Globalisation by Stealth:

The Proposed New Zealand-Hong Kong Free Trade Agreement & Investment

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March 2001

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Published by:
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Preface

From Seattle, to Prague, to Chiang Mai, to Okinawa, to Melbourne the protests against globalisation have sent a clear and potent message: people are no longer prepared to sit back and see the interests of the very rich and powerful dictate the most basic decisions that affect their lives. As a result the World Trade Organisation and APEC both appear paralysed, the World Bank and International Monetary Fund face an ongoing crisis of legitimacy, and the corporate elite and global financiers are constantly under siege.

The response has been a multi-pronged strategy to reinvigorate globalisation by stealth. Behind the scenes at the WTO negotiations are underway to extend the potentially most far-reaching of its agreements, the General Agreement on Trade in Services (GATS). Major battles on public services, environment, health, education, culture and broadcasting, are brewing as people mobilise and governments come under pressure around the world. Other discussions are taking place on extending the intellectual property rights agreement to the patenting of life forms and opposition is mounting to attempts by the pharmaceutical giants to defend the monopoly guaranteed by WTO agreements and deny poorer countries the right to copy lifesaving drugs.

At the same time, regional and bilateral agreements are seeking to stitch together from below what is no longer so easy to achieve on a global scale. Negotiations are beginning to extend the North American Free Trade Agreement from Canada, the US and Mexico to encompass a Free Trade Area of the Americas, covering 34 countries. Already a series of hugely controversial disputes brought by investors has seen regulations protecting health, safety, public services and the environment held in breach of NAFTA, resulting in massive compensation awards and the withdrawal of sound social and environmental policies. The consequences of that Agreement being extended over the whole American continent are inconceivable.

Among APEC countries a rash of negotiations has broken out in an attempt to revitalise its goal of a free trade and investment by 2010 for its richer members and 2020 for its poorer ones. The new Labour Alliance Coalition has taken the lead in this process, indicating that the evangelical commitment to free trade and investment policies of recent decades remains unchanged.

Last year a radical free trade and investment agreement with Singapore, described by its architect as a Trojan Horse for bigger deals, was negotiated with customary secrecy. A cosmetic consultation process was designed to deflect growing demands for meaningful democratic participation in the treaty-making process. An equally pointless select committee process and parliamentary vote took place, given that Cabinet retained the sole right to determine the content and endorsement of the deal. The Government is currently negotiating a similar Agreement with Hong Kong. This will build on the Singapore deal, and on an Investment Promotion agreement with Hong Kong that was signed back in 1995 about which people know very little. Yet that agreement already replicates many of the most offensive elements of the defeated Multilateral Agreement on Investment, which was itself based on the NAFTA investment rules mentioned above.

Working on the basis that 'forewarned is forearmed' ARENA is committed to building a campaign of opposition to this strategy of globalisation by stealth, whether in bilateral and regional agreements or at the WTO. As with the MAI campaign, we believe that a combination of Maori, unions, the elderly, local councils, farmers, small businesses, students, local communities and many others who are paying the price of globalisation every day can force the Government to change tack.

The benefit of the Singapore Free Trade and Investment Agreement is that we now have the model for what comes next. There are also many lessons to learn from what is happening with similar deals around the world. Dr Bill Rosenberg, in his incomparable and meticulous way, has drawn together that evidence and prepared a comprehensive account of the implications of the proposed Agreement with Hong Kong. It provides a compelling case against that Agreement, and others of its ilk, and potent ammunition on which to build a campaign. We hereby challenge both parties in Government to impose a moratorium on all its current negotiations and respond, in detail, to this evidence as part of a full, public, participatory and open debate.

Professor Jane Kelsey

Summary

Introduction

The New Zealand and Hong Kong governments are currently engaged in "exploratory talks" with the aim of negotiating a free trade and investment agreement (FTIA). Though the government has failed to release any details of what is proposed to the public, this paper finds that if such an agreement is based on the recently ratified Singapore-New Zealand Closer Economic Partnership (SNZCEP), an existing Investment Promotion and Protection Agreement (IPPA), and the WTO, it presents the following dangers to New Zealand, among others:

- Destruction of the remaining textiles, clothing and footwear industry
- Litigation by investors in closed international tribunals against the effects and existence of laws and regulations that protect our environment and economic development, resulting in multi-million dollar compensation payments and possible reversal of local and central government policies.
- Further pressure to commercialise our social services such as education, health, public broadcasting, waste disposal and water.
- Further constraints on the use of central and local government procurement to encourage economic development.
- Growing constraints on local government in all these areas.
- Encouragement of large short term international capital movements, and further loss of the control of capital movements and foreign investment which are essential to develop New Zealand's economy and protect ownership of land and fishing quota.

