

Trade Policy Review Body
12 and 14 May 2003

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TRADE POLICY REVIEW

NEW ZEALAND

Minutes of Meeting

Addendum

Chairperson: H.E. Mrs. Mary Whelan (Ireland)

This document contains the advance written questions, and replies provided by New Zealand.¹

Organe d'examen des politiques commerciales
12 et 14 mai 2003

EXAMEN DES POLITIQUES COMMERCIALES

NOUVELLE-ZÉLANDE

Compte rendu de la réunion

Addendum

Présidente: S.E. Mme Mary Whelan (Irlande)

Le présent document contient les questions écrites communiquées à l'avance et les réponses fournies par la Nouvelle-Zélande.¹

Órgano de Examen de las Políticas Comerciales
12 y 14 de mayo de 2003

EXAMEN DE LAS POLÍTICAS COMERCIALES

NUEVA ZELANDIA

Acta de la reunión

Addendum

Presidente: Excma. Sra. Mary Whelan (Irlanda)

En el presente documento figuran las preguntas presentadas anticipadamente por escrito, junto con las respuestas facilitadas por Nueva Zelanda.¹

¹ In English only./En anglais seulement./En inglés solamente.

**ADVANCE WRITTEN QUESTIONS BY MEMBERS AND
REPLIES PROVIDED BY NEW ZEALAND**

ARGENTINA

Report by the Secretariat

III. TRADE POLICIES AND PRACTICES BY MEASURE; (2) MEASURES DIRECTLY AFFECTING IMPORTS; (vi) Import prohibitions, restrictions and licensing, page 35, paragraph 32; and (3) MEASURES DIRECTLY AFFECTING EXPORTS; (iii) Export prohibitions and restrictions, page 45, paragraph 65

Question 1: Import and export restrictions

Would the Government of New Zealand please detail the restrictions on imports and exports which it maintains for health, safety, sanitary and phytosanitary and other reasons.

Answer - The Secretariat's report describes many of New Zealand's SPS-related restrictions on imported foods, animals, plants, and other agricultural products, in section 2(ix) of chapter 3 (paras 48-53). Import health standards and legislation applying to agricultural produce are freely available on these websites: www.maf.govt.nz and www.nzfsa.govt.nz. In addition, New Zealand maintains a variety of border controls relating to, for example, strategic goods, offensive weapons, hazardous waste and endangered species. These enable New Zealand to implement a range of international obligations and to achieve certain environmental, health and security objectives. New Zealand notes finally that it, like other WTO Members, is considering the content of its biennial report on quantitative restrictions to the Council for Trade in Goods.

III. TRADE POLICIES AND PRACTICES BY MEASURE; (2) MEASURES DIRECTLY AFFECTING IMPORTS; (ix) Sanitary and phytosanitary measures, pages 40-42, paragraphs 48-53

Question 2: Sanitary and phytosanitary measures

Does the Government of New Zealand anticipate modifying its sanitary measures in a way that ensures that they are not trade restrictive? (Page xi, (4), paragraph 22, of the Secretariat Report states that "For some products (most non-pasteurized cheese, fresh eggs and poultry), there are currently no imports").

Answer - Like other WTO Members, the New Zealand Government balances the health risks that imported goods can pose with the benefits resulting from trade, such as lower costs and wider choice for consumers. New Zealand is a strong advocate of the SPS Agreement and is committed to setting standards at a level that is reasonable and that are based on scientific principles. All WTO Members benefit from multilateral commitment to science-based standards developed through consistent and transparent processes. Further detail on the import requirements for the specific products mentioned is available from New Zealand's SPS Contact Point.

III. TRADE POLICIES AND PRACTICES BY MEASURE; (3) MEASURES DIRECTLY AFFECTING EXPORTS; (vi) Export finance, insurance and guarantees, page 48, paragraph 72

Question 3: Exporter assistance

Would the Government of New Zealand please explain how the proactive policies implemented by the Export Credit Office are consistent with the new disciplines related to export finance, insurance and guarantees. Are the costs, products financed with credit and total volume of exports known? Which sectors or businesses have benefited from the assistance provided under this Scheme? What changes were made to the Export Credit Scheme as a result of the review?

Answer - The operation of the New Zealand Export Credit Office (ECO) is fully consistent with the WTO Agreement on Subsidies and Countervailing Measures and the OECD Arrangement on Guidelines for Officially Supported Export Credits, which means it prices to cover all costs, including capital costs, in accordance with WTO rules.

The Export Credit Office has a mandate not to compete with the commercial sector - so it only provides medium-long-term products (as they are not provided in NZ by the commercial sector), and it does not provide direct financing - preferring instead to work with commercial financiers to provide loans to buyers of NZ exports. Accordingly, the Export Credit Office provides medium-long-term trade credit insurance. i.e., insurance of payment by the buyer for transactions with a credit term greater than one year, and where the (useful) life of the export in question is longer than the intended repayment term (telecommunications, transport, heavy engineering).

The changes implemented as a result of the review were designed to:

- crease *awareness of the ECO scheme* with a focus on increasing marketing and education initiatives to exporters and financiers;
- improve *usability* of the ECO's main products (medium-log-term trade credit insurance) through changes that make the ECO scheme comparable to other export credit agencies (duration of cover, increasing the level of cover, the provision of cover in main foreign currencies, and risk-sharing arrangements); and
- increase the *capacity of the commercial sector*, rather than replace it and ensure that the ECO meets its international regulatory obligations. As the New Zealand short-term insurance market is well serviced, and reinsurance is available for most risks, it was agreed that the ECO only provide short-term reinsurance for higher risk transactions when the ECO can cover its costs.

To date no sectors have benefited as there have been no approved applications.

III. TRADE POLICIES AND PRACTICES BY MEASURE; (4) OTHER MEASURES AFFECTING PRODUCTION AND TRADE; (v) Competition policy, pages 55-58, paragraphs 98-105

Question 4: Competition regulator

Would the Government of New Zealand please state what measures were taken to bring agriculture into the jurisdiction of the competition regulator.

Answer - The Commerce Act covers all sectors unless specifically excluded. Therefore, agriculture is covered by the Commerce Act 1986 and Fair Trading Act 1986, as outlined in the Secretariat's report, except for the sector-specific legislation in relation to dairy.

IV. TRADE POLICIES BY SECTOR; (3) MANUFACTURING, pages 76-77, paragraphs 30-34

Question 5: Industrial development policy measures

Which sectors have been prioritized under the initiative to maintain proactive industrial policies through the creation of a more supportive business and regulatory environment? What does the implementation of "increased government assistance" consist of?

Answer - The Government has prioritised sectors in which it believes New Zealand has a comparative advantage: biotechnology, information and communication technologies (ICT), and creative industries.

In a wider context, the Government has taken a more proactive role to create an efficient business and regulatory environment. This will be achieved through minimising compliance costs, specifying and protecting property rights (including intellectual property), harmonising local laws and regulations with international best practice and norms, and ensuring sound mechanisms for winding up failing businesses. A recent example is the Electronic Transactions Act that facilitates the use of electronic communications. These objectives apply to all industries without discrimination and form part of the Government's Growth and Innovation framework.

"Better official assistance" ("increased government assistance" p.52, para 88) also refers to the creation of a more efficient business and regulatory environment. Regulatory reform to date has concentrated on infrastructure such as telecommunications and electricity (as stated in para 88). Industry NZ programmes provide information to assist businesses to build capabilities in management and other generic business skills, such as accessing sources of finance.

Government Report

II. NEW ZEALAND ECONOMIC POLICY, page 6, paragraphs 11-12

Question 6: Policy measures to increase productivity and growth

Would the Government of New Zealand please describe what the "more interventionist policies" referred to in the Government Report will be and how these would affect access to the New Zealand market and exports.

Answer - The New Zealand Government Statement does not refer to "more interventionist policies" to be taken by the Government, but rather the Government has assumed a "more active role in economic development". At this stage in the evolution of the Growth and Innovation Framework the focus is on the strategic development of policy in a medium term context. This work is in its early stages. The objective is to create the conditions that will support New Zealand businesses in making a stronger contribution to New Zealand's economic growth and prosperity. This will not be achieved by erecting barriers to access into the New Zealand market, but rather by assisting New Zealand businesses to reach their full potential through fostering growth and innovation.

BRAZIL

I. ANTI-DUMPING AND COUNTERVAILING MEASURES

1. *In paragraph 33, of document WT/TPR/S/115, it is mentioned that 'There have been minor changes to New Zealand's legislation on anti-dumping and countervailing measures during the period under review, resulting from its bilateral agreement with Singapore'. Could New Zealand elaborate more on those minor changes?*

Answer - The following changes have been made to New Zealand's anti-dumping and countervailing legislation as a result of our Closer Economic Partnership agreement with Singapore:

- The *de minimis* margin of dumping, in terms of Article 5.8 of the Anti-Dumping Agreement, in the case of goods of Singaporean origin, is a dumping margin of less than 5 percent, expressed as a percentage of the export price. (Article 5.8 requires that a dumping margin is *de minimis* if it is less than 2 percent).
- The volume of dumped imports of Singaporean origin shall normally be regarded as negligible in terms of Article 5.8 of the Anti-Dumping Agreement, if those imports account for less than 5 percent of the imports of the like product into New Zealand. (Article 5.8 requires that the volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 percent of the imports of the like product). The existing cumulation provisions of Article 5.8 continue to apply.
- In terms of Article 11.3 of the Anti-Dumping Agreement and Article 21.3 of the Agreement on Subsidies and Countervailing Measures, the specified period that anti-dumping and countervailing duties will apply to goods of Singaporean origin is 3 years, unless a review is initiated before the expiry of the 3 year period. (Articles 5.8 and 21.3 specify that anti-dumping and countervailing duties will expire 5 years after they were imposed or last reviewed, unless a review is initiated before the expiry of the 5 year period).

The effect of the changes is therefore to apply higher thresholds than are provided for in the Anti-Dumping Agreement before New Zealand can apply anti-dumping duties on goods of Singaporean origin and to reduce the period when duties on goods of Singaporean origin either expire or are reviewed.

2. *Also in paragraph 33, it is mentioned that 'Final determinations of dumping or unfair subsidization, according to the legislation, would be taken within 180 days of initiation of an investigation'. Could New Zealand explain the meaning of the expression 'unfair subsidization' and its relationship with the categories of subsidies referred in the Agreement on Subsidies and Countervailing Measures?*

Answer - Unfair subsidisation is a reference to any specific subsidies in terms of Part I of the Agreement on Subsidies and Countervailing Measures and does not have any wider meaning.

3. *In paragraph 33 it is mentioned that 'No measures may remain in force beyond a period of five years from imposition of duty or undertaking, unless a review is initiated. Any review must be initiated before the expiry date of the original duty. The procedures for a review are the same as those for initial investigations'. Considering the information provided in paragraph 35, that is, 13 anti-dumping investigations initiated since 1995 were terminated with final measures, could New*

Zealand inform the current status of these cases? Have some of these anti-dumping measures been reviewed? If it is the case, how many measures were rescinded after their review?

Answer - The following data sets out the current status of the 13 cases since 1995 where anti-dumping duty was imposed:

-	Duties still in place	8
-	Duties terminated	5

Of the 13 cases, four have been reviewed, one of which resulted in the termination of the duty (one other case is currently subject to a review which has yet to be completed). In four cases the duties ceased 5 years after they were imposed because no interested party requested a review.

4. *With regard to the countervailing measures adopted on the basis of investigations initiated between 1995 and 1997, what is the current status of those measures? Were they reviewed? And if so, how many of them were rescinded?*

Answer - There have been four cases since 1995 where countervailing duty was imposed and their current status is as follows:

-	Duties still in place	1
-	Duties terminated	3

Of the four cases, two have been reviewed and both cases resulted in the termination of the duty (one other case is currently subject to a review which has yet to be completed). In one case the duties ceased 5 years after they were imposed because no interested party requested a review.

5. *Considering the data presented in Chart III.3 ('Anti-dumping cases, 1 January 1996-20 December 2002; By number of cases initiated'). Could New Zealand explain the meaning of the expression 'pending cases' and conciliate the existence of 'pending cases' related to investigations initiated in 2000 with the time-limit of 180 days of initiation for final determinations of dumping be taken, referred in paragraph 33?*

Answer - Pending cases in Chart III.3 are those which were initiated, but not completed at the end of the year. The chart shows that at the end of 2000 there was one case pending and that in 2001 there was one case completed where no final measures were imposed. The one case pending at the end of 2000 is the same case that was completed in 2001 without the imposition of final measures.

6. *In paragraph 34, it is mentioned that 'Article 15.8 of the ANZCERTA, moreover, allows one member state to request the other to take action, consistent with its international obligations, against alleged dumping by third country'. Could New Zealand inform whether any action has been taken against alleged dumping by a third country? In case of a positive answer, please indicate them.*

Answer - No duties have been imposed by New Zealand against alleged dumping by a third country.

II. GOVERNMENT PROCUREMENT

7. *Does New Zealand have any law to favour small business in government procurements?*

Answer - No. Guiding principles of the government procurement policy approach include full and fair opportunity for suppliers, including small business, to compete on the basis of value for money. Agencies, however, are free, and motivated by tight budgetary controls to seek best value for money

in an open and competitive market without discriminating in favour of or against any group of suppliers. See also answer to Brazil question 14.

8. *Are bidding processes of the Department of Defence excluded from the coverage of the Australia-New Zealand Government Procurement Agreement (ANZGPA) and other bilateral agreements?*

Answer - The Ministry of Defence and other defence agencies are subject to government procurement policy that takes into account, inter alia, New Zealand's international trade obligations, including under the Agreement between New Zealand and Singapore on a Closer Economic Partnership (ANZSCEP), the Australia - New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), and the Australia-New Zealand Government Procurement Agreement (ANZGPA). We note that Article 55 (e) of ANZSCEP and Article 18(a) of ANZCERTA provide for exemption from the non-discrimination provisions of the Agreement where national security is a consideration in defence procurement of a strategic nature.

Is there any other entity/agency excluded from the coverage in commercial agreements where New Zealand is Party?

Answer - The government procurement agreements to which New Zealand is party (ANZGPA and chapter 18 of the Singapore New Zealand Closer Economic Partnership Agreement) cover only those entities over which the government has direct control (i.e. government departments and statutory agencies), and exclude entities which are bodies corporate contracting in their own right.

What kinds of restrictions exist in the Department of Defence procurements?

Answer - New Zealand's defence procurement is normally conducted on an open and competitive basis. From time to time, however, there may be a need for Defence to acquire capability on a Government-to-Government basis or through non-competitive means for inter-operability, standardisation or security reasons.

9. *Which are the offsets allowed in the New Zealand bidding process?*

Answer - Under New Zealand's informal voluntary offsets policy, purchasing agencies are free to consider commercially viable offsets proposals which support their agency goals. There is no prescription as to types of offsets allowed.

10. *Are concessions treated in the government procurement universe? Are foreign companies allowed to participate in bids concerned with concessions?*

Answer - The government procurement policy has general application to acquisition of goods and services by government agencies by purchase, hire, lease, rental, exchange and outsourcing arrangements. This would in principle include acquisition through grant of concessions by government agencies, and the normal policy principles of transparency, competition and non-discrimination would apply. There are no *a priori* requirements to exclude foreign companies from bidding. See also answer to Brazil question 15.

11. *Which classification system is employed for goods, services and public works in New Zealand.*

Answer - There is no system specific to government procurement. The Australia New Zealand Standard Industrial Classification (ANZSIC) system is used for statistics of industrial and economic activity in general. For international trade statistics, New Zealand subscribes to the Harmonised System (Harmonised Commodity Description and Coding System).

12. *Regarding paragraph 57 of document WT/TPR/S/115, p. 43, is there a possibility for potential foreign suppliers to be included in the lists of suppliers used by federal government agency entities? If affirmative, how should those suppliers proceed to be included? Which are the requirements to be qualified in those lists? Is there preferential treatment in this regard for suppliers from any region/country besides bilateral trades?*

Answer - The Policy Guide for Purchasers (referred to in answer to Brazil question 14 below) states that existing preferred suppliers lists should be open for application by new suppliers at any time, and an invitation to apply should be advertised at reasonable intervals. There is also, however, an onus on suppliers, domestic or foreign, to take the initiative and apply to individual agencies which may be interested in products or services they have to offer (there is no central qualification system). In accordance with the policy principle of non-discrimination, such lists are open to application by foreign as well as domestic suppliers and qualification is on the basis of objective criteria without preferential treatment based on nationality of suppliers.

13. *Also regarding paragraph 57, it is mentioned that 'large and complex purchases are involved, agencies may prefer to issue tenders selectively to certain companies or identify potential suppliers through a staged process'. In this situation, is the tender published and are the offers of other companies other than the invited ones accepted?*

Answer - In the situation referred to, provided that agencies have identified a reasonable range of qualified and competitive suppliers through preliminary open invitation to register interest, or through appropriate market research, the tender need not be published or offers accepted from other companies. To do so would be to introduce unnecessary cost and inefficiencies in the procurement process (for both suppliers and buyers).

14. *Is there a consolidated and unique national legislation on guidelines and procedures on government procurement or does each entity/agency/state/territory have its own?*

Answer - There is no legislation specific to government procurement. New Zealand has a decentralised public sector management regime. In this context, the overall government procurement policy aim is to maintain an open and competitive market in which each agency is free to seek best value for money in terms of its own requirements, through its own procurement procedures and market-based decisions. For a full explanation of the policy approach, see *Government Procurement in New Zealand: Policy Guide for Purchasers* (July 2002) http://www.med.govt.nz/irdev/gov_pur/purchasers/index.html. This is complemented by good practice guidance from the Office of the Auditor-General in the publication, *Procurement: a Statement of Good Practice* (June 2001) http://www.oag.govt.nz/HomePageFolders/Publications/Procurement_Guide/Procurement_guide.htm

15. *Does New Zealand use the Build Operate Transfer (BOT) as a purchasing method? Is the Build Operate Transfer (BOT) included in the coverage of commercial agreements?*

Answer - BOT-type arrangements are not very common in public sector procurement in New Zealand, but may occur from time to time e.g. in transport infrastructure development ("toll bridges/roads"). Existing government procurement agreements (ANZGPA and Chapter 18 of the SNZCEP Agreement) cover non-corporatised central government departments and statutory agencies, which are unlikely to

be involved in such projects. The Government would, however, encourage other agencies involved to abide by the principles of the government procurement policy, including international non-discrimination commitments.

III. MARKET ACCESS

16. *Which authorities are in charge of issuing certificates of origin in New Zealand?*

Answer - Chambers of Commerce issue certificates of origin in New Zealand.

17. *What are the required procedures for availing oneself of customs' deferred payment system?*

Answer - The New Zealand Customs Service Deferred Payment Scheme (DPS) is a scheme which allows importers to defer the payment of Customs charges (including Goods and Services Tax) accounted for on Customs import entries.

All importers can apply to be registered onto the DPS by completing and submitting the following:

1. Application for Deferred Payment Registration form (NZCS 614);
2. Authority to Accept Direct Debits form (NZCS 615);
3. Guarantee for Payment of Sums Due to the New Zealand Customs Service form (NZCS 609) / credit check application fee of \$100 (payable by cheque);
4. Appropriate identification, for example, a Certificate of Incorporation for a company.

The credit check application fee enables Customs to obtain a review of the applicant by an approved credit agency. If this credit check is unsatisfactory, the applicant will need to supply a security to obtain approval to be admitted to the DPS. However, Customs will discuss with the applicant the reasons why a security is required. It is also possible to appeal to the Customs Appeal Authority if the applicant is unhappy with the decision.

No security for payment will be required unless the applicant is:

- An overseas registered company; or
- A trust; or
- Has been cancelled off the scheme and is applying to be reinstated; or
- Did not receive a satisfactory credit check.

The term overseas registered company includes a company registered as an overseas company pursuant to Part XVIII of the Companies Act 1993.

The guarantor can only be a New Zealand based bank or insurance company. Personal or company guarantees are not acceptable. The guarantor agrees to cover each and every sum deferred up to an overall maximum amount, which may, at any time, be outstanding. This amount is the credit limit. It must be enough to cover all liabilities at any one time.

Once admitted onto the DPS, the company must quote its Client Account Number on each import entry form when clearing importations.

A Fact Sheet fully explaining operation of the Deferred Payment Scheme is available from the New Zealand Customs Service website (www.customs.govt.nz), under Library – Fact Sheet 17.

CANADA

Secretariat Report (WT/TPR/S/115)

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES; (3) TRADE POLICY OBJECTIVES; para 10

1. *This paragraph is one of several references to New Zealand's shift away from unilateral tariff-cutting in the period since 1999. There is now a government-commissioned independent review of the earlier unilateral tariff-cutting approach which, among other things, recommends a resumption of such cuts by 2005 in such a manner that there will be essentially no tariffs applicable on entry into New Zealand by 2010 B the APEC target date for free trade and investment. What is the government's timetable for decisions about resuming (or not) the unilateral tariff-cutting approach?*

Answer - A Tariff Review is currently underway and decisions on tariff policy beyond 1 July 2005 are likely to be taken by the Government mid to late 2003.

II. TRADE POLICE REGIME: FRAMEWORK AND OBJECTIVES; (5) FOREIGN INVESTMENT REGIME; (ii) Legislative framework and procedures; para 32

2. *Paragraph 32 outlines the criteria used to evaluate applications for investment. These include whether or not the overseas person has relevant business experience and acumen and if they are of good character. How are these criteria assessed and is that assessment available to the overseas person for review?*

Answer - All applications are assessed on a case by case basis taking into account all relevant information and the extent to which Ministers are satisfied the criteria under the Act and Regulations have been met.

A Guide to making an application under the Overseas Investment Regulations 1995 (available at www.oic.govt.nz/guide/53545.pdf) provides a good summary of the information required.

The Commission provides applicants with a decision sheet that details the reason(s) for the decision on the application. Applicants are able to apply to the High Court of New Zealand to challenge decisions relating to applications.

