NEW ZEALAND

TRADE SUMMARY

The U.S. goods trade deficit with New Zealand was $188 million in 2006, a decrease of $315 million from $503 million in 2005. U.S. goods exports in 2006 were $2.9 billion, up 10.4 percent from the previous year. Corresponding U.S. imports from New Zealand were $3.1 billion, down 1.2 percent. New Zealand is currently the 42nd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to New Zealand were $1.3 billion in 2005 (latest data available), and U.S. imports were $1.5 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were not available in 2004 ($1.9 billion in 2003) (latest data available), while sales of services in the United States by majority New Zealand-owned firms were not available in 2004 ($16 million in 2002).

The stock of U.S. foreign direct investment (FDI) in New Zealand in 2005 was $4.8 billion (latest data available), up from $4.7 billion in 2004. U.S. FDI in New Zealand is concentrated largely in the non-bank holding companies, finance, manufacturing and wholesale sectors.

The United States and New Zealand concluded a bilateral Trade and Investment Framework Agreement (TIFA) in 1992. The United States and New Zealand have held regular meetings under the TIFA, most recently in June 2006. The agenda encompassed all aspects of the bilateral partnership, and identified areas the country will continue to discuss including agriculture (SPS, biotechnology), intellectual property, pharmaceutical policy, customs cooperation, government procurement, visa procedures, telecommunications and electronic commerce.

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 Labour government, elected in 1999, froze further reductions until July 2005. The New Zealand government announced in September 2003 that it would resume unilateral tariff reductions starting July 1, 2006. Under this unilateral tariff reduction program New Zealand has begun implementing gradual reductions of its highest tariff rates (currently 17 percent), which will reduce tariffs to 10 percent by July 1, 2009. These top rates apply mostly to clothing, footwear and carpet. *Ad valorem* tariffs on all other dutiable goods will be reduced to 5 percent by July 1, 2008.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Biotechnology Regulations

New Zealand's Environmental Risk Management Authority (ERMA), an independent body, reviews applications for the release of new organisms, including biotechnology products that contain living organisms. ERMA assesses applications on a case-by-case basis and can issue three types of approvals: contained field test, conditional release, and full, unconditional release. The Ministry of Agriculture and Forestry (MAF) enforces compliance of field tests and conditional release approvals. To date, ERMA has only approved a small number of contained field tests. There have been no applications for either a conditional or a full release of products derived by the use of biotechnology in New Zealand.

Containment approvals include those conducted in enclosed laboratories, glasshouses and outdoors in field test situations. When assessing an application for a containment approval, ERMA focuses on the adequacy of containment and, if an escape should occur, the effect of the organism on the environment. ERMA recently received an application from Crop and Food Research to conduct a contained field test for broccoli, cabbage and cauliflower derived by the use of biotechnology engineered for pest resistance. Three years ago, ERMA approved an application from the same organization to field test onions derived by the use of biotechnology.

Release approvals include both conditional release, where controls can be placed on the organism to manage risks, and full release where no controls are imposed. The process for biotechnology derived field test or release applications is much more onerous than for a full, non-field test containment application. Among other things, applicants for a conditional or full release must provide ERMA with detailed information and analysis that enables them to conduct a full scale risk assessment that takes into account a broad range of scientific and economic factors in the decision making process. This includes the possible impact of a release on New Zealand's green image and the organic sector.

Until October 2003, New Zealand maintained a voluntary two-year moratorium on the introduction of all biotechnology products, which precluded applications for the commercial planting of biotechnology crops, the commercial importation of seeds derived by the use of biotechnology, the release into the environment of animals derived by the use of biotechnology and, to a lesser extent, some human and veterinary medicines containing biotechnology products. The moratorium, however, did not apply to the use and sale of processed foods and ingredients derived by the use of biotechnology. With the moratorium's expiration and the report of the Royal Commission on Genetic Modification, Parliament amended the Hazardous Substances and New Organisms Act 1996 to make the regulation of biotechnological research more workable and to facilitate controlled release of biotechnology products. The amendment, the New Organisms and Other Matters Bill of 2003, introduced the conditional release category for approval of new organisms.

Biotechnology Food Approval

Imported foods derived by the use of biotechnology for sale in New Zealand must be assessed and approved by Food Standards Australia New Zealand (FSANZ), which is the bi-national food regulatory authority for New Zealand and Australia. FSANZ is responsible for the development of regulations in the Australia – New Zealand Food Standards Code (Code). The New Zealand Food Safety Authority (NZFSA) is responsible for implementation and enforcement of the Code within New Zealand.

