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New Zealand Agricultural Policy Review: 1994-1996 II: Agricultural Marketing Reform

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Most of New Zealand's agricultural and horticultural exports are controlled or influenced in some way by producer boards or licensing authorities. These organisations are creatures of statute, and several of these statutes have been under review in recent years. The reform seeks to take into account the current deregulatory framework in New Zealand and further disengagement of Government. This paper outlines the current and proposed roles and functions of the boards and changes to the legislation that regulates their activities.

1. Introduction

The primary purpose of this paper is to document changes to producer board legislation in the 1990s and briefly comment on the rationale for those changes. The marketing of New Zealand's pastoral exports has been subject to the influence of statutory producer boards¹ for most of this century. In more recent years, most horticultural exports have also become subject to the influence of statutory marketing boards or licensing authorities. Approximately 80 per cent of the value of New Zealand's agricultural and horticultural exports in the year to June 1995 were subject to such influence.

Three of the ten producer boards are export trading boards. The New Zealand Dairy Board, the New Zealand Apple and Pear Marketing Board, and the New Zealand Kiwifruit Marketing Board (except for exports to Australia) have export monopoly powers. While these boards can allow others to export, they generally handle most of the exports of products for which they have acquisition powers. These three producer boards do not have statutory powers over the New Zealand market. Two more, the New Zealand Hop Marketing Board and the New Zealand Raspberry Marketing Council, have both export market and domestic market monopoly powers. The powers and functions of these two boards are currently under review (Table 1).

The other five boards, the New Zealand Wool Board, the New Zealand Meat Producers Board, the New Zealand Pork Industry Board, the New Zealand Game Industry Board, and the New Zealand Horticulture Export Authority, are not directly involved in the purchase or sale of their commodities. Their roles are mainly in the areas of licensing exporters, promotion and market development, research, industry support, and quality control, although in the past some of these five non-trading boards have been involved in export trading. These Boards have varying degrees of regulatory and control powers, and have other powers that enable them to carry out industry support and leadership functions (Table 2).

The boards have developed on the apparent premise that in order for producers to better manage the risks inherent in producing primary commodities for export, legislated disciplines and controls are necessary (Cottrell and Walker). In addition, advocates of producer boards argue that they can lead to the implementation of more sophisticated and coordinated marketing strategies, and increased returns for New Zealand. Like New Zealand, a number of other countries have also relied on marketing boards to influence the returns which producers receive (Zwart and Moore, 1990).

2. Components of Producer Board Legislation

In examining producer board legislation, common provisions include object, functions, powers and duties.

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¹ In this paper we use the term "producer board" to cover all of the statutory agricultural producer, marketing, and licensing boards and authorities.

Object: Some boards have an "object" spelt out in their legislation. A board's object is like its mission statement; it is a short statement of the fundamental thing that Parliament wants the board to achieve. Other boards have no object specified, and must look to their functions and powers to determine their reason for being.

Functions: A board's functions are the things that Parliament is asking it to do in working towards the achievement of its object (whether explicit or implied). Functions might range from exporting a product to funding research and development. All producer boards have functions spelt out in their legislation, but some are spelt out in more detail than others.

Powers: Powers give a board the ability to carry out its functions for the achievement of its object. The powers that Parliament has given each board are spelt out in its legislation.

Powers of a natural person enable a board to do what any person or company can do, such as borrow money. Because boards operate only under their own legislation (and not, say, the Companies Act), they have natural person powers only if granted them by that legislation.

Other powers enable boards to do things that ordinary people or companies cannot, such as require levies to be paid to them, license exporters, or compulsorily acquire product for export. These are sometimes called coercive or regulatory powers.

Duties: As discussed under "Directors' Duties", 3.3.5, duties similar to those in the Companies Act are being imposed on individual directors of some boards. In addition, all boards have various duties to carry out as an adjunct to their functions and powers. These are commonly accountability requirements (e.g. financial reporting) or safeguards in the exercise of statutory powers (e.g. requirements to consult before exercising some powers).

3. The Need for Reform

The reform of producer board legislation takes into account the current deregulatory economic framework in New Zealand and the scope for further disengagement from regulatory interventions.

The boards' statutory status and the wide range of powers they had provided a useful mechanism for the Government to implement its interventionist policies of pre-1984. However, policies and schemes such as Supplementary Minimum Prices and income stabilisation have now been removed in line with wider government moves to a more market oriented economy. In addition, producer board access to Reserve Bank funds was removed in 1986, government involvement in the financial affairs of the boards has been reduced, and price fixing committees have been abolished (Cottrell and Walker). Some of the powers and functions of most of the boards have become redundant, and the need for government representatives on the boards has been substantially reduced.