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES; (5) FOREIGN INVESTMENT REGIME; (ii) Legislative framework and procedures; para 35

3. *Paragraph 35 describes the role of the Overseas Investment Commission in reviewing investment applications. What is the percentage of applications that are rejected each year and are rejected applications accompanied by an explanation? Is there an appeal mechanism for rejected applicants?*

Answer - The rejection rate is very low.

In the year to December 2002 there were 257 applications. Of these 248 were approved and 9 were refused – this was approximately 3.5%.

In the year to December 2001 there were 241 applications. Of these 239 were approved and 2 were refused – this was less than 1%.

As noted above the Commission makes available to the applicant a decision sheet that details the reason(s) for the decision. Applicants are able to apply to the High Court of New Zealand to challenge decisions relating to applications.

III. TRADE POLICIES AND PRACTICES BY MEASURE; (2) MEASURES DIRECTLY AFFECTING IMPORTS; (vi) Import prohibitions, restrictions, and licensing; para 32

4. *The second sentence of this paragraph talks about import bans or restrictions being in place for "health and safety reasons or in compliance with international conventions to which New Zealand is party." This is not the case vis-à-vis the current 4-year prohibition on the import of trout. What policy justification does New Zealand advance for the trout import ban and what efforts are being made during its current period of application to identify less trade restrictive means by which to meet the policy objectives?*

Answer - The Customs Import Prohibition (Trout) Order 2001 restricts but does not ban the import of a limited and specific list of trout species for 3 (not 4) years. The Order operates in conjunction with the domestic statutory prohibition on the sale of trout contained in the Conservation Act (Section 26ZQ). The Order, which provides for the importation of non-commercial quantities of trout for personal consumption, is set to expire in November 2004. The Order is subject to regular review.

III. TRADE POLICIES AND PRACTICES BY MEASURES; (3) MEASURES DIRECTLY AFFECTING EXPORTS; (v) Export monopolies; Table III.3 - State Trading Enterprises, 1995 and 2002

5. *With reference to New Zealand Kiwifruit Marketing Board, please explain what is meant by "an automatic, although not a sole right to export" for both Zespri Limited and Enza Limited?*

Answer - The Kiwifruit Industry Restructuring Act was enacted in September 1999. On 1 April 2000 the Act converted the New Zealand Kiwifruit Marketing Board into a company, Zespri Group Limited and distributed shares in Zespri Group Limited to kiwifruit growers. Zespri Group Limited retains its automatic right to export, as provided to its predecessor the Kiwifruit Marketing Board. Other exporters of kiwifruit, other than for consumption in Australia, must be approved to implement a collaborative marketing plan by Kiwifruit New Zealand (a regulatory board) to market kiwifruit in overseas markets other than Australia with Zespri Group Limited. Currently any entity can export kiwifruit for consumption in Australia.

The Government enacted legislation in September 2001 removing regulatory barriers to the export of apples and pears from New Zealand. ENZA's specific export rights were terminated on 30 September 2001 and from that date it has been required to compete on equal legal grounds with any other pipfruit exporter.

III. TRADE POLICIES AND PRACTICES BY MEASURE; (3) MEASURES DIRECTLY AFFECTING EXPORTS; (vi) Export finance, insurance and guarantees; para 72

6. *Please provide details on the commodities eligible for coverage under the Export Credit Scheme, and further information on how the terms and conditions supported would compare with what is commercially available.*

Answer - The operation of the New Zealand Export Credit Office (ECO) is fully consistent with the WTO Agreement on Subsidies and Countervailing Measures and the OECD Arrangement on

Guidelines for Officially Supported Export Credits, which means it prices to cover all costs, including capital costs, in accordance with WTO rules.

The Export Credit Office has a mandate not to compete with the commercial sector - so it only provides medium-long-term products (as they are not provided in NZ by the commercial sector), and it does not provide direct financing - preferring instead to work with commercial financiers to provide loans to buyers of NZ exports. Accordingly, the Export Credit Office provides medium-long-term trade credit insurance. i.e., insurance of payment by the buyer for transactions with a credit term greater than one year, and where the (useful) life of the export in question is longer than the intended repayment term.

As the life of the export must be longer than the repayment term, and the minimum repayment term is one year, the Export Credit Office's key export sectors include heavy manufacturing and capital goods and services (telecommunications, transport, heavy engineering).

III. TRADE POLICIES AND PRACTICES BY MEASURE; (3) MEASURES DIRECTLY AFFECTING EXPORTS; (vii) Export promotion and marketing assistance; para 74

7. *Please provide details on the nature of the "export promotion" activities of Trade New Zealand, and the commodities eligible for support under this program.*

Answer - Trade New Zealand provides a range of consultancy services, most of which are customised to the individual company or network of companies, and are part-funded by those companies. The services are available to all sectors. The suite of services delivered by Trade New Zealand includes: providing market intelligence and research; matching market opportunities to client export capabilities; identifying prospective customers; delivering trade inquiries to appropriate exporters; running education, communications and marketing programmes to disseminate market intelligence and promote Trade New Zealand services; facilitating clients' use of e-business; organising outward missions, offshore events and other strategic in-market group activities; organising inward missions, including trade media, prospective buyers and industry experts; arranging translation and interpretation services; providing capability development services; advising on barriers to trade.

Trade New Zealand also provides a range of generic promotional services:

- Promoting the export capability of New Zealand companies to overseas buyers through the media and through the internet channel i.e. MarketNewZealand.com.
- Promotion of New Zealand as a country of origin of quality products and services across a range of sectors through offshore events, conferences and associated promotional activities.
- Publishing an electronic news service on Trade New Zealand's website, and publishing a magazine on a bi-monthly basis
- Highlighting export success and promoting the benefits of exporting through a range of activities, including an ongoing programme of export awards.

IV. TRADE POLICY BY SECTOR; (2) AGRICULTURE; (iii) Export policy; para 12

8. *Please provide further details on the "requirement that all other exporters must export in collaboration with Zespri".*

Answer - As answered above, Zespri Group Limited retains its automatic right to export, and other exporters of kiwifruit, other than for consumption in Australia, must be approved to implement a

collaborative marketing plan by Kiwifruit New Zealand (a statutory regulatory board established under the Kiwifruit Industry Regulations Act 1999) to market kiwifruit in overseas markets with Zespri Group Limited. Any entity can export kiwifruit for consumption in Australia. Applications from other prospective exporters, to export kiwifruit in collaboration with Zespri, are assessed and decided on by Kiwifruit New Zealand. Private traders can export kiwifruit to Australia without prior permission of Kiwifruit New Zealand and independent of collaboration with Zespri.

IV. TRADE POLICY BY SECTOR; (4) SERVICES; (i) Overview

9. *According to paragraph 35, computer and information services represent one of New Zealand's two fastest growing services exports since 1996/77. Please provide further background regarding the success of your computer and information services sectors and please highlight your experience with regards to liberalization in this area.*

Answer - Exports of computer and education services, and software have increased from NZ\$127M in 1997 to NZ\$486M in 2002 according to Statistics NZ survey results. Communications services exports are additional but statistics are not available for the years 2001 and 2002. It is expected that these have remained at about the same level as in the 1998 to 2000 period at around NZ\$230M. Further information for the period to 2001 are available at <http://www.med.govt.nz/pbt/infotech/itstats2002/part01/index.html>. New statistics including 2002 figures will be available shortly.

Since the major telecommunication reforms of the 1980s, there has been no regulatory change of relevance. The IT hardware software and services sectors have all expanded steadily over this period. The increased export figures represent a changing emphasis in the industry from domestic to international commercial opportunities, especially in the educational services area.

IV. TRADE POLICY BY SECTOR; (4) SERVICES; (ii) Financial Services

10. *Please advise whether the government administers a deposit insurance scheme for banking customers. If so, how is it funded?*

Answer - There is no deposit insurance in New Zealand.

11. *Please give an indication of the level of foreign ownership or market share in the insurance sector. By how much has this level changed in the last decade?*

Answer - In very general terms, the insurance sector is dominated by insurers that are foreign-owned, and has been over the last decade. These insurers write the majority (approximately 70% for life insurance and 85% for general insurance) of both life and general insurance, calculated by net premiums. This has changed little over the last decade.

A more specific answer is more difficult, however. The answer depends on the interpretation of the phrase "foreign ownership or market share". Foreign ownership (in the sense that the ultimate parent is not NZ based) was easier to identify when life insurance companies were all mutuals a decade ago. On the basis of premium income, the majority of insurers would have foreign owned.

Today, however, the position is complicated by the demutualisation of insurers. Companies such as AXA, AMP and Tower are now public-listed companies with large and diversified shareholdings. Tower, for example, is a NZ company listed on both the NZ and Australian stock exchanges. It has

numerous shareholders from both countries, making it difficult to ascertain the exact proportion of the insurer owned by New Zealanders.

Viewed from the perspective of where the ultimate parent company is domiciled, New Zealand's insurance market has not changed to any great degree over the last decade. The ultimate parents of the large premium income earning life insurers and most of the large premium income earning general insurers are based overseas, most commonly in Australia or the UK. Companies whose ultimate parents are domiciled overseas earn the majority of the life insurance premiums. Between approximately 80% and 90% of the general insurance premiums are earned by companies whose ultimate parents are domiciled overseas.

IV. TRADE POLICY BY SECTOR; (4) SERVICES; (ii) Financial Services; para 46

12. *Paragraph 46 states, "Financial institutions in New Zealand do not need to be registered to provide banking services, but they do need to be registered to call themselves a bank."*

a) *Please explain the scope of business of the unregistered banking services industry and its relative size to the aggregate size of registered banks (i.e., how important are unregistered banking services providers in the financial system).*

Answer - Registered banks dominate the financial sector in New Zealand. They make up approximately 94% of deposit taking financial institutions (measured on the basis of assets).

Legally there are no constraints on a non-bank financial institution's ability to provide banking products and virtually any product typically available from a bank is also available from a non-bank financial institution.

b) *Can these unregistered entities accept deposits?*

Answer - Yes they can. (Note some, such as building societies, are registered under other legislation.)

c) *Are these unregistered entities subject to any regulation, or is the scope of their commercial activities limited?*

Answer - Deposit takers and other issuers are subject to Securities Act requirements. Under this Act non-bank deposit taking financial institutions are required to issue prospectuses and are required to be supervised by independent trustee corporations and to register for public inspection purposes a trust deed which sets out the basis on which that supervision is to be conducted. These deeds contain financial covenants that must be met throughout the term of the investments being offered. Some types of non-bank financial institution eg credit unions are also subject to additional regulatory requirements administered by the Ministry of Economic Development.

d) *Is it typical that an entity providing unregistered banking services would be registered to provide other financial services (i.e., in the insurance or securities sectors)?*

Answer - Some are required to register under other legislation e.g. building societies and credit unions, while others such as finance companies are not required to be registered.

IV. TRADE POLICY BY SECTOR; (4) SERVICES; (ii) Financial Services; para 47

13. *Paragraph 47 states, "Kiwibank was created to take advantage of the existing New Zealand Post network and in response to New Zealand Post's wish to diversify into other business areas given*

the prospect of reduced volumes in its core mail delivery business." The perception that Kiwibank deposits might benefit from an implicit government guarantee could confer it with an advantage over private banks, which do not enjoy such a guarantee.

a) Please advise whether this is an accurate representation of perceptions surrounding Kiwibank.

Answer - The Government has made it clear that New Zealand Post is required to run Kiwibank as a fully commercial operation and that the Government does not guarantee its operations (see answer to (b)). In the past the Government has allowed some SOEs (state owned enterprises) to fail.

b) Is there an implicit government guarantee of Kiwibank's operations? If not, has New Zealand attempted to dispel this myth?

Answer - Disclosure statements issued by Kiwibank include the following statement: "The Crown does not, expressly or impliedly, guarantee the obligations of Kiwibank."

Also, the Minister of Finance has gone on record as saying that (Kiwibank) "will have to stand or fall on its commercial merits".

c) Please advise whether any market impact studies were conducted to assess the effect of a new public bank on the operations of private competitors.

Answer - No such studies were conducted by public sector agencies. Under the bank registration policy administered by the Reserve Bank, there is relatively open access to the banking market, subject to minimum prudential standards being met. To quote from the Statement of Principles – Bank Registration and Supervision, issued by the Reserve Bank:

"Bank registration policy is aimed at ensuring that only financial institutions of appropriate standing and repute are able to become registered banks. Subject to this requirement, impediments to the entry of new registered banks are kept to a minimum in order to encourage competition in the banking system. This approach recognises that competition can bring significant benefits to users of the services provided by registered banks. There is no upper limit on the number of registered banks."

d) Please indicate whether an effort was made to avoid a negative impact on the profitability of private competitors when devising Kiwibank's business strategy.

Answer - Banks in New Zealand are profitable and therefore well placed to withstand competition from a new entrant to the banking market. In some cases they have adjusted their pricing to meet competition from Kiwibank, but this does not appear to have had any material impact on their profitability.

New Zealand Post approached the decision to enter the banking market purely on a normal commercial basis.

e) Does Kiwibank enjoy any different or more beneficial treatment than other banks (e.g., lighter regulatory regime, special tax treatment, or reduced capital requirements)?

Answer - No. Kiwibank is subject to exactly the same requirements as every other bank.

IV. TRADE POLICY BY SECTOR; (4) SERVICES; (ii) Financial Services; para 54

14. *Paragraph 54 states, "Up to 2000, a bank could choose to operate in New Zealand as a branch of an overseas bank or as a locally incorporated subsidiary. This position was reassessed by the RBNZ in 1999 as part of a review of its bank failure management policies. Following this review and consultation with the industry, it was decided to require a bank to incorporate locally if it is considered important in the system", or if it has significant retail deposits (i.e. \$NZ200 million) from countries that do not provide equal treatment to creditors in a wind-up situation, or where disclosure is not comparable with New Zealand's requirements.*

Please advise whether the new incorporation requirements have led to any foreign banks converting from a branch to a subsidiary.

Answer - No existing banks have been required to convert from a branch to a subsidiary as a result of the policy.

IV. TRADE POLICY BY SECTOR; (4) SERVICES; (ii) Financial Services; para 63

15. *Paragraph 63 states, "The Registrar of Companies may inspect a company to assess its financial standing. The Insurance Council of New Zealand Inc. monitors the solvency of its own members (i.e., general insurers). Companies that are not members of the Insurance Council are regulated under the general law."*

a) *Please indicate whether there is a process in force for the regular inspection of companies that are not members of the Insurance Council of New Zealand.*

Answer - The CEO of the Ministry of Economic Development receives annual audited insurance returns from all general insurance companies, whether or not they are members of the Insurance Council. New Zealand, since 1994, has had in place a ratings regime where general insurers (with some exceptions) are required to obtain annually a rating from an approved ratings agency, as described in paragraph 62 of Ch IV. This is itself a process for regular inspection of insurers by those agencies.

The Registrar of Companies also has wider supervisory powers for some insurers arising from his role as a regulator of financial reporting and securities. Where an insurer is an issuer, the insurer must annually file audited financial statements with the Registrar. Where debt or participatory securities are offered by the insurer, the prudential supervisor is required to report to the Registrar where the issuer is insolvent or likely to become insolvent.

The Insurance Companies (Ratings and Inspections) Act 1994 provides the Registrar of Companies with inspection powers, but is used because of particular circumstances, to carry out inspections to determine whether an insurer is solvent, rather than to carry out regular inspections.

The Corporations (Investigation And Management) Act 1989 allows the Registrar of Companies to request and obtain information and documents and carry out an investigation of the affairs of a corporation for the purpose of determining whether to give notice to the corporation that it is considered to be a corporation at risk or whether to give directions to such a corporation or whether the corporation should be placed in statutory management.

b) *What proportion of general insurance companies belongs to the Council?*

Answer - There are 65 general insurers operating in New Zealand. This includes health insurers and life insurers transacting disability insurance, but excludes captive insurers. (The figure would be significantly smaller if health and disability insurers are not calculated to be general insurers.) 21 are members of the Council. These include the largest general insurers. Members of the Council transact approximately 95% of the general insurance business in New Zealand, calculated by premiums.

c) *Does the Registrar of Companies also inspect life insurance firms for solvency?*

Answer - The CEO of the Ministry of Economic Development receives annual life insurance returns that are required to be passed on to the Government Actuary for review. The comments in paragraph a) apply in respect of life insurers as much as other insurers, with the exception of the first subparagraph of a), dealing with returns and ratings.

III. TRADE POLICIES AND PRACTICES BY MEASURE; (3) MEASURES DIRECTLY AFFECTING EXPORTS; (iii) Export prohibitions and restrictions; para 65

16. *Could the government of New Zealand explain the "marketing reasons" respecting the maintenance of export restrictions for certain agricultural products?*

Answer - The Government enacted legislation in September 2001 authorising the merger of New Zealand's two largest co-operative dairy companies (New Zealand Co-operative Company Ltd and Kiwi Co-operative Dairies Ltd) and the New Zealand Dairy Board. The legislative provisions providing monopoly export status to the New Zealand Dairy Board were removed. The remaining marketing restrictions exist for some products including certain specified cheese, butter and some milk powders for export to a small number of designated markets. This is necessary to manage the transition period after the removal of the Dairy Board's export monopoly. The designated markets are those where certain import restrictions are in effect. Other than in these circumstances any entity can export dairy products from New Zealand.

In terms of horticultural products, the New Zealand Horticulture Export Authority (HEA) was established in 1987 under the Horticulture Export Authority Act 1987. The primary function of the HEA is to promote the effective export marketing strategies of producers and exporters of horticultural products. This mechanism is available at the request of product groups, as representative of growers and exporters of a product, and can revoke inclusion of their product group from the Act. Horticultural products, within the provisions of the HEA Act, include apricots, avocados, blackcurrants, boysenberries, cherries, chestnuts, peaches, persimmons, plums, squash, table grapes, tamarillos and truffles.

The marketing restrictions on kiwifruit (as described in answer to an earlier question from Canada) were supported by growers at the time of their introduction. The kiwifruit industry in recent times has been innovative and forward-looking, and is also showing a tendency to expand collaborative marketing opportunities within the framework of the Kiwifruit Export Regulations 1999. The New Zealand Government is not considering deregulation of kiwifruit exporting at present.

CHILE

1. *New Zealand has recently decided to freeze its unilateral tariff reduction programme. Although we recognize that the overall average bound and applied tariffs are very low, there still are some sensitive sectors that remain with high applied tariffs. How does New Zealand plan to face*

tariff reductions in sensitive sectors such as clothing and textiles? Are there strategies or policies that will enable New Zealand to carry out reductions in these sectors?

Answer - The current tariff review covers all industries, including the clothing and textiles industries. The review will include a wide-ranging assessment of the impacts of previous tariff reduction as well as projected impacts of any further tariff reduction on all sectors of New Zealand, including the textiles, clothing and footwear (TCF) sector. The review will also include an analysis of social, gender, ethnic and regional impacts as well as consider what is happening in the international context.

2. *As an agricultural exporter, Chile is concerned about the fact that New Zealand's SPS procedures and regulations seem to be more stringent than necessary. What intentions does New Zealand have in respect to fostering trade facilitation through improvement of its SPS procedures and regulations?*

Answer - New Zealand does not accept that our SPS procedures and regulations are more stringent than necessary. New Zealand depends on the import and export of food, animals, plants, and other agricultural goods for our prosperity. We see trade and safety objectives as inextricably linked. Like other WTO Members, the New Zealand Government balances the health risks that imported goods can pose with the benefits resulting from trade, such as lower costs and wider choice for consumers.

New Zealand is a strong advocate of the SPS Agreement. All WTO Members benefit from multilateral commitment to science-based standards developed through consistent and transparent processes. Further detail on the import requirements for specific products mentioned is available from New Zealand's SPS Contact Point. New Zealand also implements the principle of "equivalence" embodied in Article 4 of the SPS agreement and will consider alternative measures that achieve the same level of protection

Oral questions

Are subsidies provided in the services area, including in land transport and tourism? Are they provided on a national treatment basis and what has been their impact?

Answer - Land transport: Subsidies are provided on a non-discriminatory basis and have allowed for more and better public transport services. For more information please refer to www.transfund.govt.nz.

Tourism: Subsidies, in the form of joint venture marketing projects, are provided on a national treatment basis and have enabled New Zealand to more effectively promote itself as a tourism destination. For more information please refer to www.purenz.com; www.tourisminfo.govt.nz.

For further background on Subsidies and the New Zealand Services Sector, please refer to the WPGR Communication from New Zealand of 23 July 1997. S/WPGR/W/16/Add.2, Doc# 97-3213. (Note: the programmes described in this paper have been subject to some administrative changes since 1997).

COLOMBIA

After many years of applying a "passive" policy with regard to State intervention in productive activity, the Government has adopted a "proactive" policy with a view to encouraging certain higher-value-added economic activities (WT/TPR/S/115, pages vii, paragraph 4; 2, paragraph 5; and 7, paragraph 19). We would appreciate the following further information:

- A. *Which mechanisms and instruments are used by the Government to support biotechnology, information and communication technologies and creative industries?*

Answer - Government has established sector taskforces of private sector individuals convened by Ministers. There are four taskforces, covering biotechnology, ICT, design and screen production. Over the past nine months each of these taskforces has considered how to realise the potential in their sector, the contribution that the sector, individual firms and the public sector can make, and the aspirations that will drive their growth. Individual firms in these main sectors have the ability to access government industry development programmes if required.

The Taskforces are now reporting on their ideas on how to achieve growth in their respective industries. The recommendations in these reports involve a number of actions by the industry and by Government, working together or separately. The Government will respond to the recommendations in the coming months.

- B. *Which other sectors does the Government intend to include under the policy known as the "Growth and Innovation Framework"?*

Answer - As the government's financial and human resources are limited it is essential to focus them on areas of maximum impact, with biotechnology, ICT and creative industries the initial choices. While there are currently no plans to extend the list of growth and innovation "focus" sectors, the Government continues to pay attention to major sectors of the economy such as agriculture, forestry, fisheries and tourism. Departments and delivery agencies in these areas support these sectors through the provision of information and specific policy development. In general, this is delivered in partnership with those in the sector.