A mandatory standard for foods produced using modern biotechnology came into effect in mid-1999. The standard, which was established under the Food Act of 1981, prohibits the sale of food produced using biotechnology unless such food has been assessed by FSANZ and listed in the food code standard. As of November 2006, FSANZ has received a total of 38 applications for assessment of bioengineered foods. Of these, thirty-one applications had been approved and five are under assessment. Two requests had been withdrawn.

Biotechnology Food Labeling

Mandatory labeling requirements for foods produced using gene technology took effect in December 2001. With few exceptions, a food in its final form that contains detectable DNA or protein derived by the use of biotechnology must be so labeled. Meeting New Zealand's biotechnology food labeling regulations can be extremely burdensome and is especially relevant for U.S. agricultural exporters who deal primarily in processed food. New Zealand wholesalers and retailers frequently demand

biotechnology-free declarations from their suppliers. This effectively places liability for any biotechnology labeling non-compliance on 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. Violators of food labeling requirements can be assessed penalties under the Food Act 1981. The New Zealand government is reviewing penalties stipulated under the Act to ensure that they represent an adequate economic deterrent. The effect of these regulations is to discourage New Zealand food retailers from carrying biotechnology food products.

Sanitary and Phytosanitary Measures

New Zealand maintains a strict regimen of sanitary and phytosanitary (SPS) controls for virtually all imported agricultural products. The United States and New Zealand continue to discuss specific SPS issues that negatively impact trade in products supplied by the United States as part of our annual Trade and Investment Framework Agreement (TIFA) dialogue and in other fora.

In 2006, New Zealand implemented new processes for undertaking risk analyses and developing import health standards. This initiative is intended to streamline existing processes and provide consistency in the way New Zealand undertakes these tasks.

As of July 1, 2006, New Zealand also implemented a new system for funding and managing the development of import health standards. The new system is intended to be more transparent, direct government resources to the highest priorities and increase the resources available for developing import health standards.

During the 2006 U.S.-New Zealand TIFA discussions, the United States Government requested that New Zealand develop an import standard for Pacific Northwest stone fruit (plums, peaches, nectarines and apricots). In response to the U.S. request, New Zealand has added Pacific Northwest stone fruit to its 2006-2007 import health standard development work program. Details on the timing for issuing the import health standard will be confirmed once the work has commenced. The 2006-07 work program also includes a review of import requirements for citrus from the United States.

New Zealand recently completed a risk assessment of U.S. chilled pork. To date, this product has been subject to a pre-cooking requirement because of the presence of Porcine Reproductive and Respiratory Syndrome (PRRS) in the United States. While the analysis confirmed that there is a risk of PRRS disease entering New Zealand, the Ministry of Agriculture and Forestry (MAF) is recommending that high value chilled cuts of pork be allowed entry without any sanitary treatment. To date, MAF has received forty-four submissions, including two from the United States. All submissions must be reviewed and considered before MAF can move to the next phase, which is drafting an import health standard.

New Zealand's import health standard for wood packaging material came into effect in May 2006 and enforcement of the standard was phased in over the following two months. However, New Zealand retained a pre-existing requirement that all wood packaging materials be bark-free. The United States has requested that New Zealand suspend the implementation of the bark-free requirement until the findings of on-going international research on the risk of pest transmission through bark is released. However, New Zealand maintains that the requirement for freedom from bark needs to be met to gain biosecurity clearance, which could take the form of debarking at destination. The United States Government continues to seek to address this issue with New Zealand under our TIFA and in other fora.

The New Zealand Food Safety Authority (NZFSA) requires case-by-case assessment of U.S. bovine products before importation due to concerns over Bovine Spongiform Encephalopathy (BSE). NZFSA has completed an assessment of the U.S. BSE regime and has indicated that it will lift that restriction once both sides agree on certification language that must accompany meat imports. Discussions are currently underway on the revised certification language.

New Zealand continues to suspend imports of U.S. poultry meat (except canned product) due to its restrictions on countries that have infectious bursal disease.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The New Zealand government has proposed amendments to strengthen its copyright and patent laws and enhance the country's IPR protection. With proposed amendments to the Copyright Act, the New Zealand government aims to address developments in digital technologies and international developments in copyright law and to bring New Zealand law into closer conformity with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The New Zealand government introduced the legislation at the end of 2006 and has had a first reading. When the Parliament reconvenes in early 2007 the legislation will pass to a Select Committee for a comment period. The legislation is expected to go to second reading without major modification.