These organisations are funded by the producers, either through levies or through deductions from payments to producer-suppliers. With the reduction of government involvement, the need for improving the accountability regimes for these organisations to the producers who fund them has grown. In addition to accountability to producers, the need for boards to be accountable to Parliament for use of their statutory powers remains.

During the 1980s and early 1990s, a number of non-trading producer boards got increasingly involved in commercial activities. This gave rise to concern about the connection between the commercial activities of those boards and their regulatory powers, particularly the licensing of exporters. The benefits of these boards' regulatory powers have also been increasingly questioned, both from within the industries and from outside, and the possible costs of the existence of these powers in terms of deterring investment and stifling innovation have been highlighted (Hussey; Trebeck).

Finally, in some industries there has been pressure to clarify the ownership of board assets.

3.1 Reforms Undertaken in the Late 1980s

Between 1984 and 1990, significant changes occurred in the domestic marketing boards. The marketing of wheat and eggs was completely deregulated. The town milk industry was partially deregulated during this period and has been completely deregulated since then.

The Producer Board Amendment Act passed in 1988 allowed boards access to a wider range of funding sources without needing government approval or su-

pervision (Zwart and Moore). The boards were granted the 'powers of a natural person' which gave them more financial flexibility. This followed the 1986 removal of access to Reserve Bank funds which some boards previously used to finance exporting and stabilisation activities at minimal cost to the industry. Since 1988, producer board earnings have been fully taxable. According to Zwart and Moore, while these changes had little direct impact on the marketing activities of the producer boards, they were significant in that they reduced the degree of government involvement.

While the Government was removing the financial concessions to producer boards it created two new boards, the New Zealand Horticulture Export Authority in 1987 and the New Zealand Kiwifruit Marketing Board in 1988.

3.2 Amendments to Producer Board Legislation in the 1990s

The main amending Acts for producer board legislation in the 1990s to date have been the Dairy Board Amendment Act 1992, the Horticulture Export Authority Amendment Act 1992, the Apple and Pear Marketing Amendment Act 1993, the Primary Products Marketing Amendment Act 1993, and the Dairy Board Amendment Act 1996. The amendments to the APMA and PPMA were made via a Producer Board Acts Amendment Bill (Johnson, pp. 385-6).

A Bill to replace the Meat, Wool and Pork Board's legislation, called the Producer Board Acts Reform Bill, has been introduced into Parliament and is awaiting referral to a Select Committee.

3.3 Reforms in the 1990s Which Will Affect All or Most Producer Boards

The main focus of the changes in producer board legislation during the late 1980s was the withdrawal of direct Government involvement in the industries. In comparison, the changes in the 1990s are mainly in the areas of improving the accountability of the boards to the producers who fund them, and focussing their objects, functions and powers to meet future needs. The nature of these changes has meant that initiatives are coming from boards and industries as well as the Government. The current changes being proposed have been developed following wide consultations with the boards and the industries. The changes below are progressively being applied to the producer boards as their legislation is amended.

3.3.1 Performance and efficiency audits

Producers need to be provided with sufficient information to assess the performance of the boards that they fund. There is a move to require boards to undertake performance and efficiency audits every five years. Some boards already have this provision in their legislation, for others these provisions will be included when their legislation is next amended.

3.3.2 Financial reporting

As the boards' legislation is being amended they are being required to comply with the accounting standards that apply to public companies under the Financial Reporting Act 1993. The requirement for audited annual reports and statements to be laid before Parliament will continue.

3.3.3 Annual general meetings

As the boards' legislation is being amended they are being required to hold annual general meetings of producers or suppliers along the same lines as companies are required to hold annual general meetings of shareholders.

3.3.4 Reporting on use of statutory powers

To improve the accountability of the boards to Parliament for the use of the statutory powers granted to them by Parliament, the boards are being required to report on their use of statutory powers in their annual reports.

3.3.5 Directors' duties

The Dairy Board Amendment Act 1996 provides for individual directors of the Dairy Board to be subject to legislative duties of care in a similar way as directors of companies under the Companies Act 1993. This is expected to be applied to other boards in the future, and will contribute to the process of making the producer boards more accountable for their actions.

Unlike companies, producer boards have statutory powers and do not have shareholders, so the Companies Act provisions need to be altered to reflect the producer board situation. The Companies Act allows shareholders to bring actions against directors, but because the boards do not have shareholders, complex and contentious questions would arise in establishing who should be entitled to take action. The enforce-

ment provisions of the Companies Act are not being applied at this stage.

However, other enforcement options exist. These include the ability of a board to take action against individual directors, judicial review of board decisions, boards being subject to the Official Information Act 1982, the ability of the Governor General to remove a director from office for failure to observe a duty to the Board, and the overall accountability requirements to be placed on the boards.