Predating the Growth and Innovation Framework, the government, the forestry industry, the regions and unions have been working together under the Wood Processing Strategy to ensure that the best value is obtained from the rapidly increasing supply of wood from New Zealand's planted forests. The government is also working with interested parties on the future of the textiles, clothing and footwear sector.

- C. *What trade policy instruments are employed by the Government in the new form of intervention provided for in the "Growth and Innovation Framework"?*

Answer - At this stage in the evolution of the Growth and Innovation Framework the focus is on the strategic development of policy in a medium term context. This work is in its early stages. The objective is to create the conditions that will support the development of internationally competitive New Zealand businesses. This will not affect access to the New Zealand market but will help New Zealand firms become better integrated into the global economy and access global markets.

- D. *What have been the initial results of this new Framework?*

Answer - The Framework was announced only in February 2002 and it is too early to be able to discern any noticeable impact from its implementation. However, the government is planning to release two reports related to the Framework. *The Growth and Innovation Implementation Report* provides an update on the Government's efforts to implement the Growth and Innovation Framework. It complements the *Growth and Innovation Indicators Report 2003*, which brings together baseline information on a set of indicators intended to track change in relation to growth and innovation (see question E).

E Has a set of indicators or criteria for assessing the future outcome of this policy been defined?

Answer - In late 2002 the New Zealand Cabinet approved a set of high level GIF indicators intended to track progress towards promoting more effective innovation and achieving stronger economic growth. Headed by real per capita GDP, the indicators also cover the key areas of the government's Growth and Innovation Framework – innovation, talent and skills and global connectedness.

Since the announcement of the Growth and Innovation Framework, the government has also released a set of sustainable development indicators that aim to measure progress towards the Government's wider goals and provide a broad view of New Zealanders' wellbeing, to which growth is a significant contributor.

EUROPEAN UNION

Report by the Government (WT/TPR/G/115)

III. NEW ZEALAND TRADE POLICY INITIATIVES

Multilateral Initiatives

The World Trade Organization

1. The report states New Zealand's interest in a strong rules-based global trading system. We agree that better WTO rules are clearly of benefit to an open economy with a high trading volume like New Zealand. We appreciate New Zealand's strong commitment to advancing the Doha Development Agenda and take note that the DDA is the Government's top trade priority. It remains, however, unclear to us why New Zealand misses to mention the Singapore issues in the rules section of its report. The Singapore issues are a part of the DDA. Given the clear interest for New Zealand of basic multilateral rules in particular on investment and competition, does the government agree that a more active support from the side of New Zealand is needed on these issues in order to ensure an ambitious result of the DDA negotiation overall?

Answer - New Zealand is indeed committed to a strong rules-based global trading system and to a successful outcome to the Doha Round of negotiations. As is clear from the report itself, New Zealand has found the application of competition law and policy to be a vital aspect of public policy aimed at securing net national welfare gains. In a similar way, in respect of investment the report notes at page 23 that, "New Zealand maintains a relatively open and transparent foreign investment regime." A recent APEC report on the Benefits of Trade and Investment Liberalisation and Facilitation concluded that "the only economies where barriers are low across the board are Hong Kong (China), New Zealand and the United States."

As far as these issues in the DDA are concerned, New Zealand indeed remains committed to working together with all WTO Members to discharge the terms of the DDA mandate. Like all WTO Members we do, of course, have our particular priorities. And the EU will be familiar enough with what these are. But having priorities has never been at the exclusion of other issues not least because we are conscious that the DDA is a collective undertaking where all Members are looking to outcomes that meet their particular priorities. In any case, it may be said that on issues of investment and competition - as indeed for all elements of the DDA - New Zealand is looking to maintain the ambitions of that Doha mandate.

2. *To what degree is improved access to the market of New Zealand being used as a political strategy for helping to eradicate poverty in developing countries?*

Answer - In July 2001, New Zealand granted tariff-free access for all goods from least developed countries. This is one of a number of measures aimed at reducing poverty in least/developing countries. New Zealand is a country committed to a more level playing field in international trade matters, and urges other developed countries to take the initiative in providing tariff-free access to least developed countries, including for processed goods. Helping developing countries to harness international trade to promote their development is a key aim of the New Zealand Government in the trade sphere.

However, providing tariff-free access is a part of the picture. New Zealand also recognises that developing countries face supply-side constraints in taking advantage of such schemes. Many people in developing countries are faced with inadequate infrastructure, poorly developed credit markets, and have inadequate business and export skills. Consequently, New Zealand's development agency, NZAID, in conjunction with other government agencies, is providing a range of trade-related development assistance to help developing countries overcome these challenges. Assistance amounts to ca. NZ\$5mn p.a., although this is likely to increase in the next few years.

3. *Please explain whether and to what extent Fair Trade (which takes account of sustainability) is being promoted by the national trade policy.*

Answer - We will assume in this answer that this is a question about the "Fair Trade" movement and "Fair Trade" branded products. New Zealand recognises, from a trade and development perspective, that Fair Trade branding has the potential to provide developing country producers with access to higher prices by appealing to the values of a certain set of consumers. This is why NZAID has for many years been providing financial support to the non-profit organisation known as Trade Aid as part of its overall programmes in support of trade-related capacity building. Trade Aid is an alternative trading company in New Zealand, which buys and sells Fair Trade products through retail outlets. It also runs various programmes, supporting the development of producer skills in developing countries. New Zealand support is not by way of core funding but is in the form of assistance to the special projects designed to develop producer skills and thus to encourage exports from those countries under the "Fair Trade" brand.

Trade and Labour

4. *We consider that the protection of core labour rights, far from being a possible hindrance to the full development of the competitive advantage in low labour costs that may be enjoyed by a number of developing countries, can actually benefit the productivity of the national industry and hence its competitiveness in the international market. This is often the direct result of creating a dedicated labour force that has a stake in the future a firm; a process that is facilitated by the recognition of minimum social standards. Would New Zealand share this approach?*

Answer - New Zealand also believes the maintenance and promotion of labour standards, such as those reflected in the International Labour Organisation's Fundamental Principles and Rights of Work, are fully compatible with, and indeed contribute to, sustainable economic development. This draws support from sound empirical studies, for example by the OECD, which find no basis for any view that respect of core labour standards negatively affects economic performance. On the contrary, the strongest findings of such studies are that there is a positive association of trade reform and improvement in core standards.

5. *How New Zealand sees the relationship between the promotion of social policy and the conduct of trade policy both at bilateral and multilateral level?*

Answer - New Zealand's approach to the relationship between social policy in the area of labour standards and trade policy is set out in the Government's Framework for Integrating Labour Standards and Trade Agreements 2001, which seeks better integration between labour standards and trade agreements. This is based on the rationale that trade and labour objectives can be mutually supportive. Neither objective takes place in a vacuum. Both contribute towards the public well-being and living standards of society, in terms of generated income, as well as the conditions of work. Countries should not be denied legitimate comparative advantage of lower labour costs. However, this advantage should not be secured by deliberately neglecting fundamental labour principles. A well-balanced policy is necessary.

In both bilateral and multilateral contexts, New Zealand aims to take a consistent approach that reflects its objective of promoting decent work in the global economy. By this it means opportunities for work in which minimum standards are protected and adequate income is generated within an infrastructure that ensures social protection. At the same time, New Zealand recognises the International Labour Organisation (ILO) as the body with the legitimate authority to set and monitor labour standards. New Zealand is mindful in trade agreements, whether bilateral or multilateral, of the need to avoid anything that could undermine the status of the ILO.

New Zealand believes the ILO's Fundamental Principles and Rights of Work, as enshrined in the 1998 Declaration, and on which there is a high degree of international consensus, provide an appropriate basis for the discussion of labour standards within the framework of trade agreements. These principles are:

- Freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of all forms of forced or compulsory labour;
- The effective abolition of child labour;
- The elimination of discrimination in respect of employment and occupation.

Consistent with the approach taken in the ILO, each country would be free to implement those fundamental principles according to its own laws and practices. But, from New Zealand's perspective, as a minimum, the outcomes of all trade agreements to which New Zealand is a party must be generally consistent with and not undermine these core principles, the promotion of decent work, and the promotion and protection of universal human rights standards.

In any provisions agreed in the context of negotiating a bilateral trade or economic agreement, dialogue and consensus will be preferred to penalties or sanctions as a way of making progress on labour standards issues. The aim will be to focus discussion of labour issues, and provide a forum for action and progress to be made, by consensus and not coercion, in a bilateral context. Whether this is done in provisions in the agreements themselves, or in some other manner, is a matter on which the Government has been, and is, willing to show flexibility. It is interested in the content rather than the form.

Finally, at the multilateral level, New Zealand is a supporter of genuine international dialogue on the social dimension of globalisation. In this context, we look forward to receiving the report of the World Commission on the Social Dimension of Globalisation.

Report by the Secretariat (WT/TPR/S/115)

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES; (4) TRADE AGREEMENTS AND ARRANGEMENTS; (iv) Unilateral trade preference

6. *How many tariff lines are covered by New Zealand's GSP? What is their share of total tariff lines?*

Answer - The New Zealand Tariff contains 7,432 separate Tariff lines, of which 4,077 (54.86 percent) are Tariff-free, regardless of origin.

Under the New Zealand Generalised System of Preferences, two levels of Tariff preference are provided, namely – to Least Developed Countries (identified as "LLDC" in the New Zealand Tariff) and to Less Developed Countries (LDCs).

All (100 percent) of the 3,355 dutiable lines in the Tariff allow for the tariff-free entry of LLDC qualifying goods. Whereas, LDCs are provided with margins of preference against 2,476 (73.80 percent) of the 3,355 dutiable tariff lines.

7. *What is the share (compared to total imports) and value of New Zealand's imports granted preferential treatment under its GSP? How have these developed during the last five years?*

Answer - Over the period July 2001 to June 2002, trade identifiable as entering under GSP amounted to \$NZ 799,957,405 representing 2.40 percent of trade from all sources. This data, obtained from Customs entries, will differ from official trade statistics produced by Statistics New Zealand, which are subject to editing and compiled according to international standards.

Comparable data back over the previous five years is not readily available.

8. *What are the top ten beneficiaries of the New Zealand's GSP and what are their respective shares in preferential imports? How have their shares developed during the last five years?*

Answer - Over the period July 2001 to June 2002, the top 10 countries of origin for trade identifiable as entering under GSP was:

Top 10 GSP Sources (Jul/Jun 2002)			
Country	Imports under Preferences		
	VFD \$NZ	% of GSP	% of Total Trade
China	292,311,497	36.84%	0.88%
Indonesia	76,976,206	9.70%	0.23%
Malaysia	66,877,245	8.43%	0.20%
Korea	43,425,202	5.47%	0.13%
India	30,175,155	3.80%	0.09%
Vietnam	25,685,383	3.24%	0.08%
Pakistan	24,278,674	3.06%	0.07%
Philippines	16,803,546	2.12%	0.05%

Table (cont'd)

Top 10 GSP Sources (Jul/Jun 2002)			
Country	Imports under Preferences		
	VFD \$NZ	% of GSP	% of Total Trade
Mexico	11,205,713	1.41%	0.03%
Chile	6,154,916	0.78%	0.02%
	<u>593,893,537</u>	<u>74.86%</u>	<u>1.78%</u>
Misc. LDCs	199,474,575	25.14%	0.60%
Total GSP	<u>793,368,112</u>		<u>2.38%</u>
Total Trade	33,378,655,976		

This data, obtained from Customs entries, will differ from official trade statistics produced by Statistics New Zealand, which are subject to editing and compiled according to international standards.

Comparable data back over the previous five years is not readily available.

9. *Are additional preferences available for beneficiary countries for social or environmental reasons?*

Answer - Preferences are based on economic criteria only.

10. *How are the tariff preferences under GSP determined for different products?*

Answer - The New Zealand GSP distinguishes between Less Developed Countries and Least Developed Countries. Qualifying imports from Least Developed Countries have, since July 2001, entered free of duty without exception. Qualifying imports from Less Developed Countries, on the other hand, generally pay a tariff that is set at 80 percent of the Normal (MFN) tariff.

There are exceptions to this general policy. In many cases, a greater margin of preference applies, for example Normal 5 percent; Less Developed Country Free. However, preferences do not apply in all cases. The principal exclusions from these preferences are set out below:

- Clothing (other than accessories);
- Footwear (other than parts);
- Many steel products of Chapter 72;
- Motor vehicles, parts and accessories; and
- Ships and boats.

11. *What countries have been graduated from the scheme since 1995? Can countries re-enter the GSP if they do not meet the criteria any more?*

Answer - No countries have been graduated since 1995. However, there has been movement between the categories of Less Developed and Least Developed Country. The Tariff (Less Developed Countries and Least Developed Countries) Order 2001 provided that, with effect from July 2001, Angola, Liberia and Senegal would change from being Less Developed Countries to being Least Developed Countries, while Botswana, the Federated States of Micronesia and Namibia would change from Least Developed Countries to Less Developed Countries. This regulation, available electronically, contains a full listing of GSP beneficiaries by category. This information is also available through the New Zealand Customs' website (www.customs.govt.nz).

The New Zealand policy of Country Graduation provides that Less Developed Countries will no longer receive GSP preferences when their per capita GNP, expressed in US dollars, reaches 70 percent of New Zealand's GNP. There is provision for reinstatement.

12. *Does New Zealand's GSP have its own preferential rules of origin?*

Answer - Yes. Full details are available on the New Zealand Customs website: *Part VI Determination of Country of Produce or Manufacture*. The basic origin-conferring criterion for partly-manufactured goods is evidence of a minimum GSP/New Zealand content of 50 percent of the factory or works cost. Importantly, there is provision for cumulation *within* each of the two categories of Less Developed Countries and Least Developed Countries but not between countries in different categories.

III. TRADE POLICIES AND PRACTICES BY MEASURE; (2) MEASURES DIRECTLY AFFECTING IMPORTS; (viii) Standards and conformity assessment

13. *(para 44) The report states that there are mandatory standards in laws and regulations of NZ and that around 29% to 35% of all standards are equivalent to international standards. The EU would like to know whether any of the mandatory standards are equivalent with international standards?*

Answer - Of the approximately 2561 Standards New Zealand standards in place, 263 are mandatory standards cited in domestic legislation (using 2002 figures). Of these, two standards are equivalent to international standards.

14. *It is also stated that NZ does not maintain data on these mandatory standards. However, the EU would like to know whether NZ could indicate in which sectors mandatory standards are used?*

Answer - Standards cited in legislation that are mandatory range across the following sectors:

- Building and civil engineering;
- Electricity and electrical engineering;
- Health;
- Consumer safety;
- Occupational safety;
- Transportation;
- Fire Protection; and
- Energy
- Food standards (established by Food Standards Australia and New Zealand).

15. *Furthermore, the EU would like NZ to explain the procedure upon and conditions under which a standard becomes mandatory?*

Answer - Standards become mandatory by being cited in legislation passed by the New Zealand Parliament. Accordingly Parliament has to determine that there is a legitimate national objective that requires a mandatory standard to be established.

(x) Government procurement

16. (para 22) *What revisions of the government procurement provisions in the Australia and New Zealand Closer Economic Relations Agreement (ANZCERTA) are envisaged?*

Answer - The Australia New Zealand Government Procurement Agreement, signed in August 1997, is reviewed at five-yearly intervals. The objectives of the Agreement are to create and maintain a single Australia-New Zealand government procurement market to reduce the costs of doing business for both government and industry. The Agreement stipulates that Australian and New Zealand suppliers must be able to compete on an equal basis for government contracts.

The current review, conducted by officials, has endorsed the objectives and principles of the existing Agreement. The changes proposed for Ministerial approval are editorial, with a view to making the text more concise and readable, and do not reflect any policy changes.

17. (para 54) *How has the Government followed up on the April 2001 procurement policy principle according to which New Zealand has trade policy interests in open and transparent government procurement markets?*

Answer - This question may be answered by reference to the publication "Government Procurement in New Zealand: Policy Guide for Purchasers" issued by the Ministry of Economic Development in July 2002 http://www.med.govt.nz/irdev/gov_pur/purchasers/index.html

In line with the freedom, and accountability of Chief Executives in New Zealand's decentralised public sector regime to manage for results within strict budgets, government agencies are responsible for their own purchasing decisions, and each agency determines its own purchasing procedures, including any value thresholds. At the same time, the Government expects its departments, and encourages other agencies, to be guided in their procurement by a number of stated principles, and has endorsed the APEC Non-Binding principles on Government Procurement, which include transparency and non-discrimination. The Policy Guide complements detailed good practice guidance offered in the Auditor-General's June 2001 publication "Procurement: a Statement of Good Practice" http://www.oag.govt.nz/HomePageFolders/Publications/Procurement_Guide/Procurement_guide.htm

Generally there are no prescriptive rules or procedures. The exceptions are ex-ante and post-award notification requirements that are mandated for government departments.

http://www.med.govt.nz/irdev/gov_pur/industrynz-notif/index.html

http://www.med.govt.nz/irdev/gov_pur/postaward.html

The April 2001 review confirmed New Zealand's transparent and non-discriminatory procurement approach consistent with our international obligations and trade policy interests. The establishment of the post-award notification requirement was a direct outcome, designed to improve transparency for all suppliers, domestic and international. Contract award notices are published on the website of the New Zealand Industrial Supplies Office <http://www.gets.govt.nz/index.php3?viewCat=215> or alternatively on individual departments' websites which may be accessed from the New Zealand Government home page <http://www.govt.nz/en/home/>

18. *Are the procurement guidelines on purchasing decisions issued by the Ministry of Economic Development compulsory? Do the guidelines relate to market access for third country bidders?*

Answer - Please refer to response to EU Question 17. The Policy Guide for Purchasers is globally non-preferential and does not require or suggest discrimination against third country suppliers in favour of New Zealand, Australian or Singaporean suppliers.

19. *When will the "Go Procure" system be set up? Will third country bidders have access to this website?*

Answer - GoProcure – the Government Online Procurement system – is currently at the first stage of a phased rollout, with operations in six agencies commencing in the period May – September 2003. From December 2003, the system will be progressively rolled out to all government departments and many large Crown entities (over 80 agencies in all). For further information, see <http://www.e-government.govt.nz/docs/supplier-news-3/index.html> Suppliers contracted through normal tendering procedures will have their product catalogues included in the system. Scoping work is to commence shortly on how best to develop a single point of access to bidding opportunities via an Internet-website which will be open to all suppliers.

20. *(para 55) Has the position of New Zealand in respect of joining the GPA evolved in light of procurement and trade policy developments?*

Answer - New Zealand keeps the issue of GPA membership under review in the light of procurement and trade policy developments. To date there has been no change to its position.

21. *New Zealand considers its procurement regime to be already open and non-discriminatory. Are the principles of non-discrimination and openness formally enshrined?*

Answer - Please refer to response to EU Question 17.

22. *(para 57) Are there any guidelines on the choice of the appropriate channel for the publication of purchasing requirements by government agencies? What are the general rules on transparency?*

Answer - The Policy Guide for Purchasers, referred to above, states that to promote competition all publicly available opportunities (e.g. invitations to tender or submit proposals, pre-qualify or register interest) should be advertised in publicly accessible print and electronic media. Examples of such publications, including websites are given in the Policy Guide. The Guide also states that existing lists of preferred suppliers should be open for application by new suppliers at any time, and an invitation should be advertised at reasonable intervals.

23. *How can prospective foreign bidders access information on tender notices, bidding procedures and awarding criteria?*

Answer - Please refer to response to EU Question 22.

24. *Is the Government Electronic Tenders Service (GETS) limited to the New Zealand and Australia industry?*

Answer - The New Zealand Industrial Supplies Office (NZSIO) exists to facilitate opportunity for New Zealand domestic suppliers to compete, and its information services target New Zealand (and Australian suppliers). Access to opportunity information on GETS and a "tenders alert" service is

accordingly limited to registered New Zealand (and Australian) suppliers. Agencies are advised, however, that all publicly available information provided to the NZISO should also be advertised in other publicly accessible media. The development of an electronic tenders website to provide a single point of access to all bidders, referred to in the previous answer, may be based on opening up of the existing GETS.

25. *(para 58) As regards routine supplies purchased through regular contracts, is it possible for third country suppliers to be included on the established list of suppliers through registration of interest?*

Answer - Please refer to response to EU Question 22.

26. *What proportion of routine supplies is undertaken by GSB Supplycorp Ltd and Serco Supply? Are such procurement opportunities open to competition?*

Answer - GSB Supplycorp and Serco Supply are private companies and such information is not readily available. Suppliers have openly advertised opportunities to bid for supply under contracts arranged by these companies.

27. *(para 59) Are the post-award transparency guidelines compulsory? Where on the Internet are contract awards published?*

Answer - Please refer to response to EU Question 17.

28. *(para 60) Does the New Zealand Industrial Supplies Office offer information on procurement opportunities only to local (New Zealand and Australian) suppliers?*

Answer - Please refer to response to EU Question 24.

29. *Is there any data on the extent of foreign procurement in New Zealand?*

Answer - This information is not collected or readily available.

30. *Procuring entities are expected to give full consideration to the "value for money advantages of sourcing from domestic producers" and to the "potential commercial and practical advantages in purchasing locally produced goods and services". Is this equivalent to a local preference rule?*

Answer - The Policy Guide referred to above makes it clear that the procurement policy "does not give preference or weighting to local content in itself". In line with the responsibility of purchasing agencies for their own decisions, "agencies should buy from the best source available, according to their own judgement of all costs and benefits". No prescriptive guidelines are applied.

31. *Do procuring entities have to apply any guidelines to determine the "best source available" for the award of contracts?*

Answer - Please refer to response to EU Question 30.

(xi) Local content

32. *(para 61) The report states that "New Zealand does not maintain any local-content requirements". However, tariff concessions may be granted to importers and manufacturers if they can demonstrate that the domestic content of the locally produced "suitable alternative" product is*

not less than 25% of its ex-factory cost of production. Can New Zealand please explain the details of this measure?

