.2 billion in 2001, a 5.8 percent increase from 2000.

U.S. exports of private commercial services (i.e., excluding military and government) to New Zealand were $1.3 billion in 2000 (latest data available), and U.S. imports were $1.2 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were $1.2 billion in 1999 (latest data available), while sales of services in the United States by majority New Zealand-owned firms were $23 million.

The stock of U.S. foreign direct investment in New Zealand was 5.3 billion in 2000, 1.7 percent lower than in 1999. U.S. direct investment in New Zealand is largely concentrated in finance, manufacturing, and wholesale sectors.

IMPORT POLICIES

Tariffs

New Zealand currently applies a tariff rate of zero on imports of whisky, brandy and rum, but continues to assess tariffs of five percent ad valorem on liqueurs and 6.5 percent ad valorem on vodka and gin. Consistent with its Uruguay Round commitments, New Zealand's bound tariff rates for distilled spirits range from 13.6 percent ad valorem to 26 percent ad valorem.

U.S. industry advises that New Zealand is an important export market for distilled spirits, with sales valued at more than $10.7 million in 2000. As such, the United States will seek to secure the elimination of New Zealand's remaining tariffs on a WTO bound basis.

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. The Government supported the report's overall strategy of preserving opportunities to exploit the economic benefits of genetic research but stated that it was concerned about potential health, safety and environmental aspects of the issue and wanted to take a precautionary approach. New Zealand announced various new biotechnology policies along with new analysis and research.

Commercial Release Moratorium

The Government announced that it would legislate a two-year constraint period during which no applications would be accepted for commercial release of any genetically modified products (GMs), except for medicines or in accordance with emergency procedures. This will prohibit any commercial planting of GM crops or release of GM animals and preclude any commercial GM seed imports during this two-year period. The New Zealand Government has notified the WTO of its intention to implement this regulation with a proposed starting date of no earlier than March 2002.

The United States has advised the Government of New Zealand that the arbitrary imposition of a two-year moratorium on any release of bioengineered products marks a clear departure from New Zealand's avowed policy of regulating these products based on science. The United States has also conveyed to the Government that the

proposed regulatory changes raise questions as to how this action fits within the principles of the WTO since there exists no evidence to suggest that bioengineered foods present any more risks to consumers than foods developed in conventional breeding programs or with other technologies. The United States suggests that a case-by-case review of the agronomic, health and environmental impact of bioengineered products would enable New Zealand to ensure security of its consumers and environment.

Field Trial Restrictions

The New Zealand Government also announced that effective November 1, 2001, it was lifting the voluntary moratorium with industry in effect since May 2000 of GM field trials (i.e., research in containment). But the Government noted it would amend the Hazardous Substances and New Organisms Act (HASNO) to ensure that appropriate environmental and health standards are met, especially regarding heritable material. The HASNO Act also would be amended to reduce some requirements for low-risk GMO research, usually done under strict laboratory conditions. The United States has advised the Government of New Zealand that it is generally satisfied with the provisions which lifted the moratorium on field trials, but nonetheless encourages the Government of New Zealand to ensure that in instances where language provides substantial discretion to the regulating body, this discretionary authority be used only in a manner consistent with sound, science-based risk evaluation.

Food Approval

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 food code standard. Bioengineered 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 2001, ANFZA had received 23 applications for safety assessments of bioengineered foods, 12 were approved, 2 were withdrawn and the remainder are in the approval process.

Food Labeling

On December 7, 2001, mandatory labeling requirements for foods produced using gene technology became effective pursuant to Australia-New Zealand Food Authority (ANZFA) approved amendments to Standard 18 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 10gm/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 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 if necessary, testing. Partly in response to these new regulations, some supermarkets in New Zealand have announced they will attempt to source only

products with GM-free ingredients. The U.S. Government will be evaluating and monitoring these requirements to determine if they are being implemented in a WTO-consistent, non-restrictive manner.

Sanitary and Phytosanitary Measures

New Zealand maintains a strict regime of sanitary and phytosanitary (SPS) control for virtually all imports of agricultural products. During 2001, SPS regulations were tightened for several products that the United States supplies, which resulted in these products being restricted, prohibited or suspended. These restrictions do not appear to be scientifically-based.