3.3.6 Interface of producer board legislation with Commerce Act

The Commerce Act 1986 is all about promoting competition in the domestic market, whereas producer board legislation is co-operative by nature in relation to export markets. Because of this conflict it is necessary to define the interface between the Commerce Act and producer board legislation. This can be done by exempting certain export related powers of the producer board Acts from Part II of the Commerce Act.

4. Current Legislation

4.1 Dairy Board Amendment Act 1996

The New Zealand Dairy Board (NZDB) is governed by the Dairy Board Act 1961. The primary function of the NZDB is to undertake the export and marketing of all dairy products manufactured for export in New Zealand. The NZDB purchases dairy produce from dairy manufacturing companies and sells it either directly or through its world-wide marketing network of subsidiary and associate companies, distributors and agents. Available net proceeds from sales are distributed to the manufacturing dairy companies and ultimately to dairy farmers. The statute gives the Board discretion in determining the formula for the calculation of the prices to be paid by it for export produce it acquires (s.26). The Board also plays a leading role in the formulation of industry policy and the general development of the New Zealand dairy industry.

The Dairy Board Amendment Act 1992 sought to make the NZDB more independent of government and more accountable to producers and to the industry. Specific changes included:

- formal recognition that cooperative dairy companies (or the dairy farmer suppliers of any other

companies) were the "owners" of the NZDB's capital;

- replacing the NZDB's two government appointees with two directors appointed for their commercial expertise, and giving the industry the responsibility to decide how it wishes to appoint or elect the remaining 11 directors; and
- requiring the NZDB to publish the guidelines by which it would assess applications from prospective additional exporters of dairy products in order to increase transparency in the licensing of exporters other than the NZDB.

Changes in line with general producer board legislation included:

- more commercially oriented financial reporting;
- independent performance and efficiency audits every five years; and
- exempting some of the Board's export related powers from Part II of the Commerce Act.

Another Dairy Board Amendment Act was passed on 31 July 1996. The dairy industry has identified that significant investment will be required to enable the NZDB to capture future market opportunities. This investment will be needed to fund working capital requirements, brand building activities, and technology and distribution systems. The Act provides a means to source the necessary capital from within the dairy industry.

The Dairy Board Amendment Act 1996:

- repeals the NZDB's ownership provision, added in 1992, and replaces it with a share structure;
- provides for the NZDB to have a constitution on matters relating to shares; and
- recasts the NZDB's dissolution provision to provide for the continuation of marketing activities should the NZDB ever be dissolved.

The Act provides for shares in the NZDB to be owned by cooperative dairy companies in proportion to the quantity of milksolids supplied by companies to the NZDB. Existing suppliers of dairy produce who increase their production, and new suppliers, will be

required to purchase additional shares in line with the additional supply. The shares will not have voting rights but can attract a dividend.

If the NZDB was ever dissolved, the new dissolution section will provide for the continuance of the body corporate in a company form, unless the shareholders of the NZDB have decided that its assets and liabilities should be transferred to some other entity or entities. The industry believes that a dissolution section is needed to protect the brand value and usage of those brands owned by the NZDB beyond the life of the NZDB for the advantage of the whole industry.

In line with proposals for other boards, the Act adds directors' duties provisions to the Dairy Board Act similar to those found in the Companies Act 1993.

4.2 Producer Boards Acts Reform Bill

The Government introduced a Producer Board Acts Reform Bill (PBARB) in July 1996. The next stage is for the Bill to be referred to a Select Committee for consideration. The Bill will replace the three Acts governing the Meat, Wool, and Pork Boards with three completely new Acts. The changes are in line with the general move to make boards more independent of the government and more accountable to producers, and there are significant changes to the Meat and Wool Boards' powers. In addition, the fact that the Acts are being replaced rather than amended provides an unusual opportunity to make changes right through the legislation and bring it into line with the way boards operate in practice in the current environment.

The boards and industries are generally supportive of the changes in the Bill. In fact, the Wool Board actually wrote to the Government requesting that most of its regulatory powers be removed. Federated Farmers of New Zealand has been supportive of the changes, but some farmers have expressed concern about the reduction of the Meat Board's powers.

4.2.1 Generic reforms applying to all three boards

Objects: It is proposed that the objects of the three boards be to help attain, in the interests of producers, the best possible net ongoing returns for their industry. For instance, in the case of the Meat Board, the object will be to help attain, in the interests of producers, the best possible net ongoing returns for New Zealand livestock, and for the meat and byproducts derived

from that livestock. In addition, in pursuing their objects, the three boards will have to have regard to the desirability of their wider industry making the best possible net ongoing contribution to the New Zealand economy.