Background

The Singapore-New Zealand Closer Economic Partnership (SNZCEP) came into effect on 1 January 2001. New Zealand has had an Investment Promotion and Protection Agreement (IPPA) with Hong Kong since 1995. Underpinning the agreement with Singapore is the WTO and APEC.

Like the SNZCEP, a FTIA would be seen as maintaining the momentum towards the government's declared intentions of building larger free trade areas in the Pacific, particularly one with ASEAN, and a "Pacific 5" agreement with Singapore, Chile, the U.S.A. and Australia – and possibly South Korea.

However an FTIA with Hong Kong would have the added significance of its close relationship with China, of which it is formally a part.

This paper looks primarily at the investment aspects of such an agreement.

Investment between New Zealand and Hong Kong

Investment flows between New Zealand and Hong Kong are heavily in Hong Kong's favour. At March 2000, companies with a presence in Hong Kong had NZ$1.067 billion invested in New Zealand according to Statistics New Zealand. However equivalent Hong Kong government figures show a startling discrepancy which highlights aspects of the investment relationship. As at 31 December 1998, Hong Kong authorities recorded NZ$9.2 billion of Hong Kong-sourced direct investment in New Zealand. On inquiry, Hong Kong authorities attributed the $8 billion difference to companies in Hong Kong seeking "tax advantages" by parking funds in New Zealand short term. Hong Kong investment flows show a very erratic pattern, and investment has fallen since the 1997 financial crisis. Hong Kong investors in New Zealand have regularly taken out more in dividends than they have earned.

Hong Kong investment in New Zealand is largely in business-oriented services: commercial property, hotels, construction, retail, importing and distribution. There are also many small investments in forestry and lifestyle properties, and some significant farms including Cecil Peak Station near Queenstown. However a large proportion of this investment is from other countries using Hong Kong as a convenient base – presumably for tax and other avoidance purposes. Countries investing in New Zealand through Hong Kong include Australia, Bangladesh, China, Indonesia, Luxembourg, Malaysia, Monaco, Saudi Arabia, Singapore, Switzerland, the U.K., and the U.S.A. They include major interests in commercial property, fish farming (including 80% of New Zealand's king salmon farming), forestry (including the 6th and 16th largest forest owners), pulp, plastics, and packaging manufacturers, hotels, and distribution.

New Zealand direct investment in Hong Kong is also unusual: its net investment is *negative*. At March 2000, that was made up of NZ$5.2 billion of equity investment, offset by NZ$5.8 billion owed in intra-company loans by New Zealand companies to their Hong Kong subsidiaries, leaving a net liability of NZ$583 million at March 2000. Hong Kong is being used as a major source of finance by a small number of companies in New Zealand. It is not clear what the very large equity investment represents, but it seems probable that it may also only represent paper companies set up to hold investments elsewhere in Asia, especially China. Much of it may be owned by New Zealand subsidiaries of overseas companies, not New Zealand owned companies.

Hong Kong investment internationally – both outwards and inwards – is heavily dominated by tax havens. At the end of 1998 tax havens made up four of the top ten destinations of Hong Kong direct investment abroad, and four of the top ten sources of investment in Hong Kong. Surprisingly, New Zealand is number six of Hong Kong's investment destinations – ahead of the U.S.A. and just behind the U.K. However, it must be always borne in mind that much of what is called "Hong Kong" investment is that of a Hong Kong subsidiary of a company owned elsewhere. Much of the investment is not productive but for the purposes of tax avoidance.

Hong Kong's investment policies

Though often held up as the model of a free market, open economy, Hong Kong has a wide range of policies to encourage domestic investment, which often look more like Alliance policies than those of Labour or National. Hong Kong uses large projects (like a huge new airport) to stimulate the economy. It also has venture capital funds, financial and technical support, export credit insurance, and government-funded industrial estates and a Science Park, aimed at supporting and incubating businesses in areas considered growth areas (such as technology) by the government. To qualify, companies "have to be 'Hong Kong companies' and 'local companies'".

There is also widespread regulation of the domestic economy, including "schemes of control" for monopoly service providers, controls on banking and workers' accident insurers, membership of the Stock Exchange, ownership of coastal shipping, and restrictions on international telecommunications.

Externally it has virtually no controls on foreign investment or capital flows. However, Hong Kong has not been nearly as willing as New Zealand governments to open its services to overseas ownership: Hong Kong's commitments to the WTO's General Agreement on Trade in Services (GATS) are substantially less than New Zealand's. It has made no commitments in education or broadcasting, for example, where New Zealand's commitments have caused controversy. This wide gap will put New Zealand in a weak position in FTIA negotiations, in which services will almost certainly be a focus.