The Ministry of Economic Development released for public comment in December 2004 the draft Patents Bill intended to replace the Patents Act 1953 and to bring New Zealand's patent law into closer conformity with international standards. This draft would keep the maximum patent term at 20 years, but would tighten the criteria for granting a patent to require that the invention be new anywhere in the world and involve an inventive step from the previous standard that a patentable invention be new in New Zealand. The bill is expected to be introduced in mid-2007 and will then pass to the Commerce Select Committee for a six month comment period.

The U.S. music industry opposes a proposed amendment to the New Zealand Copyright Act that would legalize the duplication of sound recordings in other formats for a purchaser's private use. The New Zealand government says this would enable consumers to employ new digital technologies and would legalize what already is common practice. The New Zealand government also notes the amendment would limit copying to one copy per format, specify that the original sound recording must be legitimate, and exclude making copies from borrowed or rented recordings. The music industry warns that such an exception to copyright protection would make copyright infringement difficult to enforce, send the wrong message to consumers and cost the industry in sales revenue and profits. The industry adds that the exception would discourage the development of music products that would permit home copying under contractual arrangements between the consumer and the provider.

The Ministry of Commerce has been engaged in an on-going dialogue with the industry. The New Zealand government showed flexibility on the drafting of the proposed exception and added a sunset clause and a condition that the exception would be overridden by any license provision in an attempt to address industry concerns.

Additionally, industry has expressed support for a wider approach to technological protection measures (TPMs) than that provided in the New Zealand government's proposed amendments, reflecting U.S. law. The New Zealand government's proposal would prohibit the supply of devices or the means or information to circumvent TPMs that would result in infringing any of the copyright owner's exclusive rights, and not just copying as now specified in the legislation. The industry argues that the proposal is inadequate and that the act of circumventing a TPM also should be illegal. It also wants protection

against the circumvention of TPMs that control access to copyright material, in addition to TPMs that control copying.

U.S. industry also has expressed concern over a proposal to amend the Copyright Act which it believes would discourage rights holders from developing new approaches to meeting consumer demand for electronically delivered materials and reduce access and choice for New Zealand consumers to these materials. The Act currently provides an exception (section 84) for time shifting of broadcasts or cable programs for private and domestic use and solely for the purpose of watching or listening at a more convenient time. The New Zealand government has decided that, in line with the policy of technological neutrality, this section should be amended to cover all communication works, except those available on demand. The exception explicitly relates only to watching or listening at a more convenient time. It does not allow home users to build up a collection or "library" of films or music for ongoing and repeated use.

The October 2003 legislation, which amended the Copyright Act of 1994, also made 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.

United States pharmaceutical companies have expressed concerns about a prohibition of patents for methods of medical treatment in New Zealand's draft patents legislation. The industry also is concerned by the Cabinet's decision in mid-2004 to halt a study on the economic impact of extending patent terms for pharmaceuticals. The draft patents bill fails to address the issue of patent term restoration for pharmaceuticals. The pharmaceutical industry group, Researched Medicines Industry Association of New Zealand, contends that New Zealand's effective patent life for pharmaceuticals has been substantially eroded as a result of the regulatory approval process. It asserts that patent term restoration would be in line with international best practices.

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 would otherwise pursue mandatory quotas. Although 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.

Telecommunications

U.S. industry has expressed concern about the fees charged for completing calls using mobile networks in New Zealand, which are among the highest in the world. After a year-long investigation into mobile termination rates, the New Zealand regulating authority (the Commerce Commission) determined in June 2005 that mobile network operators were able to set unreasonably high rates because of limited market competition, and called for such charges to be regulated. In April 2006, the Minister received the commission's reconsideration final report, which maintained its recommendation to regulate the termination of voice calls made from fixed home or business phone lines to all mobile networks, including those using 3G technologies. The Economic Development Minister is expected to make a final decision on how to address these rates in early 2007. The United States will continue to monitor these developments.

In May 2006 the New Zealand Minister of Communications announced a comprehensive package of reforms to improve the telecommunications regulatory environment and improve broadband access. The government of New Zealand introduced a Telecommunications Amendment Bill in June 2006 that proposed wide-ranging powers for the Communications Minister and the Commerce Commission to monitor and enforce regulations that curb anticompetitive behavior. It also provided a process for implementing the three-way operational split of Telecom New Zealand into retail, wholesale and network arms. The bill, which passed in December 2006, clarified that Telecom New Zealand must unbundle the local loop and ensure access to "naked DSL" so that its competitors can sell broadband access without phone service. The United States commends New Zealand for taking positive actions towards enhancing the competitive environment, which may lead to increased opportunities for U.S. service providers and equipment manufacturers in New Zealand's market.