Answer - This provision relates to New Zealand manufacturers when considering their viability as local suppliers in respect of any objections they raise to concession applications. Factory cost is the sum of the following:

- (a) the cost of imported materials;
- (b) the cost of New Zealand produced materials;
- (c) manufacturing wages; and
- (d) factory overhead expenses.

In order to meet the 25 percent requirement, the sum of the items (b, c and d) must represent a minimum of 25 percent of the total factory cost of the goods.

(3) MEASURES DIRECTLY AFFECTING EXPORTS; (vii) Export promotion and marketing assistance

33. *(para 74-75) To what extent are potential environmental and social impacts of investment projects taken into consideration by the New Zealand Export Credit Office, Trade New Zealand and Industry New Zealand?*

Answer - Investment New Zealand, a division of Industry New Zealand, is the Government agency responsible for attracting investment into New Zealand. Trade NZ has no responsibility for investment into or out of New Zealand. In terms of social impacts, Investment NZ seeks to attract investments into projects / activities that have the potential to create new high-paying jobs in New Zealand, and will result in development of skills and addition to New Zealand's technological capabilities.

Local government bodies address environmental issues when the company seeks approval for land usage under the Resource Management Act.

IV. TRADE POLICIES BY SECTOR; (2) AGRICULTURE; (v) Fisheries

34. *(para 23) The report states: "[...] The TAC is set in order to ensure that the greatest yield can be achieved over time while maintaining the stock's productive capacity; in addition, where non-commercial users are involved (such as Maori or recreational fishers), a quantity of stock is set aside for them before the commercial catch (TACC) is established. [...] When a new species is introduced to the QMS, 20% of the catch of all ITQs is allocated to Maori. The remaining quota is distributed amongst people holding commercial fishing permits for each species, based on how much they caught during the "qualifying years". Any remaining ITQ may be tendered off by the Crown." According to information available from the Ministry of Fisheries (www.fish.govt.nz/) and "Te Ohu Kai Moana (TOKM)", in English "Treaty of Waitangi Fisheries Commission" (www.tokm.co.nz/), Maori are involved in commercial fisheries in New Zealand. The web site of the TOKM states that "assets held by the Fisheries Commission, Maori currently own or control more than 33 percent of New Zealand's commercial fishing quota." This web site provides also information from which it appears that the "Treaty of Waitangi Fisheries Commission" currently owns a substantial share in the New Zealand's companies active in commercial fisheries.*

35. *Could New Zealand confirm that the 20% allocation for Maori on new species entering the QMS (Quota Management System) is made at no cost?*

Answer - The 20% allocation to Maori is made at no cost. It is the result of the settlement of Maori fisheries claims against the Crown in 1992, and the passing of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

36. *Could New Zealand provide information on the value, in money terms, of the yearly quota allocations to Maori for commercial fishing purposes, for the years 1998-2002?*

Answer - The current value of the fishing quota allocations held by Maori is approximately NZ\$700 million.

37. *Are commercial fisheries controlled by Maori subject to the same financial obligations as other commercial fishermen? In this respect, do they participate in cost recovery programmes?*

Answer - Commercial fisheries controlled by Maori are subject to the same obligations as other commercial fishermen. They also participate in the cost recovery programmes.

(4) SERVICES; (ii) Financial Services; (b) Insurance

38. *(para 56) The report states that the "regulation of the industry has proceeded through a combination of rather loose government supervision coupled with a measure of self-regulation". Does it mean that all insurance services can be provided on a cross-border basis to New Zealand? Could New Zealand please specify which insurance services are allowed to be provided on a cross-border basis, and under which conditions?*

Answer - All insurance services can be provided on a cross-border basis to New Zealand (with the exception of the particular arrangements in relation to the ACC and EQC noted in para 64 of Ch IV). The majority of insurance services are provided by overseas-owned insurers (that is, overseas-incorporated insurers, companies whose ultimate parent is an overseas insurer or branches of overseas insurers). No additional conditions are imposed on overseas insurers.

(iii) Telecommunications

39. *(para 68) How have the designated services been identified? Is there a review on regular basis of the list of those services? How are the prices for those services determined?*

Answer - The designated services identified in the Telecommunications Act 2001 are:

- Interconnection with Telecom's fixed telephone network;
- Number portability;
- Wholesaling of Telecom's fixed network services (including residential lines); and
- Fixed to mobile carrier pre-selection from Telecom's fixed network.

The purpose of the Telecommunications Act 2001 is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services. The initial list of designated services was judged by the Government to meet this test (the purpose test).

The Telecommunications Act provides a process for the regulation of further telecommunications services. Under this process, the regulator (the Commerce Commission) has the power to investigate whether any further telecommunications services should be regulated, taking into account the purpose test, and report its recommendation to the Government. The final decision rests with the Government.

The Telecommunications Act also requires the Commission to investigate whether the unbundled elements of Telecom's local loop network and its fixed Public Data Network, as well as access to interconnection with that data network, should be regulated.

In making a determination on a designated service the Commission must have reference to the initial and final pricing principles set out in the Telecommunications Act for each designated service (see Schedule 1 of the Telecommunications Act 2001 available at: <http://www.legislation.govt.nz>).

40. *(para 69) Is the regulator in charge of identifying and implementing remedy to anti-competitive practices (e.g. in case of anti-competitive cross-subsidisation or predatory pricing)? If not, is there another authority in charge?*

Answer - The Commerce Act 1986 prohibits anti-competitive conduct in New Zealand. The Commerce Act 1986 provides for private action through the Courts to resolve competition issues. The Commerce Commission also has the power to enforce the Act through the Courts.

41. *(para 70) Which are the services which "may not otherwise be provided on a commercial basis or at a price deemed affordable by the Minister of Communications"? Is Telecom compensated for providing those services? Can any operator apply to provide those services?*

Answer - The objective of the Telecommunications Service Obligations (TSO) mechanism in the Telecommunications Act 2001 is to ensure that key telecommunications services will be provided, where necessary, to achieve the Government's social objective. TSOs facilitate the supply of certain telecommunications services to groups of end-users within New Zealand to whom those services may not otherwise be supplied on a commercial basis or at a price affordable to those end-users.

Only one TSO has been established under the Telecommunications Act 2001. This TSO (previously known as the Kiwi Share Obligation) is an agreement between Telecom New Zealand and the Crown under which Telecom provides local residential telephone service (a copy of the TSO deed can be found at <http://www.med.govt.nz/pbt/telecom/deed/index.html>).

This TSO provides residential users with access to a price capped local telephone service that includes an unlimited number of non-chargeable local calls and includes commitments for:

- a local free-calling option for local residential telephone service being maintained for all Telecom residential customers;
- Telecom charging no more than the standard residential rental for local residential telephone service;
- standard residential rental not increasing in real terms provided that the overall profitability of Telecom's fixed business is not unreasonably impaired; and
- the line rental for local residential telephone service for Telecom customers in rural areas being no higher than the standard residential rental.

The net cost of TSOs are cost-recovered by a levy on Telecom and all telephone service providers whose telephone networks are interconnected with a fixed PSTN operated by Telecom, and who provide a telecommunications service in New Zealand to end-users by means of some component of a PSTN that is operated by the provider.

Telecom New Zealand is the only telecommunications carrier that is providing the TSO for local residential telephone service. A discussion paper on contestability of the TSO for local residential telephone service is likely to be released in the near future. The Telecommunications Act requires the

Minister of Communications to assess whether contestability could reasonably be achieved if and when a new TSO is established.

42. *(para 71) Has Telecom reported on the cross-subsidy between urban and rural users and between light and heavy users?*

Answer - The Commerce Commission is required by the Telecommunications Act to annually determine the cost of the TSO for local residential telephone service and how this cost is to be shared between Telecom and other telephone service providers.

As an input to the Commission's process, Telecom is required under the Act to provide the Commission with its own net cost calculation – which includes information about 'commercially non-viable customers'. Telecom's calculations will be considered by the Commission in making its decision on the net cost figure to be used to apportion the cost of the TSO for local residential telephone service across the industry.

43. *(para 72) Has Telecom implemented any unbundling of its local loops?*

Answer - Telecom has not implemented any unbundling of its local loops. The Telecommunications Act 2001 requires the Commission to investigate whether the unbundled elements of Telecom's local loop network and its fixed Public Data Network, as well as access to interconnection with that data network, should be regulated. The Commission must deliver a final report on its investigation to the Minister of Communications no later than 20 December 2003.

44. *(para 73) Are there any exclusive rights left for any service in the telecom sector?*

Answer - No service provider has the exclusive right to provide a particular telecommunications service.

(v) Transport; a) Air transport services

45. *(para 84-85) The report mentions that New Zealand has seven airports used for international traffic, and refers to the ownership of airports. Can New Zealand please clarify the extent and conditions under which international providers of groundhandling services can offer their services - and inform if such international providers are currently established in New Zealand's airport?*

Answer - There are no industry-specific regulatory restrictions on the provision of ground-handling services by foreign companies at New Zealand airports. Arrangements would need to be reached with the airport company concerned.

Currently a UK-owned company, Menzies Aviation Group, provides ground-handling services at Auckland International Airport.

(b) Maritime transport

46. *(para 98) Mentions that all New Zealand-owned commercial ships over 24 meters in length must be registered in New Zealand. Does this imply that New Zealand nationals/companies do not have the possibility to own (by majority) vessels not flying the flag of New Zealand flagged, and that they cannot invest in shipping companies overseas?*

Answer - New Zealand has signed the 1982 United Nations Convention on Law of the Sea. Article 91 of UNCLOS requires that there be a genuine link between a ship and the state whose flag it

flies. We understand that many other countries have also signed UNCLOS, including those in the European Union.

New Zealand's ship registration obligations under UNCLOS are implemented through the Ship Registration Act 1992. Section 6 of this Act provides that all New Zealand-owned ships exceeding 24 metres length (with certain exceptions) are required to be registered in New Zealand. Under the Act, a ship is New Zealand-owned if it is majority owned by either New Zealand citizens or by a company established in New Zealand (as an aside, we note that there is no requirement in the Act for such companies to be owned in New Zealand).

It would be possible, however, for a ship that is beneficially-owned in New Zealand to be registered overseas. For example, it could be registered overseas if the ship was legally owned by a company established in that country (and subject, of course, to that state's laws allowing such registrations).

Unless there was a clear link to a resident company, it would be hard to imagine any other UNCLOS-compliant countries allowing registration of a ship owned in New Zealand, with the following exception:

- the New Zealand-owned ship was demise chartered (leased without crew) to a company in a foreign country; and also
- that foreign country allowed the registration of foreign-owned ships that are legally under the control of a company established in that country.

The Ship Registration Act 1992 has similar provisions that allow registration in New Zealand of foreign-owned ships that are demise chartered to New Zealand-based operators

The Ship Registration Act 1992 does not restrict New Zealand nationals from investing in overseas shipping companies.

HONG KONG, CHINA

Tariffs; (WT/TPR/S/115, P.26, Para. 2)

1. *Note that New Zealand has suspended its tariff phasing-out programme until 2005, pending an ongoing review. Could New Zealand inform us of the progress of its review and the target completion date? Information on the possible framework of its further tariff reduction plan would be useful.*

Answer - Decisions on tariff policy beyond 1 July 2005 are expected to be taken by the Government mid to late 2003. The review will include a wide-ranging assessment of the impacts of previous tariff reduction as well as projected impacts of any further tariff reduction on all sectors of the New Zealand economy. The review will also consider what is happening in the international context.

Anti-dumping; (WT/TPR/S/115, P. 37, Para. 35)

2. *According to the Secretariat Report, New Zealand has initiated 37 anti-dumping (AD) investigations since 1995, 65% of which (or 24 cases) were terminated without any final measures being taken. Could New Zealand provide the reasons accounting for and its comments on the high rate of termination? In view that the mere initiation of investigation can result in significant trade-stifling effects, what measures has New Zealand taken to weed out unsubstantiated/unjustified AD cases and to prevent them from causing unnecessary disruption to trade activities?*

Answer - New Zealand carries out anti-dumping investigations in a transparent manner, provides full opportunities for all interested parties to participate, rigorously examines the evidence available to establish if there is dumping causing injury and adheres strictly to the requirements of the Anti-Dumping Agreement. Consequently, New Zealand immediately terminates an investigation, in terms of Article 5.8 of the Anti-Dumping Agreement, if there is insufficient evidence of dumping causing injury.

New Zealand notes that in considering an application for an investigation, it is required to be satisfied that there is evidence going beyond mere assertion and of a nature and extent that indicates a likelihood of dumping and resultant material injury, and requiring investigation. New Zealand scrutinises the evidence in an application with due scepticism, bearing in mind the commercial context, and notes that it must be satisfied of the sufficiency of the evidence, not of dumping or material injury. New Zealand therefore considers that the standard it applies to the sufficiency of the evidence in application fully conforms to the requirements of the Anti-Dumping Agreement.

Sanitary and Phytosanitary Measures; (WT/TPR/S/115, P. 43, Para. 52)

3. *Note that New Zealand has been developing a Biosecurity strategy and that public consultation was held in 2001. According to the Secretariat report, the final Biosecurity strategy is expected to be launched in December 2002 and implemented during 2003. Could New Zealand provide the latest progress of the Biosecurity strategy and its implementation details?*

Answer - A draft Biosecurity Strategy was released for public consultation in December 2002. It is available at www.biostrategy.govt.nz. Currently, public submissions are being analysed. It is expected that the New Zealand Government will approve a final Biosecurity Strategy in 2003, and that this strategy will be implemented progressively over the coming years.

Insurance; (WT/TPR/S/115, P. 84, Para. 64)

4. *The Apple and Pear Marketing Board no longer has the power to organize compulsory hail insurance on behalf of growers after the Apple and Pear Marketing Act 1971 was repealed in 2000. Private insurers now provide hail insurance. Could New Zealand provide more information about the reason for the repeal, and whether private insurers can also benefit from the same reason to provide workplace accident insurance, which has been solely provided by the Accident Compensation Corporation since 1999? Besides, does New Zealand have any plan to open the residential property disaster insurance to competition?*

Answer - The repeal was a necessary result of the restructuring of the apple and pear industry. The compulsory provision of hail insurance reflected the fact that the Apple and Pear Marketing Board used to exercise a monopoly on exports. The regime was changed (as discussed in para 11 of Ch IV) to remove that monopoly and the Board was replaced by a company, ENZA, which has only a part of the export market. Since there is no longer one body with a statutory monopoly, it is no longer possible or appropriate for ENZA to arrange hail insurance for the whole market, including for produce it will not be buying. Hail insurance is now available on a commercial basis.

Different factors were relevant to the decision in respect of ACC. New Zealand's accident compensation scheme provides accident insurance for all New Zealand citizens, residents and temporary visitors to New Zealand. In return people do not have the right to sue for personal injury, other than for exemplary damages. The decision to retain ACC as the sole provider of insurance was taken against that background, both to reduce costs and to allow the system to focus more on injury prevention, as was originally intended.

New Zealand does not have any plan to change the current position in respect of residential property insurance against earthquakes, volcanic eruption, hydrothermal activity, tsunamis and natural landslips through the Earthquake Commission.

INDIA

General Economic Scenario

1. *New Zealand had embarked on a path of radical macroeconomic and structural reforms about 20 years back; there appears to be a rethinking on this as evident in a number of liberalization measures like unilateral tariff liberalization, privatisation of state assets envisaged under the reforms programme being frozen. The government has assumed for itself a more 'proactive' role. Does the government of New Zealand perceive that economic reforms should not be left entirely to market forces to unfold? What are the main factors, which led the New Zealand to shun the path of complete laissez faire?*

Answer - Since the mid 1980s the New Zealand economy has been a very open one. Recent policy changes reflect an emphasis by this Government on inter alia, a high quality regulatory framework and the proper role of government to positively enhance the public sector framework where it impacts on the effective operation of the private sector. As such it recognised that there is a central role for government, especially in addressing areas the market is unable to address adequately itself.

But it is important to recognise what has remained constant as well as what has changed. New Zealand remains a very open economy as evidenced by the Secretariat's own report.

- The halting of tariff reductions is not going back on earlier tariff reductions.
- As for privatisation, it cannot be argued that there has been a major shift in the pattern of government/private ownership or influence in the commercial and financial sector. The Government has stated that it will not run a state assets sale program. Instead boards of SOEs and other Crown owned commercial organisations are expected to enhance their value and their ability to contribute to economic social growth and development. SOEs are separate legal entities from the Crown, and have operational freedom in pursuing their primary objective of being a successful business. In addition, the return to partial or full government ownership of a very small number of entities reflects either the need to overcome weaknesses in private markets or to ensure the ongoing viability of key infrastructure.

Moreover, reform can continue, and the Government continues to put considerable effort into enhancing the domestic regulatory environment. For example the government has set up the Commerce Commission as an independent body and has made changes to the competition framework. The Prime Minister said in a recent speech '[the current Government's approach is] not to advocate no reform, but rather to argue for well designed and balanced policies'.

2. *For allowing foreign direct investment in New Zealand, the government applies the criteria of "national interest". For FDI in farmland, the government need to be satisfied that the proposed FDI is not only in 'national interest' but will also result in "substantial and identifiable benefits". We would like to know how an assessment about the actual fulfilment of these criteria is made before allowing the entry of FDI?*

Answer - Land applications need to include a business plan that quantifies the benefits and sets out a likely timeframe. Any independent professional reports verifying the rationale and viability of the investment should also be supplied if they are available.

The business plan should also address the following areas:

- a. A quantified figure of how many new job opportunities will be created, and what these roles are likely to encompass;
- b. How will this acquisition increase production on the property. Will this be impacted by capital injections, new technology?;
- c. Specify market effect as a result of the investment;
- d. Outline of the costs and timing for the "milestones" of establishing the investment; and
- e. Specific description of the actual technology or business skills that will be introduced and when. This may be business skills such as corporate 'best practice standards' or technical processes or operational systems.
- f. Quantify the 'net' benefit of the investment.

In order to get a sense of the actual benefits of the particular investment, the Commission requires information pertaining to the current operations of the properties in question. The information required for the subject property should include:

- a. Current persons employed on each property;
- b. An indication of any revenue generated by the property (per annum);
- c. An indication of the expenditure required to maintain the property (per annum); and
- d. Stocking levels on the whole farm by reference to current and likely future stock units.

In addition, we compare most farm applications against the Ministry of Agriculture and Forestry "Farm Monitoring Reports".

3. *Para. 17 of the Summary Observations of the Secretariat Report notes that as part of government's pro-active strategy, a new institution, New Zealand Export Credit Office (ECO) has been established in March 2001 to provide assistance for insurance or guarantees to small and medium sized exporters. Would the government of New Zealand elaborate on the functioning of the ECO and confirm that the assistance provided to exporters is in accordance with the provisions of the Agreement on Subsidies and Countervailing Measures (ASCM).*

Answer - The operation of the New Zealand Export Credit Office (ECO) is fully consistent with the WTO Agreement on Subsidies and Countervailing Measures and the OECD Arrangement on Guidelines for Officially Supported Export Credits, which means it prices to cover all costs, including capital costs, in accordance with WTO rules.

The Export Credit Office has a mandate not to compete with the commercial sector - so it only provides medium-long-term products (as they are not provided in NZ by the commercial sector), and it does not provide direct financing - preferring instead to work with commercial financiers to provide loans to buyers of NZ exports. Accordingly, the Export Credit Office provides medium-long-term trade credit insurance. i.e., insurance of payment by the buyer for transactions with a credit term greater than one year, and where the (useful) life of the export in question is longer than the intended repayment term.

RTAS

4. *As the Secretariat Report notes, the bilateral agreement with Singapore has resulted in changes to the New Zealand's legislation on anti-dumping and countervailing measures? Would the delegation of New Zealand elaborate on the changes made recently in its trade-remedy legislation? We would like to know whether trade remedy rules applied to the preferential partner deviate from the specific provisions contained in the WTO agreements on anti-dumping and countervailing measures? If so, details thereof may be given.*

Answer - The changes made to New Zealand's legislation on anti-dumping and countervailing measures as a result of our Closer Economic Partnership agreement with Singapore are as follows:

- The *de minimis* margin of dumping, in terms of Article 5.8 of the Anti-Dumping Agreement, in the case of goods of Singaporean origin, is a dumping margin of less than 5 percent, expressed as a percentage of the export price. (Article 5.8 requires that a dumping margin is *de minimis* if it is less than 2 percent).
- The volume of dumped imports of Singaporean origin shall normally be regarded as negligible in terms of Article 5.8 of the Anti-Dumping Agreement, if those imports account for less than 5 percent of the imports of the like product into New Zealand. (Article 5.8 requires that the volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 percent of the imports of the like product). The existing cumulation provisions of Article 5.8 continue to apply.
- In terms of Article 11.3 of the Anti-Dumping Agreement and Article 21.3 of the Agreement on Subsidies and Countervailing Measures, the specified period that anti-dumping and countervailing duties will apply to goods of Singaporean origin is 3 years, unless a review is initiated before the expiry of the 3 year period. (Articles 5.8 and 21.3 specify that anti-dumping and countervailing duties will expire 5 years after they were imposed or last reviewed, unless a review is initiated before the expiry of the 5 year period).

The effect of the changes is therefore to apply higher thresholds than are provided for in the Anti-Dumping Agreement before New Zealand can apply anti-dumping duties on goods of Singaporean origin.

SPS

5. *New Zealand maintains a highly stringent sanitary and phyto-sanitary regime. Through its bio-security policy, it has effectively banned the import of most non-pasteurised cheese, fresh eggs and poultry. Would the government of New Zealand indicate the objectives sought to be achieved through its SPS policy. How would the government justify pursuance of such a policy in the light of multilateral disciplines prescribed in the WTO agreement on SPS measures? Also how would such a conservative and stringent quarantine policy fit into New Zealand's overarching objective of agriculture trade liberalization?*

Answer - Like other WTO Members, the New Zealand Government balances the health risks that imported goods can pose with the benefits resulting from trade, such as lower costs and wider choice for consumers. New Zealand is a strong advocate of the SPS Agreement and is committed to setting standards at a level that is reasonable and that are based on scientific principles. All WTO Members benefit from multilateral commitment to science-based standards developed through consistent and

transparent processes. Further detail on the import requirements for the specific products mentioned is available from New Zealand's SPS Contact Point.