The proposed objects are intended to strike a balance between the boards' accountability to their levy payers, their responsibilities to the wider industry, and the national interest.

Functions: The boards' main functions are in the areas of:

- increasing the demand for their industries' products;
- conducting or funding research and development;
- encouraging the adoption of more efficient processes and practices in their industries; and
- collecting, processing, maintaining and making available information, in order to assist production, investment, processing, product development and marketing decisions.

In the case of the Meat Board, functions will also include facilitating exports to those markets where restrictions and/or requirements are imposed that directly affect access of New Zealand meat and meat byproducts.

These functions will only be performed to the extent that they are consistent with the boards' objects.

Powers: The three boards will retain the powers of a natural person and powers to collect information from their industries.

Each board will also retain power to collect levies from producers. Some commentators have proposed that the boards collect levies under the Commodity Levies Act 1990. They consider that this would make the boards more accountable to producers, and more focused in their operations, as there is a five yearly review under that Act. However, this would not guarantee that the boards, which are required to carry out statutory functions, would be adequately funded for the effective discharge of their statutory responsibilities. The Government did not wish to run the risk that organisations established by statute cannot function because of lack of funds. The accountability provi-

sions that will be included for the three boards in the Bill are stronger than those required by the Commodity Levies Act.

Duties: Each board will be required to:

- account to producers, such as through annual general meetings and regional meetings, on its activities and its use of levy monies and other resources;
- discuss matters relating to board activities or proposed board activities with industry organisations and interests;
- report to the Minister on its performance of its functions and its use of statutory powers;
- undertake five yearly performance and efficiency audits; and
- implement financial reporting similar to companies.

In addition, board directors will be subject to duties similar to those in the Companies Act.

4.2.2 New Zealand Meat Board

The New Zealand Meat Producers Board is governed by the Meat Export Control Act 1921-22. Apart from the amendments outlined earlier in this paper, a number of other changes are to be included in the new legislation.

The Board (to be renamed the New Zealand Meat Board (NZMB)) will comprise 12 directors, up from 11. The NZMB will have six directors directly elected by farmers (see Meat and Wool Boards Electoral Regulations section, below), four directly elected by processors and exporters, one nominated by the New Zealand Dairy Board, and one appointed by the Minister of Agriculture on the NZMB's recommendation. The most significant change here will be the addition of directors elected by processors and exporters. This change is designed to bring expertise from the meat processing and exporting industries to the Board, while also boosting their buy-in to the Board's activities, thereby encouraging industry segments to work together.

While the NZMB's powers will be substantially reduced, it will still have a wider range of powers than

the Wool and Pork Boards. As well as its natural person, levy, and information collection powers, the NZMB will have:

- powers to license exporters (effectively on demand);
- powers to impose requirements on exports in certain circumstances, including allocation of access to tariff quota markets; and
- powers relating to the quality of export meat.

The current licensing regime will not be retained. However, all persons who export meat will be required to hold an export licence, issued by the NZMB on the provision of basic information. The current restrictive system was changed on the basis that it may reduce the incentive for exporters to innovate, block out some (potentially innovative) exporters entirely, increase costs, and deter investment in the industry. It is also less transparent than the proposed system.

In most markets the ability to increase prices by restrictively licensing New Zealand exporters is constrained by competition from other suppliers, and demand for red meat is sensitive to price because of the availability of substitutes. Changes to export licensing were made on the basis that in most markets, any benefits from imposing disciplines are likely to be outweighed by the costs of stifling and deterring investment.

In order to maximise the capture of quota rents, it is necessary to retain powers over exports to markets where importing countries have imposed restrictions. The NZMB will have the power to impose requirements on meat and meat product exports where there are market access restrictions, arrangements or requirements (not being of a hygiene or sanitary nature) imposed by the government of the importing country (such as country specific tariff quotas).

As a subset of its powers to impose export requirements, the NZMB will be responsible for establishing and administering mechanisms for the allocation of access to tariff quota markets. In developing an allocation mechanism the NZMB will be required to consult with the meat industry.

The NZMB will have powers relating to export meat quality (not relating to hygiene or importing countries' sanitary requirements which are the province of

MAF). The NZMB's powers here may be exercised only where:

- there is a reasonable likelihood that one or more sectors of the New Zealand meat industry would suffer significant detriment if such powers were not used;
- the meat industry has been unable to voluntarily implement measures to counter that detriment; and
- the NZ Meat Industry Association (which represents meat companies) has, after wide consultation within the industry by it and the NZMB, given its agreement to the NZMB using these powers.

