NEW ZEALAND

TRADE SUMMARY

The U.S. goods trade deficit with New Zealand was $302 million in 2007, an increase of $115 million from 2006. U.S. goods exports in 2007 were $2.8 billion, down 3.9 percent from the previous year. Corresponding U.S. imports from New Zealand were $3.1 billion, roughly the same as in 2006. New Zealand is currently the 49th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to New Zealand were $1.4 billion in 2006 (latest data available), and U.S. imports were $1.5 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were $2.0 billion in 2005 (latest data available), while sales of services in the United States by majority New Zealand-owned firms were $3 million.

The stock of U.S. foreign direct investment (FDI) in New Zealand was $5.7 billion in 2006 (latest data available), up from $4.9 billion in 2005. U.S. FDI in New Zealand is concentrated largely in the finance, manufacturing, and wholesale trade sectors.

IMPORT POLICIES

Tariff rates in New Zealand are generally low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s and continued until the current Labour government, first 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 these tariffs to 10 percent by July 1, 2009. These top rates apply mostly to clothing, footwear, and carpeting. *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 four types of approvals: initial development in containment (such as in a laboratory or glasshouse), outdoor development of field tests (in containment), conditional release, and full, unconditional release (with no controls). Biosecurity New Zealand, part of the Ministry of Agriculture and Forestry (MAF), carries out compliance and enforcement of all indoor and outdoor containment and conditional release approvals. When assessing a containment application, ERMA focuses on the adequacy of containment to mitigate any potential effect of the organism on the environment.

Since 1998, ERMA has granted approximately 15 approvals for contained field trials of genetically modified crops. Of these, approximately five have been completed, six are still ongoing, and the remaining approvals have either ceased or were unused for various reasons. To date, there have been no applications for either a conditional or a full release of products derived by the use of biotechnology in New Zealand. The most recent approval granted by ERMA was in May 2007, for Crop and Food Research to conduct a contained field test for broccoli, cabbage, cauliflower, and forage kale derived by

the use of biotechnology and 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 outdoor containment, conditional and full release of biotechnology products is much more onerous than for an indoor containment application. Among other things, applicants must provide ERMA with detailed information and analysis that enables them to conduct a full scale risk assessment taking into account a broad range of scientific, economic, cultural, and ethical factors in the decision making process. This includes the possible impact of a release on New Zealand's "clean green" image and the potential impact on the Maori culture. All outdoor containment, conditional and full release applications must be publicly notified. In addition, a Maori consultation is required.

Until October 2003, New Zealand maintained a voluntary 2 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 the approval of new organisms.

The United States has raised concerns about New Zealand's biotechnology regulatory policies in meetings under the United States-New Zealand Trade and Investment Framework Agreement (TIFA) and other fora and will continue to press New Zealand on these issues.

Biotechnology Food Approval

Foods with genetically modified content can be offered for sale and consumption in New Zealand after being assessed and approved by Food Standards Australia New Zealand (FSANZ), which is the binational 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 2007, FSANZ has received a total of 39 applications for the assessment of genetically modified foods. Of these, 33 applications had been approved and 4 are under review. Two requests had been withdrawn.

Biotechnology Food Labeling

Mandatory labeling requirements for genetically modified (GM) foods took effect in December 2001. With few exceptions, a food in its final form that contains detectable DNA or protein derived from genetic modification must be so labeled. Meeting New Zealand's food labeling regulations for genetically modified foods can be extremely burdensome for U.S. agricultural exporters who deal primarily in processed food. New Zealand wholesalers and retailers frequently demand GM-free declarations from

their suppliers. This effectively places liability for any GM labeling noncompliance 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. As part of the Domestic Food Review, the New Zealand government is reviewing the entire Food Act, and a new version is expected to be introduced to parliament in the first quarter of 2008.

Sanitary and Phytosanitary Measures (SPS)

New Zealand maintains a regimen of 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 the annual 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, prioritizing, and managing the development of import health standards. In December 2007, New Zealand announced new procedures for publishing for comment and for approving draft and final import risk analyses. 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. The new process is also likely to expand the review time for new access proposals.

During the 2006 United States-New Zealand TIFA discussions, the U.S. 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 import health standard development work program. The work program also includes a review of import requirements for citrus from the United States.

New Zealand completed a risk assessment of U.S. high value pork in June 2006. 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 is allowed entry without any sanitary treatment. In response to the risk assessment, MAF received 44 submissions, including 2 from the United States. MAF completed the review of submissions in June 2007, and re-issued new draft import health standards for pig meat and pig products in November 2007. The comment period on these draft standards closed in February 2008.

NZFSA requires case-by-case assessment of U.S. bovine products before importation due to concerns over Bovine Spongiform Encephalopathy (BSE). In February 2007 NZFSA announced a move to modernize its food safety importing requirements for beef and beef products in light of the new science that surrounds BSE. Among other things, the new measures will enable New Zealand to categorize the BSE risk status of countries exporting to New Zealand. Once these measures are finalized, the current requirement to assess U.S. products on a case-by-case basis is expected to be eliminated.

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.

GOVERNMENT PROCUREMENT

New Zealand is not a signatory to the WTO Government Procurement Agreement and is not an observer to the WTO Committee on Government Procurement. The New Zealand Government is keeping the issue of its participation in the Government Procurement Agreement under review.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Copyrights

The New Zealand government introduced the Copyright Amendments Bill at the end of 2006, which passed its first reading. In 2007 the legislation was sent to the Select Committee for a comment period. During this comment period, industry raised concerns that the draft legislation would put New Zealand at odds with the growing international consensus regarding protection of copyrights and related rights in the online environment, as provided for by the WIPO Performances and Phonograms Treaty to which New Zealand is not a Party.