Pork Meat

In September 2001, New Zealand implemented provisional regulations that required all pork meat imported from countries with porcine reproductive and respiratory syndrome (PRSS), which includes the United States, to be cooked to certain temperatures, either before export or after import in special facilities in New Zealand. This has especially affected U.S. exports of bacon, which must now be cooked. The darker color caused by cooking has been negatively received by consumers. The United States has advised the New Zealand Government of its various concerns regarding the scientific basis of the draft import risk assessment that was used as the rationale for the restrictions.

Poultry Meat

In November 2001, the Ministry of Agriculture (MAF) implemented provisional measures that suspended the importation of poultry meat from various nations, including the United States, because of the purported risk of introducing infectious bursal disease (IBD). Based on the conclusions of the risk analysis, all poultry product imports (cooked and uncooked) should be sourced from broiler flocks demonstrated to be free from infection with IBD virus and not vaccinated with live IBD viruses. U.S. exporters have been unable to meet these conditions, which has curtailed shipments of cooked poultry meat and blocked any opportunity to export uncooked poultry meat. The United States continues to question the scientific basis of the conclusions reached by New Zealand's risk assessment.

Table Grapes

In November 2001, New Zealand suspended the importation of California table grapes due to the number of live post-border, non-plant pests found, in particular black widow and other exotic spiders. The New Zealand Government is undertaking an assessment which is focusing on the risks these spiders pose to human health and the environment and will then consult with U.S. Government regulators and industry on appropriate measures to mitigate the risks. The United States has expressed disappointment with the suspension, noting various new mitigation measures put in place in 2001 and that the number of spiders detected on the grapes during 2001 fell within the New Zealand Government’s stated tolerance of one spider per million grape bunches. U.S. industry believes that in taking such action, New Zealand is singling out table grapes inasmuch as equivalent measures are not being applied to the many other import pathways for black widow spiders. New Zealand is an important market for California table grapes. In 2000, the United States shipped $3.86 million worth of grapes to New Zealand. If the market remains closed, the California table grape industry advises that it could lose this entire amount.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Parallel Imports/IPR Laws

The New Zealand Government amended the Copyright Act in 1998 to legalize 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, particularly producers and distributors of copyrighted products such as film, music and software, have voiced concerns that allowing parallel imports makes it more difficult to detect and combat piracy. They also claim such imports can erode the value of their products in New Zealand and in 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. New Zealand was maintained on the Watch List in April 2001.

In a December 1999 post-election policy speech, the Labour-Alliance government pledged to introduce restrictions on certain parallel imports. In particular, the New Zealand 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.

In December 2001, the New Zealand Government announced it would introduce legislation in the first half of 2002 to ban parallel imports of films, videos and DVDs for nine months from a title's first international release. At the same time, the New Zealand Government said it would not introduce parallel importing bans for other copyrighted products since there was no substantive evidence to show that such a ban would help New Zealand's creative arts industries. It noted it would keep the impact of parallel importing on music recording, book publishing and software industries under review for three years.

The New Zealand Government also stated in its December announcement its intention to introduce legislation in early 2002 to shift the burden of proof in copyright infringement cases to the defendant. This will complement other legislation currently before parliament to toughen substantially the penalties for copyright and trademark violations.

SERVICES BARRIERS

Local Content Quotas

The New Zealand Government is developing proposals to implement a post-election pledge to introduce format-specific quotas for local content on 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). The United States immediately raised its concerns. New Zealand Government officials have said they are sensitive to the WTO implications of any such quotas and are working to develop a voluntary system acceptable to industry. An August 2001 statement from New Zealand's Minister of Broadcasting warned that the government would consider mandatory quotas if voluntary ones could not be developed. We plan to continue monitoring this issue.

Telecommunications

In December 2001, New Zealand passed a new Telecommunications Act. The new legislation establishes a Telecommunications Commissioner, who will reside within the Commerce Commission. The new Commissioner will be responsible for resolving industry disputes over regulated services and promote competition. This is a change from the past regime whereby there was no independent authority to resolve disputes in the telecommunications sector. In addition, the new Commissioner will provide a process for implementing, costing and enforcing telecommunications service obligations. Since the law was just enacted, the United States will monitor its implementation.