The Bill provides for the NZMB's current grading powers to be replaced by the power to establish carcass description systems, with the point of compulsion shifting from point of export to "in the works". The NZMB will be required to consult with the meat industry before implementing or amending any carcass description system.

Under its current Act the Board can assume control of any export meat, and make directions relating to slaughter of stock from which meat is intended for export. These powers have not been exercised in recent years, and their existence is likely to deter investment and innovation in the meat industry. These powers will be repealed in the Bill.

The Bill will also repeal the NZMB's transport powers. The rationale for the Board having transport powers in the past was for the industry to have bargaining power with shipping companies. However, in the absence of this provision, exporters could still act together voluntarily to increase their bargaining power. The repeal of this power will enable exporters, acting either individually or collectively, to seek out shipping arrangements that suit their own requirements.

4.2.3 New Zealand Wool Board

The New Zealand Wool Board (NZWB) is governed by the Wool Industry Act 1977. Apart from the proposed amendments listed earlier in this paper, the Bill contains a number of amendments specific to the NZWB.

The Bill proposes that six directors be elected by farmers by direct election on a ward basis (see section

on Meat and Wool Board Electoral Regulations below) and four directors with relevant expertise be appointed by the Minister of Agriculture on the recommendation of the NZWB itself. These replace three directors appointed by the Government, and the position held by the Director-General of Agriculture.

The NZWB will retain powers of a natural person, levy powers and information collection powers. The NZWB will also retain some powers over the quality of wool exports, similar to those proposed for the NZMB.

The NZWB's power to control and influence the transport of wool; power to license operators to receive, store and appraise wool; power to license wool exporters; and power to compulsorily acquire and market wool will be repealed.

The NZWB has been licensing wool exporters permissively, which has led to compliance costs for exporters but few benefits. The NZWB's powers to compulsorily acquire and market all wool have never been used, and cannot be invoked without a referendum of growers. Repealing these powers is designed to remove any indirect effects on commercial behaviour, such as deterring prospective entrants to, and investors in, the wool industry.

4.2.4 New Zealand Pork Industry Board

The New Zealand Pork Industry Board (NZPIB) operates under the Pork Industry Board Act 1982. The NZPIB's statutory powers are limited, and almost all of New Zealand's pigmeat production is supplied to the domestic market. Apart from the proposed amendments listed earlier in this paper, the Bill contains amendments specific to the NZPIB relating to the directorship of the NZPIB and administrative matters.

The NZPIB will have five directors elected by pork producers, and at least two and no more than four directors recommended by the NZPIB.

The NZPIB's powers of a natural person, levy powers and powers to collect information will be retained.

4.2.5 Meat and Wool Board Electoral Regulations

The methods by which farmers elect directors to the NZMB and the NZWB are governed by regulations made under the boards' Acts. These election regula-

tions were replaced in 1995 (Meat Board Regulations 1995 and Wool Board Regulations 1995).

Previously, sheep and beef farmers elected 25 members to an electoral committee and that committee in turn elected directors to the NZMB and the NZWB. In a referendum held in 1993, farmers voted in favour of a direct form of election based on a ward system of voting. Direct elections provide more direct accountability of directors to farmers.

The new regulations, in force since 1995, allow eligible farmers to vote directly for directors on the two boards. The country is divided up into six wards with each ward electing one director to each Board every three years.

4.2.6 Primary Products Marketing Act 1953

The Primary Products Marketing Act 1953 is the umbrella legislation for the regulations providing for the New Zealand Game Industry Board, the New Zealand Kiwifruit Marketing Board and the New Zealand Raspberry Marketing Council.

In 1993 the Primary Products Marketing Act was amended to increase the financial independence of boards established under it. This removed the requirement for these boards to obtain the Minister of Finance's consent to their borrowings and investments.

4.2.7 New Zealand Apple and Pear Marketing Board

The New Zealand Apple and Pear Marketing Board (NZAPMB) operates under the Apple and Pear Marketing Act 1971. The NZAPMB is responsible for all the export marketing of apples and pears produced in New Zealand. The NZAPMB also plays a leading role in the formulation of policy and the general development of the New Zealand pipfruit industry.

The main aims of the 1993 amendment to the Apple and Pear Marketing Act 1971 were:

- to deregulate the domestic market for apples and pears; and
- to increase the independence of the NZAPMB from the Government, and improve the NZAPMB's accountability to the growers who fund it.

In addition the NZAPMB was given the ability to "claw back" money already paid to growers where market returns are lower than the price set by the NZAPMB. Market returns are now the main factor the NZAPMB must consider in setting prices. These changes were designed to limit cross-subsidisation between different types of fruit.