Among the concerns highlighted were that the bill fails to adequately protect technological protection measures (TPMs), which prevent unauthorized access to digital content. The bill inadequately protects against the distribution of circumvention (hacking) devices and only prohibits trafficking in circumvention devices where the trafficker has knowledge, or reason to believe, that the device will, or is likely to be, used for infringement.

In addition, concerns have been raised about the liability provisions in the bill for Internet service providers. The U.S. Government will continue to monitor the status of these provisions as the legislation moves forward.

Patent Protection

The New Zealand government released an initial draft patents bill in early 2005 for consultation, but the bill has not yet had its first reading in New Zealand's legislature. The bill is intended to replace the Patents Act of 1953 and to bring New Zealand's patent law into closer conformity with developments in other countries including patent term restoration. On average, the patent and regulatory approval processes for new drugs in New Zealand takes about twelve years. As a result, many drugs have very few years of patent protection remaining after the regulatory authority grants marketing approval.

SERVICES BARRIERS

Media

Radio and television broadcasters have adopted voluntary local content targets after the New Zealand government made it clear that it would otherwise pursue mandatory quotas. New Zealand government officials have said they are sensitive to the implications of quotas under the GATS, but nonetheless they reserve the right to impose them.

Telecommunications

New Zealand has, over the past decade, moved from relying primarily on the courts to regulate the telecommunications sector under general antitrust statutes (that proved time consuming and ineffective) to the introduction of enforceable sector specific rules.

New Zealand amended the 2001 Telecommunications Act in 2006 (the Act), separating Telecom New Zealand (Telecom) into separate access network services, wholesale, and retail business units. The separation is aimed at promoting competition in the telecommunications market. The Act requires Telecom to operate its Access Network Services unit on a stand-alone basis and its wholesale and retail units at arms-length from one another.

As part of the operational separation process, the Minister of Communications and Information Technology (Minister of Communications) issued a determination on September 26, 2007, requiring Telecom to prepare a draft separation plan. Telecom submitted a plan that was opened for public comment in January 2008. Taking into account comments received, the Minister of Communications is required to approve or amend the plan "as soon as practicable." The determination also set requirements for providing Access Network Services over existing copper, and future fiber and wireless access networks to ensure comprehensive service coverage and a forward-looking approach.

Other key features of the Act require Telecom to provide unbundled local loop and unbundled bit stream access, "naked" DSL services, and unbundled backhaul services; improve transparency of Telecom's costs and pricing by requiring separate wholesale and retail accounting; and enhance the Telecommunications Commissioner's ability to enforce effective and timely access to regulated services. The Act also empowers the Commerce Commission to set terms and conditions of supply for regulated services and to resolve supply terms and conditions for regulated services, rather than only for individual operators. It empowers the Telecommunications Commissioner to initiate determinations of the terms and conditions of regulated multi-network services. In addition, the Act requires Telecom to make relevant services, especially unbundled local loops and unbundled bit stream, available to all market participants on equivalent terms.

With respect to mobile termination rates, the Economic Development Minister announced in April 2007, that he would accept voluntary and separate binding commitments from Vodafone and Telecom to reduce such rates to more reasonable levels. The commitments require operators benefiting from such reductions to pass through reductions to their customers.

Based on such commitments and over a five year period, Telecom has offered to reduce its mobile termination rate from 20 New Zealand cents per minute (cpm) to 12 cpm, and Vodafone has offered to reduce its mobile termination rate from 20 cpm to 14 cpm. This outcome contrasts with the 2005 Commerce Commission recommendation that rates be reduced immediately to 15 cpm by 2006, which was not implemented due to legal challenges brought by mobile operators.

INVESTMENT BARRIERS

Investment Screening

New Zealand maintains investment screening requirements, but has not blocked any foreign investments since 1984.

New Zealand's Overseas Investment Office (OIO) screens foreign investments that exceed NZ$100 million and represent 25 percent or more of the equity in a New Zealand enterprise, foreign investments in land defined as sensitive within the Overseas Investment Act 2005, and foreign investment in fishing. In August 2005, the New Zealand government enacted The Overseas Investment Act that liberalized the investment screening regime by refocusing screening on assets of critical interest. The review also strengthened the monitoring and enforcement of conditions of consent made under the Act.

Investors also are required to satisfy an "investor test." In particular, an investor must be of good character, must not be excluded from entering New Zealand under the Immigration Act, and must be able to display both financial commitment and business acumen.

The United States has raised concerns about the continued use of this screening mechanism.

OTHER BARRIERS

Pharmaceuticals

The U.S. Government continues to raise concerns regarding New Zealand's relatively weak support for 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 nonsubsidized pharmaceuticals in the country. However, private medical insurance companies will not cover the cost of nonsubsidized 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 nonsubsidized medicines and the ability of pharmaceutical companies to sell their products in the New Zealand market.

In addition, U.S. industry continues to have concerns about the transparency, predictability, and accountability of PHARMAC's processes. In October 2005, the United Future Party announced that it had secured an agreement from the Labour Party to develop a national medicines policy as part of Labour's coalition negotiations to form a government. In doing so, they will focus on three areas: access to medicines; quality use of medicines; and the rational use of medicines. The national medicines policy, anticipated to be released through the Ministry of Health as a consultation document, will offer some principles and proposals in these areas. Changes are expected to be implemented later in 2008.