Further detail on the import requirements for the specific products mentioned is available from New Zealand's SPS Contact Point.

TRIPS

6. *Para 21 of the Summary observations in the Secretariat Report notes that the government has enacted the GI Act; however it is not yet in force. Pending the enforcement of the GI Act, how has the government been fulfilling its obligations under Section 3 of the WTO TRIPS Agreement?*

Answer - New Zealand protects geographical indications through the Fair Trading Act 1986 and the common law tort of passing off.

TARIFFS

7. *Although the applied MFN tariff rate in New Zealand is 4.1%, considerably high tariff rate is applicable to textiles, clothing and leather products, which are sectors of crucial export interest to many developing countries. Tariff peaks and escalation are also very evident in these three sectors. Does the government intend to reduce tariffs in these sectors and what are its plans to address tariff peaks and escalation?*

Answer - The current tariff review covers all industries, including the textiles, clothing and leather industries. The review will include a wide-ranging assessment of the impacts of previous tariff reduction as well as projected impacts of any further tariff reduction on all sectors of New Zealand, including the textiles, clothing and footwear (TCF) sector. New Zealand would be pleased if the maximum *ad valorem* tariff it faced in its export markets was just 19%. The review will also consider the most appropriate tariff structure, including the structure for the textiles sector and the application of alternative specific tariffs.

8. *Clothing products are subject to "alternative specific tariff rates" i.e importers pay the higher of the due amount under the ad-valorem duty rate and under the specific duty rate? The use of such a system not only unduly penalizes low value exports but also introduces a lot of complexity and unpredictability to the system. We would like to hear from the government about its plan to simplify its tariff structure in the textiles sector.*

Answer - The current tariff review covers all industries, including the textiles sector. The review will include a wide-ranging assessment of the impacts of previous tariff reduction as well as projected impacts of any further tariff reduction on all sectors of New Zealand, including the textiles sector. The review will also consider the most appropriate tariff structure, including the structure for the textiles sector and the application of alternative specific tariffs.

9. *As per the existing taxation system prevalent in the clothing sector, in cases where importers feel that the specific rate of duty they are required to pay is unreasonably high, they may apply for 'concession'. In case concession is granted, the tariff could be paid at the ad-valorem component of the alternative specific duty. What are the parameters, which guide the authorities in granting such tariff concessions? When can an importer deem a specific rate as 'unreasonably high'? Upon a request being made, what is the normal time frame within which authorities are supposed to decide about the grant of tariff concessions? In the event of grant of tariff concessions, how is extra payment*

reimbursed to the importer? Does the government have any plans to make the system more transparent and predictable?

Answer - Applications for tariff concessions are considered for goods that are subject to alternative specific rates of duty where the goods are of such low value that the resultant duty payable is manifestly excessive.

The goods that are considered under this concession category are parts of apparel for use as manufacturing inputs or disposable articles of apparel classified in the plastics/textile apparel chapters of the Tariff. In all cases the goods must be identifiable as having an intrinsically low value for which the specific rate of duty was not designed. Each application is considered on merit but applications are not accepted under this policy in respect of low value "wardrobe" type garments or complete articles which are not manufacturing inputs and which are designed [intended] to be worn more than once.

If a concession is approved under the above policy, the concessionary rate of duty is the alternative *ad valorem* rate applicable to the tariff item under which the article is classified, i.e. these concessions only result in the removal of the specific tariff.

The normal time frame from the receipt of a tariff concession application through to the final decision is about 5 weeks. This includes a three week public notification period of the concession application during which local producers may notify the Ministry of Economic Development of their objection to the granting of a concession.

Concessions are effective from the first day of the month in which the Ministry of Economic Development receives the application. When a concession is issued after a product is imported, the importer may apply for a refund of the tariff duty paid. Similarly, should an importer omit to claim a pre-existing concession on import, a refund of duty based on that concession might be applied for.

The New Zealand Customs Service provides a binding ruling system that covers both tariff classification and concession applicability against imported goods. Opinions issued under this arrangement are designed to provide the importer with certainty in the tariff treatment that their goods encounter on importation.

The tariff concession system is continually being reviewed. Transparency and predictability is achieved through a procedure of notifying all applications and decisions in the New Zealand Gazette as well as on the Ministry's web site: http://www.med.govt.nz/buslt/tariffs/reference_99/index.html. It is also achieved by having the Tariff Concession Policy and Procedures Manual freely available to all.

10. *Is there any mechanism to take into account the recent trend in the international prices to regularly revise the specific duty component in "alternative specific tariff rates"?*

Answer - There is no specific mechanism to revise specific tariffs on a regular basis, but specific tariffs as a whole are being examined in the context of the current tariff review.

11. *It has been noted that samples of spices cleared by laboratories elsewhere in the world fail during testing in New Zealand. The methods of analysis are not disclosed to the exporters so the results/test cannot be verified independently. Would the government of New Zealand furnish justification for the same?*

Answer - The New Zealand Food Safety Authority (NZFSA) manages the import entry of selected spices.

The selected spices that are monitored on entry to New Zealand are - pepper, paprika cinnamon and nutmeg. These are monitored because these spices have been found to have a higher risk of contamination than other imported spices. All varieties and mixtures of other spices go directly into the market place once they have cleared MAF biosecurity.

Details of negotiated arrangements with third countries and test methods are available of the website. To check the high risk foods import procedure see the following website for details on high risk foods – <http://www.adhb.govt.nz/akphp/Services.htm> (select "Imported Foods" and click on "GO", select the "Food Commodity" you want details on click "GO" for more details).

Third party certification is not accepted unless specifically negotiated. The test method is publicly disclosed.

INDONESIA

1. *Since the 1980, New Zealand has initiated its reform to a market oriented and resulting in reducing most barriers to trade both in the form of tariffs and non tariff. However, while New Zealand has successfully reduced tariff from 14,5% in 1988 to 4,1%in 2002, tariff peak is still in place for those products on interest to Indonesia namely, textiles and clothing and leather products. Could New Zealand give clarification on this matter?*

Answer - New Zealand's tariff reduction programmes began in 1988 and were across-the-board reductions. From 1988 until 2000, tariffs on all products were gradually reduced, with tariffs on textiles, clothing, footwear and leather products initially reducing faster than other tariffs as they were as high as 65%. Given the unique characteristics of the textiles, clothing and footwear (TCF) sector, tariffs continue to be higher on TCF products than for other sectors, with the highest *ad valorem* rate at 19%. New Zealand wishes the maximum tariff it faced in export markets was 19%. The current tariff review will consider the most appropriate tariff structure beyond 1 July 2005, including for textiles, clothing and leather products.

2. *In relation to question 1 above, New Zealand has also imposed "alternative specific" tariff rate that could conceal tariff peaks and tariff escalation. Se also footnote 10 which stated that New Zealand uses "alternative specific rate", with a specific and an ad valorem component for 390 tariff lines or 195 tariff "pairs". In this context, Indonesia wishes to have a detailed clarification on how the Government of New Zealand determines the criteria to impose that kind of tariff instead of tariff peak and/or tariff escalation.*

Answer - New Zealand has a very small number of alternative specific tariffs which apply largely to clothing imports. Alternative specific tariffs on clothing were last reviewed in 1991. Following this review a number were removed on the basis of low usage. The current tariff review will consider the most appropriate tariff structure beyond 1 July 2005, including alternative specific tariffs. Decisions are likely to be taken in mid to late 2003.

3. *In page 26 of the Secretariat Report, it is stated that minor changes have been made to the antidumping, countervailing and safeguards legislation due to the Closer Economic Partnership with Singapore and Australia. Can New Zealand give justification on this statement?*

Answer - The following changes have been made to New Zealand's anti-dumping, countervailing and safeguards legislation as a result of our Closer Economic Relations/Partnership agreements with Singapore and Australia:

Singapore:

- The *de minimis* margin of dumping, in terms of Article 5.8 of the Anti-Dumping Agreement, in the case of goods of Singaporean origin, is a dumping margin of less than 5 percent, expressed as a percentage of the export price. (Article 5.8 requires that a dumping margin is *de minimis* if it is less than 2 percent).
- The volume of dumped imports of Singaporean origin shall normally be regarded as negligible in terms of Article 5.8 of the Anti-Dumping Agreement, if those imports account for less than 5 percent of the imports of the like product into New Zealand. (Article 5.8 requires that the volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 percent of the imports of the like product). The existing cumulation provisions of Article 5.8 continue to apply.
- In terms of Article 11.3 of the Anti-Dumping Agreement and Article 21.3 of the Agreement on Subsidies and Countervailing Measures, the specified period that anti-dumping and countervailing duties will apply to goods of Singaporean origin is 3 years, unless a review is initiated before the expiry of the 3 year period. (Articles 5.8 and 21.3 specify that anti-dumping and countervailing duties will expire 5 years after they were imposed or last reviewed, unless a review is initiated before the expiry of the 5 year period).
- Neither New Zealand nor Singapore can take safeguard action against goods of the other country's origin.

Australia:

- New Zealand cannot take anti-dumping action against goods of Australian origin. Goods of Australian origin are those that qualify for preferential entry under the Closer Economic Relations Agreement with Australia.
- Neither New Zealand nor Australia can take safeguard action against goods of the other country's origin.

JAPAN

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES; (5) FOREIGN INVESTMENT REGIME

Investment

(p. viii, paragraph 10 of the summary observation and p. 24, paragraph 32 of the Secretariat Report; p. 7, paragraph 16 of the Government Report)

1. Under the Overseas Investment Regulations, 1995, consent by the Overseas Investment Commission (OIC) must be sought for the acquisition by overseas persons of 25% or more of the securities, or 25% or more of the voting power in the company, if the value of the assets of the issuer of the securities exceeds \$NZ50 million. Also, under this Regulation, consent by the OIC must be sought, in principle, for the acquisition of land of more than 5 hectares by an overseas person. Please provide the reasons for requiring said consent.

Answer - New Zealand welcomes foreign investment to New Zealand as it recognises that it brings a number of benefits to New Zealand. These benefits include:

- a. bringing an inflow of capital which is typically less liquid than debt or portfolio investment and thus involves greater commitment to New Zealand;
- b. allowing development that cannot be fully funded domestically;
- c. increasing competition and efficiency. This in turn stimulates local firms to become more competitive and therefore increases the role of market mechanisms;
- d. encouraging New Zealand exports through either multinational corporations or linkages with domestic corporations;
- e. bringing an inflow of knowledge, skills and technology to the economy;
- f. providing direct and indirect employment. Multinational corporations can generate considerable employment through both forward and backward linkages with enterprises in New Zealand and the country in which the investor is based. An example is the linkages through the purchasing of raw materials, parts, components and services from subcontractors; and
- g. developing offshore networks.

The screening regime is considered an important part of ensuring that New Zealand adequately captures these benefits.

2. *In the case of overseas investment in farmland, the land can be purchased by overseas persons when, after making an offer on the open market, sellers cannot find purchasers who are not overseas. What is the rationale of this system?*

Answer - The policy change was to ensure that potential domestic purchasers were provided with the same opportunities as international investors to buy farm land.

New Zealand does not consider this a more restrictive practice as there is no requirement on the vendor to sell to an interested domestic buyer before advertising internationally. The vendor is free to wait and weigh up all offers, both domestic and international, on the property.

Ministers have discretion to waive the advertising requirement. This discretion can be (and has been) used to ensure that shares in New Zealand publicly listed companies, that own or control 'farm land' can continue to be freely traded.

III. TRADE POLICIES AND PRACTICES BY MEASURE; (3) MEASURES DIRECTLY AFFECTING EXPORTS

(p. 45, paragraph 65 of the Secretariat Report)

Export prohibition and restrictions

According to the Report, export restrictions are maintained for marketing reasons in the case of some agricultural products, including kiwifruit, dairy products, and horticultural products. In this regard,

3. *Please indicate what items are included in "dairy products" and "horticultural products". Please also explain "marketing reasons" in a concrete manner.*

Answer - The Government enacted legislation in September 2001 authorising the merger of New Zealand's two largest co-operative dairy companies (New Zealand Co-operative Company Ltd and

Kiwi Co-operative Dairies Ltd) and the New Zealand Dairy Board. The legislative provisions providing monopoly export status to the New Zealand Dairy Board were removed. The remaining marketing restrictions exist for some products including certain specified cheese, butter and some milk powders for export to a small number of designated markets. This is necessary to manage the transition period after the removal of the Dairy Board's export monopoly. The designated markets are those where certain import restrictions are in effect. Other than in these circumstances any entity can export dairy products from New Zealand.

In terms of horticultural products, the New Zealand Horticulture Export Authority (HEA) was established in 1987 under the Horticulture Export Authority Act 1987. The primary function of the HEA is to promote the effective export marketing of prescribed horticultural products, for the commercial benefit of producers. This mechanism is available at the request of product groups, as representative of growers and exporters of a product, and can revoke inclusion of their product group from the Act. Horticultural products, within the provisions of the HEA Act, include apricots, avocados, blackcurrants, boysenberries, cherries, chestnuts, peaches, persimmons, plums, squash, table grapes, tamarillos and truffles.

4. *Please provide detailed information on the conditions to initiate this measure, procedures for initiation, legislation that is the basis of this measure, and the governmental organizations which are involved when taking this measure.*

Answer - For information on the conditions of these measures refer to the STE notifications by New Zealand to the WTO (WTO documents G/STR/N/6/NZL and G/STR/N/7/NZL). Note that a further updating notification is currently under preparation.

5. *Please provide detailed data on the initiation of this measure since 1996, item by item (i.e. the year of initiation, the period, contents of measures, reason for initiation, the articles of WTO Agreements which are the bases of respective items, and the Members with which NZ made a consultation according to Article 12 of the Agreement on Agriculture).*

Answer - With the exception of new products groups brought within the provisions of the HEA Act, New Zealand has not instituted any new export prohibition or restriction on foodstuffs.

(4) OTHER MEASURES AFFECTING PRODUCTION AND TRADE

Intellectual property rights

(p. 60, paragraph 111 of the Secretariat Report)

6. *Does New Zealand have any intention to accede to the WCT and WPPT. If yes, when? Please also explain in detail which parts of the current legislation have to be amended in order to implement these treaties. Will the amendment cover the right of making available, and remedy measures on obligations concerning the rights management information and the technological measures, which are prescribed in WCT and WPPT?*

Answer - New Zealand is currently undertaking a review of the implications of digital technology for copyright. This review is also considering the implications of the WCT and WPPT. The Government will be considering the outcome of the review later this year.

(p. 63, paragraph 122 of the Secretariat Report)

7. *In recent years, there has been a tendency in western countries to extend the period for protection of intellectual property rights to 70 years. Does New Zealand intend to do this?*

Answer - No.

(p. 63, paragraph 123 of the Secretariat Report)

8. *Under the Copyright Amendment Act 1998, the Government removed the prohibition in the Copyright Act 1994 on parallel imports of goods subject to copyright protection. However, in December 2001, the Government announced that it would be introducing legislation to ban parallel imports of films, videos and DVDs. Please provide a detailed explanation on the background of banning parallel imports of these products. Why are the parallel imports of only these products banned, whereas those of music recordings, books and software are not banned? Please explain the reason why the period to ban parallel imports of films, videos and DVDs is for nine months from a title's first international release.*

Answer - The ban on the parallel importation of films (including videos and DVDs) is to address concerns expressed by representatives of the motion picture industry that parallel importing could threaten the financial viability of widespread theatrical exhibition of films in New Zealand, in cases where videos and DVDs of major films are imported into New Zealand ahead of the New Zealand theatrical release date. The availability of copies of new release films for rental before or during the release of those titles in New Zealand was considered to threaten the viability of cinemas and the ability of local distributors to supply prints to cinemas for exhibition. This was seen as a concern particularly for rural and provincial picture theatres, with consequent detrimental effects on those communities. The ban on the parallel importation of films seeks to manage these impacts, by providing a sufficient period of time (9 months) to allow for theatrical release. The ban does not extend to sound recordings and computer programs given the above comments regarding film-specific concerns.

9. *The Report states that the Government intends to introduce legislation to strengthen the onus of proof in civil copyright infringement cases, making it easier for rights holders to take action against copyright infringement in relation to certain imported copyright works. In the Copyright Act, are there any other measures which relax the onus of proof by right holders? If any, please explain them in detail.*

Answer - There are no other measures in the Copyright Act 1994 of the kind introduced by the Bill. In all other cases the onus of proof lies with the plaintiff.

10. *In New Zealand, parallel imports on brand items are permitted, which creates a negative effect on the New Zealand subsidiaries of foreign companies that hold such a brand. Does the Government take any measures against this? If any, please explain them in a concrete manner.*

Answer - The government does not propose to make further changes in respect of parallel importing at this time. The effect of parallel importing on consumers is to create a more competitive supply of products, with consequential benefits in terms of increased consumer choice and lower prices.

(p. 65, paragraphs 127-130 of the Secretariat Report)

11. *The Report states that a lot of items which infringe intellectual property rights are being seized by the New Zealand Customs Service. Which are the major countries exporting piracy items? Does New Zealand take any measures to restrain them? Furthermore, does New Zealand take any measures against the distribution of piracy items in the domestic market, in particular, infringement on the Internet?*

Answer - The major countries are China (approx 60%), Thailand (approx 15%) and Indonesia (approx 15%).

The Copyright Act 1994 provides a range of measures against copyright infringement including:

- If copyright has been infringed, the copyright owner can take legal action against the infringer through the courts. This can include suing the infringer for damages as compensation; seeking an injunction to stop the infringer carrying out or continuing the infringing activity or to seize the infringing goods; or applying for an order to have infringing goods delivered to the copyright owner, or to have the infringer pay any profits made from the infringing activity to the copyright owner.
- Provision for copyright owners and licensed distributors to take legal action in relation to making or commercial dealing in devices designed to circumvent or 'hack' copy-protected electronic works, and the publishing of information intended to assist persons in undermining copy-protection measures. Similar action can be taken in relation to apparatus or devices designed or adapted to facilitate unauthorised reception of subscription television services.
- Some types of copyright infringement that involve the making for sale or hire or other commercial dealing in infringing copies, including importing, distribution and offering for sale or hire can amount to criminal offences that can be prosecuted by the Police. Where criminal liability arises, copyright infringers can be fined or subject to a period of imprisonment.
- The government recently passed the Trade Marks Act 2002, which will enter into effect later this year, replacing the existing Trade Marks Act 1953. The new Act includes the existing civil remedies against trade mark infringement, but also creates new offences (i.e. makes it a criminal matter) in relation to the counterfeiting of trade marks. The new Act sets out stringent penalties on conviction of an offence. This includes substantial fines and a maximum term of imprisonment of five years.

IV. TRADE POLICIES BY SECTOR; (4) SERVICES

Transport

(p. 92, paragraph 93 of the Secretariat Report)

12. *The Report states that the discriminative practices that may have the effect of reducing competition would be in need of independent investigation by the Commerce Commission. In this regard, please provide information on concrete incidents during the past several years, including the number of actual applications and the results of investigations, relating to port services and coastal shipping services.*

Answer - Specific instances of competition issues about port companies are set out in Chapter 6, Market Power Concerns, of the report "Port Companies and Market Power - A Qualitative Analysis"

prepared in the April 2002 by Charles Rivers Associates Ltd for the Ministries of Transport and of Economic Development. Copies of this report may be obtained through the Ministry of Transport's website at: <http://www.mot.govt.nz/publications/index.shtml>.

The Commerce Commission has not received formal complaints, or conducted investigations in respect of anti-competitive practices in the coastal shipping market. Shortly after section 198 of the Maritime Transport Act 1994 came into effect in February 1995 (this section allowed overseas shipping companies to carry coastal cargo as part of an international voyage), the Commerce Commission held discussions with a cartel of overseas shipping operators to advise them that collusive practices in the coastal shipping market would be subject to investigation by the Commission. This informal intervention was successful in deterring anti-competitive practices in coastal shipping at that time.

(p. 92, paragraph 96 of the Secretariat Report)

13. *The Report mentions that the Shipping Act 1987 provides that the Ministry of Transport may issue directions to any carrier that is found to engage in practices unfairly harming any New Zealand shipper. In this connection, Japan would like to know whether the Government has ever issued said directions. If the government has, please provide details, including when, to which country and what kind of directions the government issued.*

(p. 93, paragraph 97 of the Secretariat Report)

14. *Regarding "outward shipping legs of multimodal transport", the Report states that the Shipping Act 1987 covers them. In this regard, please provide a descriptive explanation on this issue.*

Answer to both 13 & 14 - The statement in paragraph 97 of the Trade Policy Review refers to competition regulation of outwards shipping markets. Other matters of regulation, for example maritime safety and environmental requirements, are set out in other legislation, such as the Maritime Transport Act 1994.

In respect of competition regulation, when overseas shipping operators are engaged in carrying goods by sea from a place in New Zealand to a place outside New Zealand, they are not subject to those parts of the Commerce Act 1986 dealing with restrictive trade practices. They are instead subject to the Shipping Act 1987, which seeks to promote fair dealing and safeguard competition in New Zealand's outward shipping services, and also to discourage discrimination against New Zealand shipping and trading interests by foreign governments.

The Shipping Act 1987 recognises both that New Zealand is reliant on international shipping services provided by overseas shipping companies, and that some overseas shipping companies chose to provide such services through collusive arrangements such as cartels or conferences. The Commerce Commission would likely investigate these types of restrictive trade practices if outwards shipping services were subject to the Commerce Act 1986. Under the Shipping Act 1987, however, these practices are not investigated unless the Minister of Transport believes on reasonable grounds that anti-competitive practices by carriers have, or are likely to have, a detrimental effect on the interests of a New Zealand shipper (such as a New Zealand exporter). One way of characterising this difference is that, while competition in outwards shipping services is preferred, contestability in outwards shipping services through the entry of new carriers, and also the countervailing power of New Zealand shippers, will act as constraints on anti-competitive practices in outwards shipping services.