INVESTMENT BARRIERS

Investment Screening

New Zealand's Overseas Investment Office (OIO) screens foreign investments that exceed specified value thresholds as well as foreign investments in land. Amid growing public concern about purchases of coastal properties by foreigners, the New Zealand government enacted legislation in August 2005 that increased screening and monitoring of land purchases, but raised the minimum threshold for scrutiny of proposed business purchases. Under the legislation, the threshold for screening non-land business assets was increased from NZ$50 million to NZ$100 million where a foreigner proposes to take ownership or control of 25 percent or more of a business. New Zealand government approval is required for purchases of land larger than 5 hectares (12.35 acres) and of land in certain sensitive or protected areas. For land purchases, foreigners who do not intend to live in New Zealand must provide a management proposal covering any historic, heritage, conservation or public access matters and any economic development planned. That proposal must be approved and generally made a condition of consent. In addition, investors are required to report regularly on their compliance with the terms of the consent. Overseas persons also must demonstrate the necessary experience to manage the investment. The OIO, part of Land Information New Zealand, took over the functions of the Overseas Investment Commission in August 2005. The United States has raised concerns about the continued use of this screening mechanism. New Zealand's commitments under the WTO General Agreement on Trade in Services reflect New Zealand's screening program.

OTHER BARRIERS

Pharmaceuticals

The U.S. Government continued to raise concerns about New Zealand's support for innovation in the research and development of innovative pharmaceutical products. New Zealand's Pharmaceutical Management Agency (PHARMAC), a stand-alone Crown entity, administers a Pharmaceutical Schedule that lists medicines subsidized by the New Zealand government. The schedule also specifies conditions for prescribing a product listed for reimbursement. PHARMAC accounts for 73 percent of New Zealand's expenditures on prescription drugs. The New Zealand government also supports hospitals' pharmaceutical expenditures, bringing its share of total spending on prescription drugs in the country to about 80 percent.

New Zealand does not restrict the sale of non-subsidized pharmaceuticals in the country. However, private medical insurance companies will not cover the cost of non-subsidized medicines and doctors are often reluctant to prescribe them to patients who would have to pay the cost themselves. Thus,

PHARMAC's 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 U.S. Government has serious concerns regarding the transparency, predictability and accountability of PHARMAC's operations and decision-making. U.S. pharmaceutical suppliers maintain that the methodology used to determine Pharmaceutical Schedule decisions lacks transparency. PHARMAC is reviewing the way it decides funding for high-cost medicines and some other aspects of its listing procedures and methodology.

In October 2005 the Labour Party, in an agreement to form a new government and with support from the United Future party, agreed to review the nation's long-term medicines strategy, including PHARMAC's role. The next stage of this work is the post-Cabinet release of a consultation document, with changes expected in 2008.

The New Zealand and Australian governments signed a treaty on December 10, 2003, to create a joint agency to regulate medical devices, prescription and over-the-counter medicines, dietary and nutritional supplements, and cosmetics such as sun creams. Aside from prescription pharmaceuticals, New Zealand does not currently regulate market entry of these products, but will do so under the new regulations. Implementing legislation known as the Therapeutic Products and Medicines Bill was introduced at the end of 2006 and passed the first reading. The bill is with the Government Administrations Committee for comment. It is expected that it will pass to the second reading with amendments. The bill is expected to grandfather products that are already lawfully on the market at the time of the implementation of the legislation. The bill would grant an interim license valid for a transition period of three years. Discussion is ongoing as to possibly extending the term of transition to five years. It is expected that the new agency will charge full cost-recovery fees to register products and require additional documentation and assessments for certain products, even if they already have U.S. Food and Drug Administration approval. Each country's government will continue to separately determine funding of prescription medicines. U.S. manufacturers and distributors of non-pharmaceutical therapeutic products in New Zealand have expressed concerns that these new requirements will be overly burdensome and costly, and could serve to discourage exports of their products from the United States to New Zealand.

GOVERNMENT PROCUREMENT

New Zealand is not a signatory to the WTO Government Procurement Agreement and is not an observer to the Committee on Government Procurement.