The relationship with China

Hong Kong is part of China, under China's "one country, two economic systems" policy. However Hong Kong's autonomy is used for their own convenience by China, Hong Kong, and the transnational corporations active in them.

Hong Kong handles about half of all exports to Mainland China, and accounts for about half of foreign direct investment there. China is also a major investor in Hong Kong, with a gross asset value approaching US$200 billion.

However, Hong Kong's main role is "intermediation". It is moving rapidly away from manufacturing based on low-cost labour, making money instead from organising production on behalf of buyers – mainly in the industrialised world – using the cheapest raw materials, factories and labour, wherever it can find them in Asia, the Middle East and West Africa. Since China is currently one of the cheapest sources of labour, Hong Kong is ideally placed for this function. Just one such trading house alone, Li & Fung, has offices in over 20 countries and oversees the entire fabrication of a good, from purchasing raw materials and planning production to monitoring manufacturing among 7,500 independent plants to which it subcontracts orders.

Hong Kong is no longer a low wage economy: its per capita GDP in 1999 was approximately NZ$45,600 – 70% higher than New Zealand's NZ$26,700. Though it is one of the most unequal societies in the world, the average daily wage for production workers in manufacturing is approximately NZ$104.

In 2000, 88.5% of Hong Kong's exports were "re-exports" – exporting imported goods that have undergone no further processing or only simple processing in Hong Kong. A third of those re-exports are to the mainland of China, and 43.6% of Hong Kong's imports are from the Mainland. Goods are processed partly or fully in China and then re-exported to Hong Kong, which puts large markups on the goods – averaging 24%. The markups amounted to 10% of Hong Kong's entire GDP in 1996 – more than manufacturing.

There is strong evidence that the use of Hong Kong is to allow transnational corporations who manufacture in China (which accounted for 41.9% of China's exports in 1998) to make their profits in low-tax countries, rather than where they sell the final goods. It may also enable them to avoid or take advantage of trade agreements such as the Multi-Fibre Agreement on footwear, clothing and textiles.

There is therefore extremely close integration between companies in Hong Kong and China. Hong Kong traders have considerable control of the processing and can be expected to attempt to manipulate that to minimally satisfy whatever "rules of origin" requirements are stipulated in a trade agreement:

Yet it is notable that 58% of Hong Kong's "domestic exports" were still "articles of apparel and clothing accessories" and textiles in the year ended November 2000 – worth about NZ$25 billion. While these are in theory produced in Hong Kong, the move of Hong Kong out of manufacturing and its high and increasing integration with external subcontractors – especially in China – implies that the "manufacturing" of these items in Hong Kong is likely often to be minimal. A large part of the value is likely to be markup, with just enough processing to satisfy "Hong Kong origin" requirements of the importing country.

It will be exceptionally difficult to define rules of origin, for either goods or services, that are enforceable and distinguish Hong Kong-made "domestic" products from ones substantially made in China or elsewhere. There is huge potential for Hong Kong's exports to devastate the remaining New Zealand textile, clothing and footwear sector.

Implications of a Hong Kong FTIA

Services

Services will be a focus of negotiations. Education, and professions including architecture and engineering are likely to be targets for New Zealand in Hong Kong. Hong Kong can be expected to demand concessions in return. But New Zealand has relatively little to give in services: it already has one of the most wide-ranging commitments of any WTO member, including those areas, so concessions will be particularly painful. In the Singapore agreement, concessions in services included environmental and ambulance services among many others.

If Hong Kong asks for like-for-like concessions, then New Zealand's public education and health systems, both of which have become commercialised and open to private sector competition, are at risk of being locked opened to commercial competition from companies based in Hong Kong. That would undermine the government's proclaimed intention to restore the public dimension to these systems. It will also place a further block on backing out of the liberalisation in a number of services which is now regretted.

In any case, it is difficult to see New Zealand benefiting from opening Hong Kong's education system to New Zealand educational institutions. Hong Kong has a well developed tertiary education system, with considerably better student:teacher ratios than New Zealand, particularly in tertiary education. Though it has a shortage of facilities, costs and quality demands will be high, and will require significant capital investment – when most New Zealand institutions are critically short of funding. The institutions are already attracting Hong Kong students to New Zealand without the need of a full FTIA. Specialised agreements on mutual recognition of qualifications could be made without the wide-scale concessions an FTIA will entail.

Jobs created in service industries are of very mixed quality. Those created in the sectors favoured by Hong Kong-based investors are likely to be largely in hotels and distribution, such as supermarkets – jobs which are notoriously low paid, insecure, casualised and deunionised. Its investment in property and business services is unlikely to provide many jobs – if it is productive investment at all.