The Shipping Act 1987, section 7, allows the Minister of Transport to issue directions to carriers following investigations of anti-competitive practices. These directions are to do with disclosure of information about the carrier's outwards shipping services and its agreements with other carriers. No such formal investigations have ever been carried out, and no such directions have ever been issued.

The Shipping Act 1987, section 12, also allows the government of New Zealand to make regulations controlling the carriage of goods in ships where the Minister of Transport is satisfied that a foreign government has adopted, or proposes to adopt, any measure that damages or threatens to damage New Zealand shipping or trading interests by adversely affecting the access of New Zealand national flag carriers to seaborne cargo or of New Zealand shippers to the services of carriers of their choice. No such regulations have ever been made. On two occasions (once in 1994 and once in 2000), New Zealand government officials needed to consider potential concerns in outwards shipping arising from measures contemplated by a foreign government. These concerns were resolved amicably through diplomatic channels.

(p. 93, paragraph 100 of the Secretariat Report)

15. *With regard to "The Australia and New Zealand Closer Economic Relations Agreement (ANZCERTA)", please explain the outline of the relevant parts of the Maritime Transport Services.*

Answer - Coastal shipping is currently excluded from the Protocol in Trade in Services to the ANZCERTA by both Australia and New Zealand. New Zealand's inscription in the Annex of the Protocol on coastal shipping states:

'The Maritime Transport Act 1994 allows cargo or passengers (coastal cargo) to be picked up from one port in New Zealand and carried to another by three categories of ships. These are:

- New Zealand ships
- Ships coming to New Zealand to load cargo for unloading overseas or to unload cargo which was loaded overseas;
- Ships which the Minister of Transport authorises to trade on the coast when there are no ships from either of the above two categories available to carry coastal cargo. Authorisation to carry coastal cargo must be obtained from the Minister of Transport well in advance of the intended carriage.

Authorisation to carry coastal cargo is subject to compliance with other relevant provisions of the Maritime Transport Act and with other law, including the Resource Management Act, the Immigration Act, and border control legislation.'

The inscription was amended in September 1995. Prior to this, ships trading in coastal waters had to comply with requirements applied to coastal ships by the Shipping and Seamen Act 1952. In the absence of suitable New Zealand tonnage equipment, foreign ships were permitted – provided convention certificates were in order, the equivalent of local wages were paid to crew, and manning complied with flag state requirements.

REPUBLIC OF KOREA

III. TRADE POLICES AND PRACTICES BY MEASURES

P. 26 (para. 2)

1. *It is stated by the Secretariat that, although average MFN tariff rates are low (4.1 % in 2002), the applied MFN rates for some items like clothing, textile and leather products are relatively high.*

- *Does New Zealand have a plan to reduce the tariff rates for those items in the near future?*

Answer - The current tariff review covers all industries, including the textiles, clothing and leather industries. The review will include a wide-ranging assessment of the impacts of previous tariff reduction as well as projected impacts of any further tariff reduction on all sectors of New Zealand, including the textiles, clothing and footwear (TCF) sector. New Zealand would be pleased if the maximum ad valorem tariff it faced in its export markets was only 19%.

P. 30 (para. 19)

2. *The report by the Secretariat states that New Zealand planned to reduce the simple average tariff, based on the ad valorem part of the tariff and the AVEs provided by the authorities, to 3% by 2000, but the new Government elected in 1999 decided to freeze further tariff reductions until at least July 2005. The average is reportedly 4.1% in 2002.*

According to the authorities, the freeze was motivated by the view that unilateral tariff reductions were no longer appropriate. The Government has initiated a review of post-2005 tariffs and decisions are expected to be taken by mid 2003.

- *Please explain the more detailed reasons for the decision to freeze further tariff reductions.*
- *Please inform us of the details of the review. (including how and on what basis the review is conducted)*

Answer - The decision to freeze tariffs at 1999 levels was based on the policy position of the new Coalition government elected in November 1999. New Zealand is currently conducting a domestic tariff review to decide the shape of domestic tariff policy post 2005. The current policy still allows for tariffs to be reduced or removed on a reciprocal basis. The current tariff review covers all industries, including the textiles, clothing and leather industries. The review will include a wide-ranging assessment of the impacts of previous tariff reduction as well as projected impacts of any further tariff reduction on all sectors of New Zealand, including the textiles, clothing and footwear (TCF) sector.

NORWAY

1. Deregulation

Over the last two decades, New Zealand has undertaken a series of fundamental deregulation in different economic sectors. The formidable economic growth in recent years is to a large extent attributed to the deregulation/privatisation efforts. New Zealand claims to have "the third freest economy in the world" (WT/TPR/G/115, para 1), and we see no indications in the governmental report that any changes in the deregulation policy are occurring.

However, we learn from other sources that preparations are underway for the deprivatisation of parts of the railway system, effectively reversing earlier policy in this sector. Also in the health sector, deregulation apparently is considered or already undertaken.

It would be of interest to have a general comment on the overall experience with deregulation and the present reassessment and (possible) need for corrections to this policy.

Answer - Since the mid 1980s the New Zealand economy has been a very open one. Recent policy changes reflect an emphasis by this Government on inter alia, a high quality regulatory framework and the proper role of government to positively enhance the public sector framework where it impacts on the effective operation of the private sector. As such it recognised that there is a central role for government, especially in addressing areas the market is unable to address adequately itself.

But it is important to recognise what has remained constant as well as what has changed. New Zealand remains a very open economy as evidenced by the Secretariat's own report.

- The halting of tariff reductions is not going back on earlier tariff reductions.
- As for privatisation, it cannot be argued that there has been a major shift in the pattern of government/private ownership or influence in the commercial and financial sector. The Government has stated that it will not run a state assets sale program. Instead boards of SOEs and other Crown owned commercial organisations are expected to enhance their value and their ability to contribute to economic social growth and development. SOEs are separate legal entities from the Crown, and have operational freedom in pursuing their primary objective of being a successful business. In addition, the return to partial or full government ownership of a very small number of entities reflects either the need to overcome weaknesses in private markets or to ensure the ongoing viability of key infrastructure.

Moreover, reform can continue, and the Government continues to put considerable effort into enhancing the domestic regulatory environment. For example the government has set up the Commerce Commission as an independent body and has made changes to the competition framework. The Prime Minister said in a recent speech "[the current Government's approach is] not to advocate no reform, but rather to argue for well designed and balanced policies".

Beyond that government policy makers in New Zealand as in other economies are continually striving to set the boundary between government and private sector in a sensible place. In New Zealand the rail operator was privatised in 1993. That privatisation included the track but not the underlying rail corridor. The rail operator has encountered financial difficulties recently. The government intends that the rail network will remain in place, and that there be a strong rail operator, so that New Zealanders continue to have the option of using rail. The Government is currently considering a range of options to facilitate this.

No plans are being considered or undertaken to de-privatise any part of the health sector.

2. Tariff and duty free imports from LDCs

In July 2001 New Zealand introduced tariff and duty free access for goods from LDCs. Norway has introduced this same policy without restrictions as of 1 July 2002. We wonder whether this measure has resulted in a measurable import growth from the LDCs? If not, will you undertake any specific measures to make it possible for the LDCs to profit from tariff and duty free access?

Answer - Imports from least developed countries in the year ending 30 June 2002 (the first year after the introduction of tariff and quota free access for least developed countries imports) were NZ\$44.49 million. This represented an increase of over one hundred percent on total least developed country imports for the year ended 30 June 2001, which were NZ\$21.97 million.

While improving market access is a good first step, New Zealand recognises that least developed countries face numerous supply-side constraints which prevent them from taking advantage of new opportunities in New Zealand, for example: a limited range of goods and services to export; limited access to credit; inadequate market information; and undeveloped business and export skills. High transport costs to New Zealand and the fact that least developed countries' products are in highly competitive markets are further constraints.

So, providing tariff-free access is only a part of the picture. New Zealand also recognises that developing countries need assistance in overcoming these supply-side constraints. Consequently, New Zealand's development agency, NZAID, in conjunction with other government agencies, is providing a range of trade-related development assistance to help developing countries tackle these challenges. This includes assistance in rural and SME development, customs and phytosanitary matters. It will also be scaling up its assistance in areas such as trade promotion and community-based trading partnerships where this has been identified as a need. Assistance currently amounts to ca. NZ\$5mn p.a., although this is likely to increase in the next few years.

3. Genetic modification

Question - With a view to modifying the present legislation regulating genetic modification, New Zealand undertook in September to December 2002 a public hearing. We would be pleased to know what the main changes are expected to be and the reason behind them.

Answer - The public consultations held from September 2002 were on a series of proposals and options for legislative change outlined in a discussion document "*Improving the Operation of the HSNO Act for New Organisms: Including Proposals in Response to Recommendations of the Royal Commission on Genetic Modification*". This document is available on the Ministry for the Environment's website www.mfe.govt.nz. The proposed changes form part of the Government's response to recommendations made by a Royal Commission on Genetic Modification. The Royal Commission was established in 2000 to inquire into and report on the strategic options available to enable New Zealand to address GM now and in the future. The Royal Commission was satisfied that the basic regulatory framework was appropriate, but suggested a number of enhancements.

The Government announced on 12 February 2003 the changes it plans to make to the main legislation covering GM. The key decisions were to:

- Tighten the law relating to the regeneration of animals from tissue and to the modification of human cell lines.
- Streamline the processes for approval of medicines that contain new organisms and provide a fast-track system to be used to deal with a human or animal health or biosecurity emergency.
- Provide for conditional release of new organisms.
- Strengthen the machinery for compliance and enforcement where new organisms are subject to controls, including providing for strict civil liability for harm caused by non-complying activity and a civil penalty regime for certain breaches of the HSNO Act.

- Improve the operability of the law through a number of provisions, including clarifying the circumstances and procedures for protection of confidential supporting information.

Draft legislation encompassing these decisions is now being considered by the New Zealand parliament. It is expected to be passed by the end of October 2003. The changes proposed will ensure that New Zealand's regulatory framework is pitched at the right level to allow genetic modification developments to proceed cautiously while preserving opportunities. Full details of the decisions taken by the government can be found at www.mfe.govt.nz.

4. Labelling requirements

In December 2001 New Zealand introduced new labelling requirements for foods produced using gene technology. This new legislation gives supermarkets and other traders technically the possibility to refrain from presenting GM products to potential buyers. It would be of interest to hear more about your experience with the new labelling system, and whether it has had any measurable effect on consumers' buying patterns.

Answer - New Zealand has a content-based GM-food labelling system that is shared with Australia. Labelling is required where novel DNA or protein is present in the final food, or the food has altered characteristics. There are some exemptions. The GM food labelling requirements were introduced in December 2001 but had a one year transitional period of implementation provision. The legislation itself does not regulate non-GM labelling claims. In New Zealand, this is covered by the Fair Trading Act 1986 that requires that any claim must be accurate and not misleading. There are only one or two foods that have been labelled in New Zealand supermarkets since the new regulations came into full force. There are three possible reasons for this:

1. Many manufacturers are choosing to source non-GM ingredients.
2. Many products that contain ingredients derived from approved GM organisms are highly processed, and therefore don't necessarily contain novel DNA or protein; and
3. fresh GM foods are sold in New Zealand (and these would be the most likely candidates for labelling under the regime).

Due to the above and the short time the regulations have been in operation little can yet be said about consumer buying patterns. The compliance in New Zealand is assessed as being high. Industry has taken the requirements seriously and their documented assurances are generally of a high standard. Audits of the regime have shown that in the main, instances of non-compliance are from accidental presence and at very low levels (below 1%). These have involved products on which "GM-free" claims have been made.

SWITZERLAND

Report Secretariat (WT/TPR/S/115)

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES; (4) TRADE AGREEMENTS AND ARRANGEMENTS; (iii) Bilateral agreements

New Zealand's external economic policy emphasizes the crucial role played by multilateral trade cooperation bodies such as the WTO. Regional and bilateral trade cooperation, the recent conclusion of the New Zealand-Singapore Closer Economic Partnership being an example, represent a further key aspect of this policy.

1. *Could New Zealand say more on the strategy followed with regard to the selection of potential bilateral or regional trade cooperation partners aiming at improving mutual opportunities for trade in goods, services and investment? Is New Zealand already in a position to share with Members first insights with regard to the comprehensive New Zealand-Singapore Closer Economic Partnership Agreement?*

Answer - The New Zealand Government has no formal list of potential FTA partners. Nevertheless, it recognizes that free trade agreements with key trading partners can open up new opportunities for its exporters that complement gains made through the multilateral process. New Zealand is prepared to consider free trade agreements with any economy, as long as they are of a comprehensive standard and are in New Zealand's overall strategic and economic interest.

It is still too early to make definitive judgments on the effects of the Singapore CEP, which has only been in force for two years.

(5) FOREIGN INVESTMENT REGIME; (i) Introduction

The Secretariat report's highlights the recent creation of the Investment Promotion Agency (IPA). The main goal of such a body is straightforward. Initial priorities are set in the information and communication technology (ICT), creative, and biotechnology sectors.

2. *Could New Zealand elaborate on the possible future or current need of setting up IPA "antennas" in key markets abroad in order to come closer to potential investors? From the foreign direct investment point of views, which are the current main prospective markets for New Zealand?*

Answer - Investment New Zealand currently has a presence in North America through offices in New York and Los Angeles. Through direct representation abroad we are able to work more closely with potential investors and to offer them a single point of contact for advice and information about investing in New Zealand. All this means we are better able to attract, retain and grow high quality direct investment in New Zealand. As part of this strategy of strengthening its presence in key overseas markets, Investment NZ has recently opened offices in Singapore and Sydney to facilitate foreign direct investment from the Asian countries and from Australia.

III. TRADE POLICIES AND PRACTICES BY MEASURE; (2) MEASURES DIRECTLY AFFECTING IMPORTS

(viii) Standards and conformity assessment

3. *According to the Trans-Tasman Mutual Recognition Arrangement (TTMRA) mentioned in § 41, goods that are sold legally in Australia may be sold in New Zealand without having to meet the New Zealand standard. Is the TTMRA only applicable to products originating in Australia and New Zealand or does the TTMRA cover products irrespective of their origin? What is the product coverage of the TTMRA?*

Answer - The TTMRA principle in relation to goods means that goods need only comply with the standards or regulations applying in the country in which they are produced or through which they are imported before they can be sold in the other country. The TTMRA operates on a negative list system that means that all products are covered unless they are specifically excluded.

At present the following goods are excluded from the TTMRA: therapeutic goods, child seat car restraints, motor vehicles, gas appliances, radio communication equipment, hazardous substances,

industrial chemicals and dangerous goods. These are dealt with under Special Exemption Co-operation Programmes and apply in both countries.

In addition, New Zealand has recently taken out a temporary exemption for electrical water heaters and lighting ballasts from Australia. This exemption will expire on 1 February 2004.

4. *The secretariat's report states that "Standards New Zealand" has accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards under Annex 3 of the WTO Agreement on Technical Barriers to Trade. Point F of this Code obliges national standardization bodies to use international standards as a basis for national standardization work. According to § 44 of document WT/TPR/S/115 only 29 to 35% of national standards are equivalent to international standards. What are the reasons for the relatively low level of harmonisation with international standards? Are there any product sectors where the harmonisation level is especially low?*

Answer - New Zealand is fully committed to the obligations flowing from the WTO TBT Agreement, including the need to encourage the use of international standards. These agreements recognise that in certain circumstances other standards may be preferable. In addition, the coverage of international standards is incomplete and there may be no practical alternative to the use of national standards.

Standards New Zealand is the peak standards development body in New Zealand. International alignment of standards increased from 31.2% to 35.0% in the year to 30 June 2002, an improvement of 5%. This improvement was mainly in the areas of electrical appliance safety and usage. The rate is relatively high compared with other national standards bodies in the region and is increasing as the statistics show.

Areas where international alignment is lower relate to New Zealand's geography, especially seismic issues associated with building. International alignment is also lower in some areas of performance-based regulation that are not mirrored elsewhere in the world. (In this respect New Zealand's approach responds to the exhortation in the TBT agreement that standards should be performance-based rather than prescriptive where possible.) New Zealand has a highly deregulated economy and as such the use of international standards in some sectors is limited as a number of international standards are more prescriptive than is required.

It should also be noted that there is high alignment with Australian standards (76.0% at 30 June 2002). The *Active Co-operation Agreement* between Standards New Zealand and Standards Australia International facilitates the development of joint AS/NZS standards. Both countries are moving towards the use of a greater number of international standards.

5. *In the field of accreditation of certification and inspection services, New Zealand and Australia operate one single Accreditation body, the JAS-ANZ. Is there a joint accreditation strategy between Australia and New Zealand in the field of laboratory accreditation, e.g. by creating a single accreditation service for Australia and New Zealand in the field of testing and calibration?*

Answer - JAS-ANZ was established by treaty between the Australian and New Zealand governments and is the peak accreditation body in New Zealand responsible for the accreditation of certification bodies. Accreditation by JAS-ANZ provides assurance that third party certification bodies are competent to carry out independent audits of management systems and to issue certificates of compliance for quality management systems (ISO 9001:2000), environmental management systems (ISO 14000) or other management systems with specified criteria. JAS-ANZ also accredits the bodies that certify products to the international standard ISO/IEC Guide 65: General requirements for bodies operating product certification systems.

International Accreditation New Zealand (IANZ) is the operating arm of the Testing Laboratory Registration Council, a statutory body of the New Zealand Government established by Act of Parliament in 1972. It is responsible for the accreditation of testing and calibration laboratories and inspection bodies against international standards ISO/IEC 17025 and ISO/IEC 17020 respectively.

IANZ is currently involved in Mutual Recognition Arrangements with 40 accreditation authorities in 29 of New Zealand's major export markets, including Europe, North America, Australia and a number of developed Asia countries. MRA partner accreditation authorities will accept test, measurement and inspection reports from New Zealand if they bear the IANZ accreditation logo.

IANZ is a founding member of the International Laboratory Accreditation Co-operation (ILAC) and the Asia Pacific Laboratory Accreditation Co-operation (APLAC). Australia is a member of both these international groupings. In addition, IANZ maintains good working relations with its Australian counterpart, National Association of Testing Authorities (NATA).

(ix) Sanitary and phytosanitary measures

6. *In footnote 47 on page 41, it is mentioned that a mandatory New Zealand standard for the processing of milk and milk products is planned. Could you please inform on the progress of the establishment of this standard and advise on when this standard is supposed to be effective. Further, we would be grateful, if New Zealand could describe the main conditions that will have to be respected for imported dairy products. Finally, would this standard be applied to domestic as well as to the imported dairy products?*

Answer - The New Zealand (Milk and Milk Products Processing) Food Standards 2002 was issued on 18 November and came into effect on 20 December 2002. It is available on the NZFSA website, at www.nzfsa.govt.nz. It applies to milk and milk products processed within New Zealand or imported into New Zealand. The Standard contains permitted methods of processing, which include pasteurisation, cheese treatment, ice cream treatment, and the method set out in the Ordinance on Quality Assurance in the Dairy Industry of the Swiss Federal Council of 18 October 1995. It also allows heat treatments that are as effective as pasteurisation in terms of bacterial reduction.

(x) Government procurement

7. *According to OECD figures up to 80 % of the international public procurement are covered by the GPA, thus making a strong case for a participation of New Zealand in this plurilateral WTO agreement. Could New Zealand elaborate on its stance of not intending to become a member to the GPA?*

Answer - Like the New Zealand market in general, our government procurement market is already open on a unilateral and decentralised basis, so that government agency buyers are free to make their own market-based decisions and obtain best value for money through global competition. In terms of New Zealand export interests, exporter responses to surveys and analysis of relevant new market opportunities that would be opened, have not to date indicated benefits sufficient to outweigh the resource costs of negotiating accession and the administrative and transaction costs of meeting membership obligations. Export interests in the important Australian government procurement market are already secured by CER commitments, and the Singapore New Zealand CEP Agreement also includes government procurement. Developing countries' government procurement markets are generally outside the GPA, but New Zealand firms are competing and succeeding in these markets on their merits. Many development projects are covered by the competitive procurement rules of lending institutions such as the World Bank.

8. *Does the Australia –New Zealand Government Procurement Agreement (ANZGPA) allow for suppliers from other WTO member states to submit their offers? And if yes, which conditions must be fulfilled in order to do so?*

Answer - Individual ANZGPA members apply their own policies towards third country (non-ANZ) suppliers. New Zealand's membership is on the basis of its own global no-preference policy, meaning that it does not discriminate against other WTO members.