Moreover, the incumbent telecommunications company does not appear to provide interconnection at cost-oriented and non-discriminatory rates or access to unbundled network elements. Finally, concerns have been raised regarding the consistency of New Zealand's universal service regime with its WTO commitments.

STATE TRADING ENTERPRISES (STEs)

Dairy Industry

In September 2001, Parliament passed the Dairy Industry Restructuring Bill, which merged the New Zealand Dairy Board, a state trading enterprise (STE), with the two largest dairy cooperatives, New Zealand Dairy Group and Kiwi Dairies, to form Fonterra Co-operative Group. The Bill also exempted the merger from any competition policy review by the Commerce Commission. This legislation, once approved by industry in mid-October, eliminated the Dairy Board's export monopoly controls except for quota markets. Fonterra retains licensing and tariff quota rights in overseas quota markets for six years, after which a yet to be decided system will go into effect to allocate licenses. The quota rights held by Fonterra are for butter and cheese to the EU, cheese subject to quota to the United States, butter to Canada, cheese and animal fats to Japan, and whole milk powder to the Dominican Republic.

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 (US$ 21.5 million); land over 5 hectares and/or worth more than NZ$ 10 million (US$ 4.3 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 and residential intentions. In 2001, the government brought into force provisions approved by its predecessor establishing that no farmland could be approved for sale to foreigners unless it had first been offered on the open market to New Zealanders. In practice, the OIC has approved the overwhelming majority of applications received in a matter of days. However, U.S. companies have expressed concerns over the potential for the criteria to be applied more strictly or for their investment applications to be subjected to political intervention.

ELECTRONIC COMMERCE

World Intellectual Property Organization (WIPO) Treaties Ratification

New Zealand has yet to ratify the WIPO Copyright and Performances & Phonograms Treaties (together "the WIPO Treaties"). The WIPO Treaties require effective legal remedies against the circumvention of technical measures used by content owners to protect their property from theft and mutilation. This legal framework permits content owners to provide for the security of their property online which is essential for successful electronic commerce.

OTHER BARRIERS

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. At its creation, PHARMAC was exempted from New Zealand's competition laws, an exemption upheld in a 1997 high court ruling and continued in December 2000 legislation.

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. The use of non-subsidized pharmaceuticals by hospitals is also limited, and is likely to become more so given the government's decision to have PHARMAC share responsibility for the purchase of hospital medicines. Thus, PHARMAC's decisions on the Pharmaceutical Schedule have a major impact on the ability of pharmaceutical companies to sell their products in the New Zealand market.

One of the U.S. pharmaceutical industry's chief concerns with PHARMAC is that its wide exemption from the Commerce Act's 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. Pharmaceuticals already on the Schedule 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.

Another set of serious concerns relates to the transparency, predictability and accountability of PHARMAC's operations. Pharmaceutical suppliers complain that it is difficult and time-consuming to add new products to PHARMAC's schedule and that the methodology used to determine Pharmaceutical Schedule decisions lacks transparency.

After extensive discussions between the research medicines industry and the Ministry of Health (MOH), the MOH and the New Zealand Health Funding Authority commissioned a study of the process and procedures under which PHARMAC operates. On September 28, 2000, the authors (including a former Minister of Health) of the Lexchin-Caygill report submitted it to the Ministry of Health. The report identified many deficiencies in

PHARMAC's operations that undermined transparency and procedural fairness. It also made several recommendations for improvements to PHARMAC's operating procedures that would have improved transparency and fairness. However, PHARMAC has not implemented these recommendations to any significant degree.

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.

Trout Import Ban

The New Zealand Government announced in September 2001 that the existing moratorium prohibiting the importation of trout would be extended for three more years. The New Zealand Government stated that fishermen believe that the importation of trout would encourage poaching and could undermine the trout sports industry and its way of life. The United States continues to express concern regarding the moratorium.