The 1993 amendment provided for the deregulation of the domestic market from 1 January 1994 with the NZAPMB's principal functions being limited to the acquisition and export marketing of apples and pears. The NZAPMB is free to trade in any horticultural product in New Zealand and can obtain Ministerial approval to export horticultural products other than apples and pears.

The NZAPMB has the legal responsibility for all exports of fresh apples and pears, and it generally exports the fruit itself. However, the 1993 amendment required the NZAPMB to publish the guidelines by which it would assess applications from prospective additional exporters of apples and pears. The NZAPMB already had the power to permit others to export, but this amendment made the process more transparent. It is up to the NZAPMB to decide what is in the guidelines and to make the decision on any applications that it receives. This is considered necessary given that the NZAPMB has the legal obligation to accept all apples and pears that meet its standards.

The 1993 amendment to the Apple and Pear Marketing Act replaced the two Government members, who represented New Zealand consumers, with three directors appointed for their commercial expertise. These three directors are appointed by the Minister of Agriculture on the nomination of the NZAPMB itself. The other four directors are appointed by the Minister of Agriculture on the nomination of the New Zealand Fruit-growers Federation. The changes reflected the increased independence of the NZAPMB from the Government and the deregulation of the New Zealand apple and pear market.

The 1993 amendment also:

- required the NZAPMB to commission a performance and efficiency audit at least once every 5 years - the first audit was carried out as at 1 October 1994;
- provided for more commercially oriented financial reporting;

- formalised the NZAPMB's annual general meetings; and
- exempted certain export related powers of the NZAPMB from Part II of the Commerce Act.

4.2.8 New Zealand Horticulture Export Authority

The New Zealand Horticulture Export Authority (NZHEA) is governed by the Horticulture Export Authority Act 1987.² The primary function of the NZHEA is to promote the effective export marketing of horticultural products. The Horticulture Export Authority Act provides for horticultural products to become "prescribed products", the establishment of export marketing strategies for prescribed products, and the licensing of exporters. Currently there are 19 prescribed products.³

The only significant amendment to the Horticulture Export Authority Act was made in 1992. The 1992 amendment was designed to improve the effectiveness of export marketing strategies and improve the NZHEA's efficiency so that Government funding could be ended.

The Horticulture Export Authority Amendment Act 1992 gave greater powers to the NZHEA in relation to what could be included in an export marketing strategy. Strategies can now:

- impose limits on the volume of a prescribed product to be exported to a specific market; and
- limit the number of exporters to be licensed to export a prescribed product.

To restrict these powers the 1992 amendment put export marketing strategies under constant review. Restrictions on the volume and number of exporters automatically expire three years after their approval by the NZHEA.

The 1992 amendment also changed the rules for export licensing:

- export licences must be renewed every five years;
- licence applicants must comply with stricter conditions in order to be granted a licence; and
- the NZHEA can refuse to grant an export licence.

These provisions gave the NZHEA the teeth to enforce the conditions on exports commonly found in export marketing strategies.

The 1992 amendment also:

- reduced the number of board members from nine to five; and
- introduced five yearly performance and efficiency audits - the first one was carried out as at 1 October 1994.

The Government has now phased out its funding of the NZHEA. Today the NZHEA recovers the full cost of its activities by means of fees imposed on recognised product groups.

4.2.9 New Zealand Kiwifruit Marketing Board: Industry Review

The New Zealand Kiwifruit Marketing Board (NZKMB) is governed by the Kiwifruit Marketing Regulations 1977, under the Primary Products Marketing Act 1953. The NZKMB was established in 1988, with substantial grower support, in response to a dramatic fall in orchard profitability in the 1986 to 1988 seasons. The primary function of the NZKMB is to organise and control the export marketing, other than to Australia, of kiwifruit produced in New Zealand.

There have been several amendments to the Kiwifruit Marketing Regulations mainly to amend the price fixing mechanisms that the NZKMB uses to pay growers for kiwifruit.

In 1992, the NZKMB significantly overestimated the value of the 1992 crop and overpaid growers early in the season, leading to the NZKMB incurring a debt of NZ\$93m. In response to this situation the kiwifruit industry initiated a review, which was undertaken in three stages. Stage one of the review resulted in the formation of a national organisation of kiwifruit growers, New Zealand Kiwifruit Growers Inc, to represent

² For information on the establishment of the NZHEA refer to Cottrell and Walker.

³ The 19 prescribed products are: apricots; avocados; blackcurrants; blueberries; boysenberries; citrus; feijoas; garlic; myoga; nashi; nectarines; peaches; persimmons; plums; squash; sweet cherries; table grapes; tamarillos; and wasabi.

the interests of kiwifruit growers, and for the NZKMB to be accountable to. Stage two, a marketing study, recommended options for export marketing strategies and provided the basis for considerable industry consultation. This consultation constituted the third stage of the review, which resulted in a final report being completed in November 1995. The report recommendations were in three main areas.