9. *It seems that value thresholds would vary from agency to agency (§57); are there any rules or principles applicable to all purchasing agencies in order to ensure transparency and accessibility of the procuring system?*

Answer - This question may be answered by reference to the publication "Government Procurement in New Zealand: Policy Guide for Purchasers" issued by the Ministry of Economic Development in July 2002 http://www.med.govt.nz/irdev/gov_pur/purchasers/index.html

In line with the freedom, and accountability of Chief Executives in New Zealand's decentralised public sector regime to manage for results within strict budgets, government agencies are responsible for their own purchasing decisions, and each agency determines its own purchasing procedures, including any value thresholds. At the same time, the Government expects its departments, and encourages other agencies, to be guided in their procurement by a number of stated principles, and has endorsed the APEC Non-Binding principles on Government Procurement, which include transparency and non-discrimination. The Policy Guide complements detailed good practice guidance offered in the Auditor-General's June 2001 publication "Procurement: a Statement of Good Practice" http://www.oag.govt.nz/HomePageFolders/Publications/Procurement_Guide/Procurement_guide.htm

Generally there are no prescriptive rules or procedures. The exceptions are ex-ante and post-award notification requirements, which are mandated for government departments.

http://www.med.govt.nz/irdev/gov_pur/industrynz-notif/index.html

http://www.med.govt.nz/irdev/gov_pur/postaward.html

The April 2001 review confirmed New Zealand's transparent and non-discriminatory procurement approach consistent with our international obligations and trade policy interests. The establishment of the post-award notification requirement was a direct outcome, designed to improve transparency for all suppliers, domestic and international. Contract award notices are published on the website of the New Zealand Industrial Supplies Office <http://www.gets.govt.nz/index.php3?viewCat=215> or alternatively on individual departments' websites which may be accessed from the New Zealand Government home page <http://www.govt.nz/en/home/>

(4) OTHER MEASURES AFFECTING PRODUCTION AND TRADE; (vii) Intellectual property rights

10. *In the report of the Secretariat it is mentioned that the Patent Act was amended recently to allow manufacturers of generic drugs to commence chemical trials before a patent has expired. In this context we would be interested to know what concrete measures your legislation provides to ensure that undisclosed test data of pharmaceutical and agrochemical products submitted to authorities in marketing approval procedures are protected against unfair commercial use (Article 39.3 of the TRIPS Agreement).*

Answer - New Zealand protects confidential supporting information including undisclosed test data through provisions in several pieces of legislation. Specific protection is provided for confidential information submitted as part of applications for regulatory approval of innovative agricultural compounds or medicines under the Agriculture Compounds and Veterinary Medicines Act (ACVM) 1997 (as amended) and the Medicines Act 1981 (as amended) and, as applicable, the Hazardous Substances and New Organisms Act 1996 (as amended). These Acts require the relevant Government authority to ensure that confidential supporting information is kept confidential and not released except in accordance with the provisions of the Official Information Act 1982 (as amended), where applicable.

Any information held by the Government may be released to the public under the Official Information Act 1982, subject to exclusions for example in relation to national security. The OIA aims to increase the availability of official information to the people of New Zealand in order to enable their more effective participation in the making and administration of laws and policies and to promote the accountability of Ministers and officials. The provisions in the OIA on the release of information are, however, balanced by specific protection for confidential supporting information. If the authority holding the information submitted as part of an application for regulatory approval of an agriculture compound or new medicine receives a request to release information under the OIA, the authority can withhold that information "where the making available of the information would disclose a trade secret or would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information" (section 9(2)b of the OIA). In addition the Government has recently recommended that the legislation be amended in future so that the authority must also "make all reasonable efforts" to contact the person or persons who supplied the information, prior to responding to any request to release the information.

The recent amendment to the Patents Act did not affect the provisions in other legislation governing the protection of confidential information.

11. More specifically, please explain how your legislation ensures that undisclosed and confidential test data or other data submitted by an applicant to the responsible State agency in the procedure for market authorization of a pharmaceutical or of an agrochemical product is protected against disclosure and against unfair commercial use by a competitor, for example by prohibiting a second applicant from relying on, or from referring to the original data of the first applicant, when applying subsequently for market authorisation for his own product. Does your legislation provide for a fixed term of protection for undisclosed information / such test data of the first applicant?

Answer - Under the Medicines Act, confidential information (including undisclosed test data) submitted as part of an application for regulatory approval of a pharmaceutical product may not be cross-referenced in another application for approval. The initial term of protection is five years while the new medicine is being developed. If regulatory approval is obtained within that period, protection is extended for another five years. Once this period of protection has expired, and provided the patent for a product has also expired, data may be cross-referenced in subsequent applications for approval of equivalent generic products. Similar provisions on cross-referencing exist in respect of confidential information submitted as part of an application for regulatory approval of an agricultural compound under the ACVM Act.

12. Switzerland welcomes the plans of the Government of New Zealand to introduce legislation strengthening the possibilities of the right holder to take action against copyright infringements in civil cases regarding certain imported copyrighted works. In this context, we would welcome further information concerning this Draft and would be interested to know if the Government of New Zealand plans to introduce similar legislation in the fields of patents and trademarks.

Answer - The measures to which this question refer are included in the Copyright (Parallel Importation of Films and Onus of Proof) Amendment Bill 2002, which was recently introduced into Parliament. The Bill proposes the following changes to the onus of proof in civil proceedings concerning the importation of films, sound recordings and computer programs:

- the introduction of an objective knowledge requirement, requiring the plaintiff to prove that the defendant knows or ought reasonably to know that the imported work is an infringing copy. The current test in the Act is that the defendant "knows or has reason to believe".
- The burden of proof is placed on the defendant to rebut the presumption that the imported work is an infringing copy.

The Government has no plans to make similar changes to other intellectual property statutes.

SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

Unilateral Tariff Reduction Plan

(p. 9, para. 13; p. 17, para. 10; p. 26, para. 2; p. 30, para. 19; p. 67, para. 3)

We had previously welcomed New Zealand's firm commitment to future global trade liberalization. In 2000, the New Zealand Government decided to suspend, until at least July 2005, its continued unilateral tariff liberalization that had originally been envisaged up to 2006.

1. *Could New Zealand please confirm whether it still has a plan to carry out further tariff concessions on a reciprocal basis under its WTO, APEC and regional trade agreements with various trading partners. If so, we would appreciate being provided with the timetable for such a plan.*

Answer - New Zealand announced in April 2000 that further unilateral tariff reductions were to be suspended until 1 July 2005. The current policy does, however, allow for tariffs to be reduced or removed on a reciprocal basis. In addition, NZ removed all tariffs on imports from least developed countries in July 2001. Tariff policy beyond 1 July 2005 is subject to an ongoing review. New Zealand would be pleased if the maximum tariff it faced in its export markets was just 19%.

Tariff Rates for Textiles and Clothing Products

(p. 26, para. 2; p. 32, paras. 20 & 21; p. 67, para. 3; p. 76, para. 31)

2. *We notice that New Zealand's average applied MFN tariff in 2002 was relatively low, at 4.1%. However, there are still some tariff peaks applied to textiles and clothing products. Tariff rates for clothing products are particularly high, averaging 18.6%, and show signs of significant tariff escalation, adversely affecting imports of processed products. Could New Zealand please advise us of any plans it has to reduce the number of items subject to tariff peaks and moderate the conditions causing tariff escalation?*

Answer - The current tariff review covers all industries, including the textiles and clothing industries. The review will include a wide-ranging assessment of the impacts of previous tariff reduction as well as projected impacts of any further tariff reduction on all sectors of New Zealand, including the textiles, clothing and footwear (TCF) sector. The review will also consider the most appropriate tariff structure, including the structure for the textiles sector and the application of alternative specific tariffs. Decisions are likely to be taken mid to late 2003 on tariff policy beyond 1 July 2005.

Export Monopoly

(p. 9, para. 16; p.26, para. 5; p. 47, paras. 70 & 71; p. 67, para. 2; p. 70, paras. 10 - 12)

3. *We are delighted to see that export monopolies granted by the government to its state trading enterprises for some agricultural products have gradually been removed over the past few years. However, the private companies that were converted from state trading enterprises still tend to export all or most of the products concerned. How does New Zealand ensure that end-users, both processors and consumers, have the opportunity to purchase quality agricultural products at internationally competitive prices? Does New Zealand have plans for further liberalization in this area?*

Answer - New Zealand companies export into international markets in competition not only with other New Zealand exporters but also with exporters from other countries. New Zealand exporters must be competitive on quality and price or they will not succeed commercially in this competitive environment. Deregulation has given producers a choice of exporters competing for the supply of products involving the removal of certain export monopolies and has provided significant improvement in the ability of the industry to respond to markets and reduce cost structures of exporting. With respect to plans for further liberalisation, the Hop Industry Restructuring Act 2003 recently passed by Parliament will remove the restrictions on exporting hops.

Free Trade Agreements

(p. 10 - 12, paras. 37 - 50; pgs. 21 - 22, paras. 21 - 24)

New Zealand is of the view that "free trade agreements with key trading partners can open up important new opportunities for exporters and in a shorter time frame than the multilateral process," and that "FTAs can make an important strategic contribution to moving the WTO process forward." Furthermore, "It sees FTAs as an opportunity not only to remove tariff barriers on a bilateral basis, but also to deepen economic integration with its trading partners across the wider trade and investment relationship."

4. *We would like to know what measures New Zealand adopts, in reality, to ensure that barriers are not raised against non-participating countries. Does New Zealand have the intention of signing new FTAs with other countries, and where does it stand currently in this respect?*

Answer - Given that New Zealand has a very low MFN tariff as a result of substantial unilateral tariff reductions, we do not consider that there would be significant barriers raised to non-participating countries as a result of third countries negotiating FTAs with New Zealand. New Zealand is prepared to consider free trade agreements with any economy, as long as they are of a comprehensive standard and are in New Zealand's overall strategic and economic interest.

The New Zealand Government has no formal list of potential FTA partners. Nevertheless, it recognizes that free trade agreements with key trading partners can open up new opportunities for its exporters that complement gains made through the multilateral process. Details of our current CEP/FTA initiatives are set out in the NZ Government's report on the Trade Policy Review of NZ.

(p. 10 - 12, paras. 37-50)

We note that New Zealand sees Free Trade Agreements (FTAs) as an opportunity to deepen economic integration with its trading partners across the wider trade and investment relationship (NZ report, para 38). The same report also mentions that New Zealand has made considerable progress towards

the (APEC) Bogor goals through autonomous liberalization, and is willing to liberalize further on a reciprocal basis (NZ report, para 54).

5. *Would New Zealand please describe its vision of liberalization and structural reform for the East Asian region, in light of current regionalization developments. Moreover, considering its desire to deepen relationships with its partners in the East Asia and even Pan-Pacific regions, will New Zealand's preference be to implement its liberalization through a multilateral or a bilateral approach?*

Answer - New Zealand's first priority for liberalization in the East Asian region is through multilateral fora. Its second priority is for achievement of the APEC Bogor Goals. In the short-term New Zealand recognises that deeper and faster liberalisation may be gained from bilateral and plurilateral trade agreements. New Zealand also recognises that regional developments in relation to trade agreements could have adverse effects on New Zealand. For these reasons New Zealand seeks closer economic partnerships with a range of trading partners that will bring significant strategic and economic benefits.

Service Sectors

(p. 18, para. 15; p. 67, para. 4; p. 77-78, para. 35-41)

6. *We would like to commend New Zealand on its contribution to the WTO services negotiations. We greatly appreciate New Zealand's efforts in submitting many constructive negotiation proposals in various sectors. We also welcome its recent efforts in trying to expand the sectoral coverage of its commitments, improve its existing commitments and eliminate its MFN exemptions. We would therefore appreciate being informed of any plans and ideas that New Zealand might have under the current round of WTO negotiations on trade in services.*

Answer - New Zealand intends to continue to engage actively in the current round of WTO services negotiations, both in relation to the negotiation of sectoral commitments and in the ongoing work on rules.

Foreign Direct Investment

(p. 23-25, paras. 30-35)

7. *Although New Zealand already maintains a relatively open and transparent Foreign Direct Investment (FDI) regime, we have discovered in the course of pursuing our own interest in making further investments in New Zealand, that there are still some restrictions in the areas of forestry and fisheries. The same applies in service sectors such as telecommunications, air transportation and other state-owned enterprises. We would particularly like to see further relaxation of New Zealand's FDI regime in the future and we would like to know if it plans to lift such restrictions in the new round of negotiations?*

Answer - New Zealand offers a very welcoming regulatory environment for foreign direct investment. New Zealand's initial offer in the WTO services negotiations does not include any changes to New Zealand's horizontal commitment relating to the Overseas Investment Commission.

Privatization of SOEs

(p. 27, para. 6; p. 54, para 93)

8. *Since the mid-1980s, a large number of New Zealand's state-owned enterprises (SOEs) have been corporatized or privatized, which has resulted in the transformation of its economy into one that is more open and competitive, and it has established a model for other countries. However, the current Government of New Zealand has indicated that there will be no further privatization of SOEs during its term. We would like to know more about New Zealand's future policy on SOEs, over and above the information already provided in document WT/TPR/S/115.*

Answer - The NZ Government has no intentions for either buying or selling any SOEs at this time.

Sanitary and Phytosanitary Measures

(p. 43, para. 53)

9. *It is noted that Food Safety Australia New Zealand (FSANZ) is an independent statutory authority for the development of joint food standards for both countries. However, we understand that New Zealand still develops some of its own food safety standards, such as the maximum residue limits (MRLs) of chemicals for food. We would appreciate an explanation from New Zealand of its reasons for not adopting the above-mentioned joint food standards in the case of MRLs.*

Answer - New Zealand's MRLs are set at a level that reflects the safe and appropriate minimum use of agricultural compounds in the New Zealand agricultural context. This is known as Good Agricultural Practice (GAP).

Safe levels of human exposure are dependent on the acceptable daily intake (ADI) of the compound in question, which is the same throughout the world. However, GAP depends on the agricultural practices, climate conditions and pest pressures, which are different in New Zealand from those in Australia.

Accession to the Agreement on Government Procurement

(p. 43, para. 54; p. 45, para. 60)

10. *New Zealand has clearly indicated that it does not intend to become a signatory to the Agreement on Government Procurement (GPA). While we fully understand the rationale behind New Zealand's decision, we believe that, in view of its extensive experience in the field of government procurement, by acceding, New Zealand would make a valuable contribution to the group of GPA Parties. We would therefore like to encourage New Zealand to become a signatory to the GPA.*

Answer - New Zealand thanks Taiwan for its comments and we can advise that we are keeping the issue of GPA membership under review, in light of procurement and trade policies developments. To date there has been no change to New Zealand's position on membership of the GPA.

Geographical Indications

(p. 65, para. 124)

11. *New Zealand has negotiated with the EU for many years, and has made some tangible progress in the area of geographical indications. We would appreciate being more informed of New*

Zealand's current status in this respect, and also being provided with details of its border measures and regulations relating to geographical indications.

Answer - NZ has not negotiated bilaterally with the EU on the question of geographical indications, but has discussed GIs in the multilateral context of the WTO TRIPS Council. (Geographical indications were discussed in the context of negotiations toward a bilateral wine agreement: such negotiations have been in abeyance for some years.) NZ does not provide for ex officio enforcement of GIs in the form of border measures, but provides the legal means for interested parties to prevent the inappropriate use of a GI. For more information on New Zealand's system of protection for GIs please refer to our response to the Checklist of Questions under the Review of Article 24.2 of the Application of the Provisions of the Section of the TRIPs Agreement on Geographical Indications submitted to the TRIPs Council under document IP/C/W/117 and addenda.

Agriculture Export Policy

(p. 70, para. 11)

12. According to the New Zealand government's report, the Apple and Pear Industry Restructuring Act was enacted in September 1999. At the same time, a new non-trading regulatory body, the Apple and Pear Export Permits Committee, was created to issue permits for the export of apples and pears, except where the export is by ENZA. Please explain the necessity to maintain this permit and its legitimacy under Article 11, GATT1994.

Answer - This question is no longer relevant because the Act was repealed and the committee dissolved by the Apple and Pear Industry Restructuring Act Repeal Act 2001.

Audiovisual Services

(p.77, para. 39)

13. According to Article II, Exemptions of GATS, in principle, the period of MFN exemptions should not exceed 10 years. New Zealand states that it will review its exemptions for audiovisual services, interpretation services and maritime services during the current round of negotiations in the WTO. Has New Zealand already taken this review into account in the preparation of its initial offer

Answer - New Zealand reviewed its existing MFN commitments very carefully in the process of preparing its initial offer. This is reflected in the inclusion within the initial offer of the proposed removal of several such reservations.

Financial Services (Banking)

(P. 79, paras. 47-55)

Banking supervisors are faced with increasing challenges as financial products become diversified and the scope of banking business extends globally with few barriers. The openness of New Zealand's banking system and the internationally known effectiveness of its banking supervisory authority have been highly praised throughout the world. We believe that one of the reasons for its success comes from its considerable emphasis on the role of bank directors in overseeing and taking ultimate responsibility for the operation and risk management in their banks.

14. *We would therefore like to learn what methods and incentives New Zealand uses to strengthen the responsibility of a bank's board of directors, and which would appear to further enhance the efficacy of market discipline and corporate governance in the financial system.*

Answer - The Reserve Bank of New Zealand's banking supervision arrangements include a number of policies designed to encourage sound corporate governance in the banking sector. These policies include:

- Comprehensive quarterly disclosure requirements for banks.
- Directors' attestations. In each quarterly disclosure statement directors are required to sign attestations on certain key matters including an attestation on the adequacy of the bank's systems and controls, and that the bank is complying with all prudential requirements.
- Directors' liability. Each bank director is required to sign their bank's disclosure statements and to certify that disclosures made are not false or misleading. If a disclosure statement is found to be false or misleading, directors may face legal penalties including imprisonment. In addition directors may face unlimited personal liability for creditors' losses where those losses have been sustained by creditors who have placed reliance on false or misleading information contained in a disclosure statement.
- Independent director requirements. Banks incorporated in New Zealand are required to have a minimum of two independent directors and a non-executive chairperson.

The above requirements complement and reinforce the standard duties applicable to company directors generally under New Zealand law.

(p. 80. para. 47)

15. *As indicated in New Zealand's TPR report, deposits in state-owned banks, e.g. Kiwibank, might benefit from an implicit government guarantee, while deposits in private banks do not enjoy such a guarantee. We would be very interested in having New Zealand's opinion on the deposit insurance scheme and in learning whether there is any future plan for the aforementioned government guarantee to be extended to banks.*

Answer - The Government has made it clear that New Zealand Post is required to run Kiwibank as a fully commercial operation and that the Government does not guarantee its operations. Disclosure statements issued by Kiwibank include the following statement: "The Crown does not, expressly or impliedly, guarantee the obligations of Kiwibank." Also, the Minister of Finance has gone on record as saying that (Kiwibank) "will have to stand or fall on its commercial merits".

A small proportion of the population may be under the impression that there is an implicit Government guarantee of all bank deposits. But, we do not believe such a view is widespread. Surveys of public opinion commissioned by the Reserve Bank indicate that most people are aware that the Government does not guarantee bank deposits and that, in the event of a failure, depositors could lose money.

There are no plans to introduce a deposit insurance scheme or for a government guarantee of Kiwibank and/or banks generally.

Financial Services (Insurance)

(p. 84, para. 64)

16. *Accident insurance remains closed to competition. The Accident Compensation Corporation (ACC) is the sole provider of accident insurance in New Zealand. Could New Zealand please advise whether it has a plan to open the market to private insurers, and, if so, what is the timetable?*

Answer - There are no plans to open the accident insurance market up to private insurers.

Electricity

(p. 86, paras. 74-81)

17. *According to the WTO Secretariat report, New Zealand implemented reform of the electricity market in the mid-1980s.*

a) *Why did the New Zealand Government promulgate the Electricity Industry Reform Amendment Act of 2001, and set up the independent Electricity Governance Board (EGB)?*

Answer - The Electricity Industry Reform Amendment Act 2001 (EIRAA) amended the Electricity Industry Reform Act 1998 (EIRA). The key feature of EIRA is that no person involved in (i.e. owning greater than a 10% interest in, or having a material influence over) an electricity lines business may be involved in an electricity supply business (i.e. selling or generating electricity). EIRAA introduced two key changes to EIRA:

- First, it allowed an exception to the general prohibition against simultaneous involvement where the generation involved is built after 2001, is embedded in a distribution network, and is from (or mostly from) a "new renewable energy source". A "new renewable energy source" is an energy source that occurs naturally and is replenished by natural processes within 50 years or less of being used, but it does not include hydro or geothermal generation plant greater than 5MW. Although this exception allows simultaneous involvement in a lines and a supply business, different companies operating at arms length must still carry out the two businesses.
- Second, it amended the definition of "electricity supply business" so that anyone who generates (and sells) a small amount of electricity from a generation plant embedded in a local distribution network is not regarded as being an "electricity supply business". This allows lines businesses to own a small amount of local generation ("distributed generation") – the limit is the greater of 5MW and 2% of the maximum demand of that distributor's system.

The reason for these amendments was to reduce a barrier to investment in generation from new renewable energy sources and small-scale distributed generation. Electricity lines businesses may be in a good position to take advantage of opportunities arising from new renewable technologies. However, if an electricity lines business wants to take advantage of the exception to the simultaneous interest prohibition in the first bullet point above (for generation from a new renewable energy source), it must still keep those activities in a separate company operating at arms length from the lines business. This addresses the concern that the electricity lines business might cross-subsidise or otherwise favour its own generation business.

b) What is the current status of the electricity market mechanism in New Zealand?

Answer - New Zealand still operates a voluntary spot market administered through a multilateral contract known as NZEM (New Zealand Electricity Market). The majority of electricity is traded through this market. Bilateral trades outside the market are also possible.

The government is currently considering changes to electricity market arrangements to improve the security of New Zealand's electricity supply. An announcement will be made on the changes before the end of May 2003. The Prime Minister has already announced that there will continue to be a market. However, a mechanism will be found alongside that market to see that there can be stand-by generation brought into operation when a number of factors combine to produce a shortage.

c) Why does the New Zealand Government keep three large electricity industries (including generators and retailers) as state-owned enterprises within a deregulated electricity industry? Please elaborate on the reasons for this arrangement.

Answer - The Government has stated that it will not run a state assets sales program. This applies to all State-owned Enterprises (SOEs), Crown companies and entities, including electricity generators. Instead, boards of SOEs and other Crown owned commercial organisations are expected to enhance their value and their ability to contribute to economic and social growth and development. SOEs are separate legal entities from the Crown, and have operational freedom in pursuing their primary objective of being a successful business. The Government's influence over SOEs relates to high level strategic and financial matters.

The Government separates its ownership interests from its regulatory interests in the electricity industry. Electricity SOEs are expected to compete amongst themselves and the private sector. The legal and regulatory frameworks applying to SOE electricity generators provide no competitive advantage or disadvantage.

d) Can there occur some power price manipulation under the current market mechanism because each state-owned electricity generator/retailer accounts for such a large share of power generating capacity?

Answer - It is possible that some power price manipulation can occur under current market arrangements and from time to time there are allegations to this effect. NZEM's Market Surveillance Committee has the power to investigate and correct any situation that threatens fair, orderly or proper trading on NZEM (including manipulative activity).

The incentive on electricity generators to manipulate the market price is reduced by the high degree of vertical integration with electricity retail businesses. If a generator acts to increase the spot price, their retail branch will also pay the higher price when purchasing electricity to sell to their fixed-price customers. In addition, generators usually hold a portfolio of hedge contracts (e.g. contracts for differences based on the NZEM spot price) that means that, if a generator manipulates the spot price, that generator will also pay more under its financial hedge contracts.

Telecommunications

(p. 86, paras. 71 & 73)

18. *According to the sections on competitive safeguards and interconnection in the Telecom Reference Paper, appropriate measures shall be maintained for the purpose of preventing suppliers*

from engaging in anti-competitive practices (e.g. cross-subsidy). Furthermore, under non-discriminatory terms, conditions and rates, interconnection with a major supplier's network should be ensured. However, the Telecom operator that dominates New Zealand's telecommunications market applies a cross-subsidy between urban and rural users and between light and heavy users. Moreover, the interconnection charges offered by New Zealand's Telecom operator to its competitors are very high in comparison with world levels.

With respect to the fair competition principle, does New Zealand intend to reduce its telecom tariffs and, if so, what is the timetable?

Answer - The GATS Basic Telecommunications Reference Paper provides the right for any Member to define the kind of universal service obligation it wishes to maintain:

"3 Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member."

In December 2001 the Government introduced the Telecommunications Act 2001. The Telecommunications Act 2001 provides a process for the creation of Telecommunications Service Obligations (TSO). The objective of the TSO mechanism in the Telecommunications Act is to ensure that key telecommunications services will be provided, where necessary, to achieve the Government's social objective. TSOs facilitate the supply of certain telecommunications services to groups of end-users within New Zealand to whom those services may not otherwise be supplied on a commercial basis or at a price affordable to those end-users.

Only one TSO has been established under the Telecommunications Act 2001. This TSO (previously known as the Kiwi Share Obligation) is an agreement between Telecom New Zealand and the Crown under which Telecom provides local residential telephone service (a copy of the TSO deed can be found at <http://www.med.govt.nz/pbt/telecom/deed/index.html>).

This TSO provides residential users with access to a price capped local telephone service that includes an unlimited number of non-chargeable local calls and includes commitments for:

- a local free-calling option for local residential telephone service being maintained for all Telecom residential customers;
- Telecom charging no more than the standard residential rental for local residential telephone service;
- standard residential rental not increasing in real terms provided that the overall profitability of Telecom's fixed business is not unreasonably impaired; and
- the line rental for local residential telephone service for Telecom customers in rural areas being no higher than the standard residential rental.

The WTO Secretariat's Report has suggested that New Zealand's interconnection rate is very high and cites a source from 2000 to support its conclusion.

Since then, New Zealand has introduced the Telecommunications Act 2001. The Telecommunications Act 2001 provides for the designation (regulation) of certain telecommunications services, including

interconnection with Telecom's fixed PSTN. Where commercial negotiations have failed, access seekers may apply to the Telecommunications Commissioner for an access determination (including pricing) for services designated under the Act.

TelstraClear made an application to the Commission for an access determination on interconnection with Telecom's fixed PSTN in mid-2002. On 5 November 2002 the Commerce Commission released its initial pricing determination on TelstraClear's Interconnection Application recommending that TelstraClear pay 1.13 cents per minute for interconnection to Telecom's fixed network (approximately half what Telecom previously required TelstraClear to pay). Both parties have since applied under the Telecommunications Act for a pricing review of the determination using the TSLRIC pricing formula.

UNITED STATES

TRADE POLICIES AND PRACTICES BY MEASURE

MEASURES DIRECTLY AFFECTING IMPORTS

Standards and conformity assessment

The United States has discussed concerns with the Government of New Zealand over New Zealand's biotechnology policies, particularly over New Zealand's commercial release moratorium for Genetically Modified Organisms (GMOs), field trial restrictions, GM food approvals and food labeling requirements.

1. *The provisional moratorium on commercial planting of GMO crops, the release of GM animals, and the commercial importation of GM seeds expires in October of this year. New Zealand has indicated it will not propose new legislation to extend the moratorium. Can New Zealand elaborate on its plans for addressing the commercial release of GMOs after October 2003?*

Answer - After the restricted period expires on 29 October 2003, the Environmental Risk Management authority will be able to consider any applications made to release GMOs into the New Zealand environment.

The New Organisms and Other Matters Bill was introduced to Parliament on 29 April 2003. This legislation will enhance the regulation of new organisms (including GMOs). Information about this bill can be found on the Ministry for the Environment (MfE) website www.mfe.govt.nz

The bill is progressing and is expected to be enacted before 29 October 2003.

2. *Can New Zealand confirm that regulatory requirements for the release of GMOs will be science-based?*

Answer - The release of GMOs into the New Zealand environment is regulated under the Hazardous Substances and New Organisms (HSNO) Act, 1996. The HSNO Act provides a risk management regime, it does this by focusing on the effects of hazardous substances and new organisms. The purpose of the Act is to protect the environment and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms, including genetically modified organisms. Information on HSNO can be found at www.hsno.govt.nz.

3. *New Zealand adopted mandatory labeling requirements for foods produced using gene technology, which the United States is concerned will encourage New Zealand retailers to source only*

products with GM-free ingredients. What is the "legitimate objective" (per article 2.2 of the TBT Agreement) of these requirements?

Answer - New Zealand has a content-based GM-food labelling system that is shared with Australia. The requirements fall within a range of options for labelling of GM foods being considered by the Codex Committee on Food Labelling.

Labelling is required where novel DNA or protein is present in the final food, or the food has altered characteristics. There are some exemptions. Further information and details of GM foods approved for sale in New Zealand can be obtained at www.foodstandards.govt.nz

Only a few GM labelled foods have appeared in New Zealand supermarkets since the new regulations came into full force in December 2002. Possible reasons for this include:

Many manufacturers are choosing to source non-GM ingredients in response to the demands of their customers.

Many products that contain ingredients derived from approved GM organisms are highly processed, and therefore don't necessarily contain novel DNA or protein; and

No whole GM foods are sold in New Zealand (and these would be the most likely candidates for labelling under the regime).

A key objective of the labelling requirements is the provision of consumer information.

Local content

4. *The United States would appreciate greater detail on New Zealand's policy of granting tax concessions to manufacturers if they can demonstrate that the "domestic content of the locally produced 'suitable alternative' product is not less than 25% of its ex-factory cost of production."*

Answer - Under this provision factory cost is the sum of the following:

- (a) the cost of imported materials;
- (b) the cost of New Zealand produced materials;
- (c) manufacturing wages; and
- (d) factory overhead expenses.

In order to meet the 25% requirement, the sum of the items (b, c, and d) must represent a minimum of 25 percent of the total factory cost of the goods.

MEASURES DIRECTLY AFFECTING EXPORTS

Duty and tax concessions

5. *Under Section 117 of the Customs and Excise Act 1996, exporters are allowed a drawback on duties paid for imported goods. Could you please provide further information on how this duty drawback scheme operates?*

Answer - Drawback is the New Zealand Customs procedure, which provides for the refund of duty when goods are re-exported. The drawback provision covers any goods that were subject to duty on

importation and are being re-exported. This includes goods for export, which have been produced in New Zealand and subject to Excise duty.

The following duties may be refunded:

- Import Duties (other than anti-dumping and countervailing duties, unless permitted by the Secretary of Commerce);
- Excise Duties;
- GST may be refunded, in certain circumstances, for exporters who are not registered under the terms of the GST Act 1988. In addition, Customs may also refund GST on drawback to a registered person who exports goods that are not of a kind used in their taxable activity.

Written notice of intention to ship goods for export under drawback should be given to the New Zealand Customs Service at least 48 working hours before loading the goods.

The re-importation of goods shipped for export under drawback is permitted except for certain types of motor vehicles (not be re-imported within a 12-month period following the date of exportation). Duty has to be paid on re-importation of goods as if the goods were being imported for the first time.

Except for goods exported by private persons, the minimum amount of drawback that can be claimed for commercial goods is NZ\$ 50.

Any person who can provide and substantiate information necessary to legally claim drawback may do so. Regular exporters who claim drawback can arrange with Customs to lodge periodic entries to cover a period such as one month's exports. Export entries claiming drawback may be lodged electronically.

A Fact Sheet fully explaining drawback arrangements is available from the New Zealand Customs Service website: (www.customs.govt.nz), under Library – Fact Sheet 1.

OTHER MEASURES AFFECTING PRODUCTION AND TRADE

Export finance, insurance, and guarantees

6. *The United States would be interested in further detail on how New Zealand's export credit scheme, The New Zealand Export Credit Office (ECO), complies with New Zealand's obligations under the Agreement on Subsidies and Countervailing Duties (SCM Agreement). In particular, at what rate are export credits offered to New Zealand's industries through this program? To which industries are export credits offered through this program?*

Answer - The operation of the New Zealand Export Credit Office (ECO) is fully consistent with the WTO Agreement on Subsidies and Countervailing Measures and the OECD Arrangement on Guidelines for Officially Supported Export Credits. Accordingly, though the rates offered by the ECO will depend on the transaction, every transaction is priced to ensure that the ECO covers all costs, including capital costs, which is in accordance with WTO rules.

The ECO provides medium-long-term trade credit insurance. i.e., insurance of payment by the buyer for transactions with a credit term greater than one year, and where the (useful) life of the export in question is longer than the intended repayment term. The export credit facility is open to all sectors.

Intellectual Property Rights: general

7. *Does New Zealand have any plans to join the WIPO "Internet" treaties (WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty)?*

Answer - The Government is currently reviewing the implications of accession to these treaties in the context of its review on the implications of digital technology for copyright. The Government will consider ratification of the Treaties once the review of the Copyright Act is complete.

8. *Does New Zealand have any plans to join WIPO's Madrid system for the international registration of marks or its Hague system on the international deposit of industrial designs?*

Answer - The Government will review the implications of accession to these treaties following entry into effect of the Trade Marks Act 2002.

9. *Does New Zealand have any plans to join WIPO's Trademark Law Treaty (TLT) or WIPO's Patent Law Treaty (PLT)?*

Answer - The Government will review the implications of accession to the TLT and PLT following entry into effect of the Trade Marks Act 2002 and passage of new patents legislation, consequent on the current review of the Patents Act 1953, respectively.

IPR: Patents

10. *New Zealand's Patents Act was recently amended to allow manufacturers of generic medicines to commence regulatory trials before a patent has expired. Our pharmaceutical industry has concern that this amendment will permit generic pharmaceutical companies within New Zealand to produce a patented product for export to countries outside of New Zealand. Could New Zealand comment on any implementing regulations or safeguards that it has adopted or is considering to prevent erosion of patent rights?*

Answer- The exemption applies only to activities associated with obtaining marketing approvals. It does not permit the production, sale or export of goods that are still subject to a patent.

11. *New Zealand has indicated that the 1953 Patent Act is currently under review to bring the Act more in line with current international practices. One of the areas being reviewed is exclusion from patentability. Could New Zealand comment specifically on what exclusions are being considered?*

Answer - Issues of patentability are set out in detail in the discussion paper "Review of the Patents Act 1953: Boundaries to Patentability" issued by the Ministry of Economic Development in March 2002, and accessible on the Ministry's website (<http://www.med.govt.nz>). Possible exclusions to patentability were canvassed in that document and included biotechnological inventions, methods of medical treatment of human beings, computer software and business methods.

12. *Can New Zealand confirm whether it will consider within the context of the Patents Act Review providing extended patent life protection to pharmaceuticals?*

Answer - The Government is considering this issue in the context of the Patents Act review.

IPR: TRADEMARKS

13. *We understand that the Trade Marks Act of 2002 has recently been adopted to replace the Trade Marks Act of 1953. Could you comment on the progress of implementation of the new Trade Marks Act?*

Answer - The Act has been passed by Parliament and will enter into effect once regulations are made that implement many of the operational aspects of the Act. This process is due to be completed in the latter half of 2003.

14. *How does the new Trade Marks Act address protection for well-known marks?*

Answer - Section 25(1)(c) of the Trade Marks Act 2002 provides that the Commissioner of Trade Marks must not register a trade mark in respect of any goods or services if it is, or an essential element of it is, identical or similar to, or a translation of, a trade mark that is well known in New Zealand, whether through advertising or otherwise, in respect of those goods or services or similar goods or services or any other goods or services, if the use of trade mark for which registration is sought would be taken as indicating a connection in the course of trade between those other goods or services and the owner of the well known trade mark, and would be likely to prejudice the interests of the owner.

Section 89(1)(d) of the Act provides that a person infringes a registered trade mark if the person does not have the right to use the registered trade mark, and uses in the course of trade a sign identical with or similar to the registered trade mark in relation to any goods or services that are not similar to the goods or services in respect of which the trade mark is registered, where the trade mark is well known in New Zealand and the use of the sign takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the mark.

These provisions relate specifically to well-known marks: they are additional to the normal provisions in the Act that allow for the protection of all registered trade marks against infringement.

15. *Section 20 of the 2002 Act bars registration of trade marks containing protected geographical indications. Can New Zealand elaborate upon that restriction, and explain when trade marks containing geographic terms would be registerable and when they would not be? Would geographical indications be registerable as certification marks?*

Answer - Section 20 provides that the Commissioner must not register a trade mark that—

- (a) contains a protected geographical indication in respect of specified goods; and
- (b) relates to specified goods that do not originate from the place indicated in the protected geographical indication.

The registration of a trade mark containing a geographical indication is precluded where the proposed trade mark includes a geographical indication, protected under the Geographical Indications Act 1994 in relation to goods specified by way of a Schedule to that Act, and where the proposed trade mark relates to goods not originating in the locality to which the protected geographical indication pertains. A trade mark that contains a geographical term, and relates to goods specified for a protected geographical indication and derived from the locality pertaining to that geographical indication, may be registerable provided it meets the other criteria for registerability specified in the Act. In addition, a trademark containing a geographical term that relates to a class of goods other than that specified for a protected geographical indication, may be registerable provided it meets the other criteria for

registerability specified in the Act. Certification marks may also be registerable provided they meet the conditions outlined above.

16. Under Section 83 of the 2002 Act, trade mark licenses may be recorded. Is license recordation required in order for the licensee or trademark owner to bring an infringement action pursuant to the 2002 Act? If the licensee brings suit independently of the trade mark owner, under Section 104 of the 2002 Act, the trade mark owner automatically becomes a defendant in the action (incurring no costs unless the action is defended). Please explain this provision, and if there is any perceived discouraging effect on licensing.

Answer - Registration of a licensee is a pre-requisite to the licensee bringing an infringement action under section 103 of the Trade Marks Act 2002. The trade mark owner may bring an infringement action pursuant to section 101 of the Act, independent of whether or not any licensing arrangements exist. Section 104 of the Act is a longstanding provision, carried over from section 37(3) of the Trade Marks Act 1953. It recognises the interests of a licensee by providing for the enforcement of rights in the trade mark where, contrary to agreement between the licensee and the trade mark owner, the trade mark owner has refused or neglected to bring proceedings in response to a request from the licensee.

IPR: Copyrights and Related Rights

17. What is the current status of New Zealand's review of the impact of parallel importation on various industries, and how and to whom can foreign copyright holders submit comments regarding their positions on these issues?

Answer - This review was completed in 2001. As a result of the review, the Government announced that it would introduce legislation to ban the parallel importation of motion picture films for a period of 9 months from first release, and would make some changes to the onus of proof in civil proceedings concerning the importation of sound recordings, films and computer programs. The Government introduced the Copyright (Parallel Importation of Film and Onus of Proof) Amendment Bill earlier this year to give effect to these decisions and the Bill is currently before a Parliamentary Select Committee (the Commerce Committee). The Commerce Committee previously called for public submissions on the Bill (note that this did not constitute a further review of parallel importing per se).

IPR: Geographical Indications

18. What are New Zealand's plans regarding implementation of the geographical indications law of 1994, which has not yet been implemented?

Answer - The Government has not decided when the Geographical Indications Act will be implemented.

19. Can geographical indications be protected as certification marks in New Zealand?

Answer - See the comments on certification marks in the reply to the question on the Trade Marks Act above (US questions 13, 14, 15, 16)

20. It is established in the Trade Marks Act of 2002 that at least certain marks, including protected geographical indications, cannot be registered. Is the reciprocal case true, that a geographical indication cannot be protected in New Zealand if it is pre-dated by a corresponding trademark?

Answer - The Geographical Indications Act 1994 not yet having entered into force, any potential conflict between pre-existing trademarks and a geographical indication would be dealt with under the common law tort of passing off, which provides the opportunity for right-holders to take proceedings to prevent others trading on the good reputation of the mark, and the Fair Trading Act 1986, which provides the opportunity for right-holders to take proceedings to prevent conduct in trade that is deceptive or misleading or likely to deceive or mislead. In addition, the Trade Marks Act 2002 provides further protection for registered and well-known trademarks, including the right to exclusive use of the sign, provisions relating to infringement of a registered or well-known trademark, and provisions on the registerability of (inter alia) identical or similar trademarks.

21. *New Zealand has indicated that it expects to complete a review of its Plant Variety Rights Act during 2003 and that one of the major issues being examined is whether New Zealand should ratify the 1991 Act of the International Union for the Protection of New Varieties of Plants ("UPOV 1991"). The United States believes that UPOV 1991 provides better protection for plant varieties than the 1971 Act of UPOV and that global harmonization of plant variety protection standards to UPOV 1991 is important. Can New Zealand comment on whether ratification of UPOV 1991 is likely?*

Answer - The Government has not yet taken decisions on the review, including in relation to UPOV 1991.

IPR: Enforcement Measures

22. *What is the status and expected date for the establishing of a Supreme Court in New Zealand?*

Answer - The Supreme Court Bill was introduced to Parliament in December 2002 and has been referred to a Parliamentary Select Committee, which is now hearing public submissions on the Bill. The Bill, which is subject to change, proposes a commencement date 28 days after receiving the Royal Assent.

23. *In the process of establishing a Supreme Court as final appellate review, has the Government of New Zealand considered establishing or designating a specialized trial and/or appellate court for all intellectual property rights matters?*

Answer - This bill, as drafted, would result in the Supreme Court replacing New Zealand's current final appellate Court – the Judicial Committee of the Privy Council. In doing so it would widen the jurisdiction of the final appellate court so that the Supreme Court is capable of hearing appeals, usually after an intermediate appeal to the Court of Appeal, from any jurisdiction.

The Supreme Court Bill focuses only on the structure of New Zealand's final appellate Court.

The establishment of a specialist court for intellectual property rights matters is not part of the present legislative proposal.

At the Government's request the Law Commission is currently examining all state based adjudicative bodies in New Zealand, below the Court of Appeal. The Law Commission examination has involved widespread public consultation and the Commission is due to present its final report to Government later this year.

24. *With regard to the potential statutory range of penalties that a court may impose in cases of criminal copyright and trademark infringement proceedings, are there any current legislative plans to*

increase the maximum fines and/or terms of imprisonment that can be imposed by a court beyond the current maximums?

Answer - There are no current plans to make further changes to the criminal penalties for trade mark and copyright infringement. The Government has only recently passed the Trade Marks Act 2002, which substantially increased penalties in relation to copyright infringement and introduced new offences and penalties for trade mark counterfeiting, including by increasing the maximum term of imprisonment on conviction of an offence for copyright infringement from 3 months to 5 years. The same penalty applies in the case of trade mark infringement.

TRADE POLICIES IN SELECTED SECTORS

Agriculture

25. *Has New Zealand notified its Sustainable Farming Fund to the SCM Committee as stipulated under Article 25 of the SCM Agreement? If not, please discuss whether there are any plans in the future to do so or why New Zealand believes it is not necessary to notify this program.*

Answer - The Sustainable Farming Fund provides grants for community-driven projects which provide extension and advisory services, including through the transfer of results of research and technology improvements, to farm communities. The subsidy is not "specific" within the meaning of Article 2 of the SCM Agreement, and therefore, under Article 25.2, need not be notified. We invite interested members to read the DS:2 notification provided to the Committee on Agriculture (G/AG/N/NZL/34), or to visit the Ministry of Agriculture and Forestry website (www.maf.govt.nz/sff) if they require further information.

Manufacturing

26. *Can New Zealand provide more information regarding the government-run program previously known as Industry New Zealand (now part of New Zealand Trade & Enterprise)? In particular, what is meant by the phrase "sector facilitation and support," as it applies to the funding provided to New Zealand's high growth sectors through this program?*

Answer - Industry NZ was established as the government's economic development agency in 2000. The agency's purpose was to facilitate (in co-operation with industry, central and local government, and relevant community groups) the development and implementation, of strategies, programmes, and activities for industry and regional development.

Sector facilitation and support refers to Industry New Zealand's engagement with particular sectors to identify constraints to sectoral growth and opportunities for potential growth. Industry NZ also facilitates the removal of identified constraints by working with relevant government departments and key players within particular sectors to remove growth impediments and to encourage industries to develop the capability required to realise their growth potential.

Industry NZ is currently being merged with Trade NZ to form New Zealand Trade and Enterprise, a new economic and trade development agency.

Services

27. *The Government of New Zealand has indicated that it reserves the right to impose mandatory quotas on local content for radio and broadcast television to meet its broadcasting objectives. How*

do this right relate to New Zealand's GATS commitments? What measures is the Government currently considering to regulate local content?

Answer - New Zealand commercial radio has developed a voluntary code of practice. The industry set target of 13% New Zealand music was exceeded by 2% in 2002. The New Zealand Television Industry has recently established a Television Local Content Group that will consider the issue of local content on New Zealand television. Ministers have expressed satisfaction with these industry initiatives.

VENEZUELA

Oral questions

What is the scope of your Generalised System of Preference Scheme? Is Venezuela covered by it?

Venezuelan imports are among those imports that receive preference under NZ's generalised system of preferences (GSP). For a complete list of the coverage of the GSP see the New Zealand Tariff online (pp. vi, vii) at:

<http://www.customs.govt.nz/library/working+tariff+of+new+zealand/default.asp>