- "Corporatisation" The NZKMB would be established under its own Act of Parliament, with grower ownership and a share structure. There would be eight directors of the new NZKMB, six appointed by New Zealand Kiwifruit Growers Inc and two appointed by the NZKMB for their commercial expertise. The NZKMB's marketing functions would be performed by a wholly owned marketing company which would be free to focus on commercial marketing without interference from the industry, but would be directly accountable to the new NZKMB.
- "Collaborative Marketing" The NZKMB would be enabled to work with other organisations in exporting kiwifruit. A committee of the new NZKMB would be responsible for receiving and processing applications, and making recommendations to the new NZKMB.
- "Operational Restructuring" The point of supply between grower and marketer would be more flexible than permitted under the current Kiwifruit Marketing Regulations, with growers taking more responsibility for onshore activities such as cool-storage and transport.

The objective of these proposals is to retain a cooperative, single-desk structure while:

- improving marketing performance, mainly through the marketing company concentrating on operating commercially in overseas markets, and the NZKMB working with growers and postharvest operators to improve the efficiency of onshore handling; and
- improving the accountability of the NZKMB to growers.

The final report of stage three of the industry review was presented to the Government and to growers in November 1995. Kiwifruit growers showed their sup-

port for the review recommendations in a referendum held in December 1995.

The NZKMB and New Zealand Kiwifruit Growers Inc have formed an Industry Change Group to implement the review recommendations. Many changes can be made under the existing Kiwifruit Marketing Regulations 1977. The changes proposed for 1996 include:

- setting up the separate marketing company as a subsidiary of the NZKMB;
- appointment and election of new directors for the NZKMB (by the methods currently specified in the Kiwifruit Marketing Regulations) and for the marketing company;
- assessment of collaborative marketing proposals from private organisations; and
- trial contracts with growers, to investigate different allocation of responsibilities between growers and the NZKMB.

Some changes, such as clarification of the NZKMB's ownership, issue of shares, and compulsory changes to onshore operational structures, would need legislative changes. However, various issues need to be worked through before any new legislation can be considered. These include:

- the roles of New Zealand Kiwifruit Growers Inc, the proposed new NZKMB and the marketing company (measures would be needed to ensure transparency and accountability of the NZKMB and marketing company to growers);
- the extent to which more flexible and commercial relationships with growers can be introduced, while retaining the fairness and transparency required for a single-desk marketing operation; and
- details of share value and redeemability.

5. Conclusions

The 1990s have seen a continuation of the changes to producer board legislation that began in the mid 1980s. In 1991 Cottrell and Walker predicted that decision makers were likely to continue making changes to producer board legislation in an incremental manner,

and this has proved to be the case over the last five years. For example, while the Producer Board Acts Reform Bill will substantially reduce the Meat and Wool Boards' statutory powers, many of these powers were not being actively used. The changes to the Dairy Board's ownership provision are substantial, but they stop short of full corporatisation (on the basis that this would be inappropriate while the Board retains its export monopoly status).

Continuing pressure for changes to producer board legislation can be expected from a variety of quarters, including:

- producers in importing countries who wrongly consider that New Zealand's trading boards are subsidised and have an unfair advantage;
- New Zealand producers who wish to have their ownership stake in boards' assets more clearly defined; and
- business lobbyists and economists who consider that the continued existence of statutory producer boards does not lead to net benefits for New Zealand and is inconsistent with the wider changes in other parts of the economy.

In addition, the need to amend legislation for practical or administrative-type reasons should not be underestimated. When producer board Acts are amended or replaced, there are usually a number of changes that have no philosophical origin, but are merely intended to make the legislation work better in practice.

The boards themselves and a majority of producers have generally gone along with the incremental changes of the 1990s, and in some cases have actively sought them. However, both boards and producers have vigorously resisted suggestions of wholesale changes or repeal of producer board legislation. In particular, most producers who export through the

trading boards are firmly of the view that their returns are enhanced by those boards' activities.

Many of the recent proposed changes to producer board legislation put more responsibility in the hands of farmers. AGMs, for example, will be ineffective if farmers do not participate. While turnouts at AGMs to date have been encouraging, it remains to be seen how effectively farmers will hold the boards accountable. Other industry participants will also have to take more responsibility. In the meat industry, for example, the Meat Industry Association will have greater input into decisions on the Board's use of its statutory powers. Further, the reduction in the Board's role will mean that processors and exporters will be able to make more decisions for themselves. If results are poor, they will be less able to blame the Board. As the reforms take effect, it will be necessary to monitor the extent to which industries are taking up the responsibilities they are being given.

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Table 1: Trading Boards

Name of Board and Act under which Board Operates	Statutory Object/Functions	Powers Relating to Export Market	Powers Relating to Domestic Market	Other Powers Conferred by Statute
Dairy Board (Dairy Board Act 1961 - as amended)	statutory functions include acquiring, controlling and marketing export dairy produce	the Act empowers the Board to acquire and market all of NZ's export dairy produce; it may grant permission for others to export	the Board operates a price equalisation scheme between domestic and export market for certain products	<ul style="list-style-type: none"> - authorise appointment or election of 11 of its 13 directors - retain money to maintain reserves - control dairy livestock breeding
Apple and Pear Marketing Board (Apple and Pear Marketing Act 1971 - as amended)	statutory function includes acquiring, exporting and marketing apples and pears	the Act requires the Board to acquire and market all of NZ's export apples and pears that meet export standards; it can give consent to others to export	Nil	<ul style="list-style-type: none"> - establish standards - impose levy on fruit acquired - retain money to maintain reserves
Kiwifruit Marketing Board (Kiwifruit Marketing regulations 1977 under the Primary Products Marketing Act 1953 - as amended)	statutory object is to obtain in the interests of NZ producers, the best possible long term returns for kiwifruit intended for export	the regulations require the Board to acquire and market all of NZ's export kiwifruit (except exports to Australia); private traders can export only if acting as an agent of the Board	Nil	<ul style="list-style-type: none"> - establish standards - retain money to maintain reserves
Raspberry Marketing Council (Raspberry Marketing Regulations 1985 under the primary products marketing Act 1953 - as amended) (currently under review)	statutory functions include regulating, controlling and promoting the orderly marketing of raspberries both locally and overseas	the Council has the power to purchase, sell, or dispose of raspberries on the world market as it thinks fit; private traders can export only if acting as an agent of Council	the Council has the power to fix quotas for supply to domestic manufacturers and resellers	<ul style="list-style-type: none"> - undertake production and market research - impose levies on growers
Hop Marketing Board (Hop Marketing Regulations 1939 under the Marketing Act 1936 and the Agriculture (Emergency Powers) Act 1934 - as amended (currently under review)	statutory functions include regulating and controlling the marketing, both locally and overseas, of all hops produced in NZ	subject to Ministerial approval the Board controls and regulates exports as it sees fit; it acts as the sole agent for hop producers	subject to Ministerial approval the Board controls the domestic hop industry including imports	<ul style="list-style-type: none"> - establish standards - arrange shipping and storage - register producers

Table 2: Non-trading Boards

Name of Board and Act under which Board Operates	Statutory Object/Functions	Powers Relating to Export Market	Powers Relating to Domestic Market	Other Powers Conferred by Statute
Meat Producers Board* (Meat Export Control Act 1921 - 22 - as amended)	statutory object is to ensure that the producers in New Zealand of stock from which meat is derived obtain the best possible long-term returns for that stock	the Board is actively involved with product promotion; it has unused powers to take control of export meat; it licenses exporters	Nil	- establish grading standards - arrange shipping* - impose a levy on stock slaughtered
Wool Board* (Wool Industry Act 1977 - as amended)	statutory object is to obtain in the interests of growers the best possible long-term returns for NZ wool	the Board is involved with product promotion and research; it has latent powers to acquire all wool for export; it licenses exporters and requires all export wool to be certified	Nil	- establish standards - control freight, storage* - impose a levy on wool sold
Pork Industry Board* (Pork Industry Board Act 1982 - as amended)	statutory functions include promoting and assisting with the orderly development of the industry and marketing of its products; the PBAR Bill will insert an object for the PIB*	N/A	the Board is actively involved with product promotion	- impose a levy on pigmeat producers
Game Industry Board (Game Industry Board Regulations 1985 under the Primary Products Marketing Act 1953 - as amended)	statutory functions include promoting and assisting with the orderly development of the game industry and marketing of its products	the Board does not trade; it has latent powers to license exporters of deer products	Nil	- impose a levy on deer and deer products - undertake and control research
Horticulture Export Authority (Horticulture Export Authority Act 1987 - as amended)	statutory primary function is to promote the effective export marketing of horticultural products	the Authority does not trade; it approves export marketing strategies and licenses exporters for horticultural products prescribed under the Act - there are currently 19 prescribed products	Nil	- undertake market research - latent power to levy

* The Producer Board Acts Reform Bill introduced into Parliament in 1996 will refocus non trading Boards away from regulating their industries towards using farmers' levies to increase demand, fund research and development etc. The Meat and Wool Boards' control/acquisition powers and some other powers will be repealed.