Government procurement

In the SNZCEP, all government procurement of goods and services over the equivalent of $125,000 were opened to Singapore on an equal basis to local companies. This area is particularly contentious because it directly affects local government. Local service suppliers – such as in "environmental services": rubbish collection, sewerage, and perhaps services in relation to water supply – may find themselves competing with companies from around the world using a Hong Kong base for tendering. Central and local government are prevented from imposing conditions on suppliers to encourage local development, gain technology, or earn foreign exchange.

The Investment Promotion and Protection Agreement

The New Zealand-Hong Kong Investment Promotion and Protection Agreement was signed in 1995, and is very similar to one signed with China in 1988. Both have the rigidity of minimum 15 year terms, with protection to continue for a further 15 years for any investment in place if the agreement is subsequently terminated. Similar agreements were signed by the previous government with Chile and Argentina which await only ratification.

Two features stand out: the expropriation provisions, and the disputes procedure. These provisions are very similar to ones at the centre of public concern in the OECD-sponsored Multilateral Agreement on Investment (MAI) which was defeated in 1998 after widespread international opposition. These were in turn modelled on the NAFTA agreement.

The expropriation provision in NAFTA has been interpreted by tribunals to include loss of an investment's value through loss of profitability. It means that any change in environmental regulations by central or local government which reduced the profitability of an enterprise could result in awards of compensation and perhaps reversal of a change in law or regulation. Even the threat of such costly actions is a brake on actions a government would otherwise have been taken in the interests of its citizens.

There are now many cases under NAFTA. They have been described by one U.S. attorney, Lydia Lazar, as "a strategic windfall for companies unhappy with actions taken by local or federal governments, actions that impede or thwart their corporate ambitions". Claims by corporations regularly amount to hundreds of millions of U.S. dollars, and settlements in the tens of millions.

In one example, the Ethyl Corporation sued the Canadian government for about US$250 million for restricting use of MMT, a petrol additive produced by the corporation, because of its danger to health and car emission systems. Ottawa was forced to repeal its ban, pay US$13-million in damages to Ethyl and withdraw its assertion that MMT caused damage.

In another case, Metalclad Corporation, a US waste disposal company, was awarded US$16.7 million when the Mexican state of San Luis Potosi refused it permission to re-open a waste disposal facility after it was revealed that subterranean streams supplying water to the local community ran under the landfill. According to the Mexican government, "Metalclad knew the local community opposed it and they decided to force the situation, ignored the issue of the local permit and built without having a permit." This case is doubly significant because it involved local government – not a signatory to NAFTA.

New Zealand examples in recent years that could spark such investor claims include the halting of the Britomart scheme in Auckland, the renationalisation of ACC, the slowing of fast ferries in the Marlborough Sounds, and the 1998 electricity "reforms".

It is particularly important to note that any company in the world could take advantage of the IPPA with Hong Kong: all they need is to own their investment through a paper subsidiary company in Hong Kong. In addition, any Hong Kong citizen in New Zealand can use it, while New Zealand citizens and companies cannot. An example (under the equivalent IPPA with China) is the principal of the Britomart project, Jihong Lu, who is a Chinese national.

As controversial as the expropriation provision is the disputes procedure under which such actions are taken.

Article 9 of the IPPA provides for investor enforcement: it gives investors the right to force such disputes to arbitration under the Arbitration Rules of the United Nation's Commission on International Trade Law (UNCITRAL). Effectively this gives corporations equal standing with governments and a potentially greater right to enforce outcomes of disputes arising under the agreement than the governments themselves – an unprecedented development in the history of nations' sovereignty.

The process can be seen as a privatisation of the commercial justice system. The arbitral tribunal is appointed by the parties to the dispute. No third parties, such as a local authority, affected neighbours, or employees, have any standing in hearings, if hearings do occur (all submissions may instead be writing). Indeed "hearings shall be held in camera unless the parties agree otherwise", and third parties will not normally even be aware that the dispute is being heard. There is no right for the public to listen to proceedings or view evidence or submissions presented. The final "award may be made public only with the consent of both parties" so the corporation party to the dispute can veto any decision being made public. So can a government which is embarrassed or nervous of public or investor reactions.

According to Lazar, "Substantively, arbitral decisions reflect the economic interests of businesses. Arbitrators do not explicitly incorporate any other interests, such as environmental, social, or political concerns." Yet their decisions have enormous impacts on such concerns.

Although the SNZCEP has no expropriation provision, it has an even stronger investor-government disputes procedure than the IPPA. The merging of the two in a FTIA, is likely to increase the danger provided by the existing IPPA.

The SNZCEP

Duplicating the provisions of the SNZCEP would have many further effects on investment.

There is more in the SNZCEP that investors can litigate. For example, its "national treatment" article means that that overseas investors must be treated at least as well as local investors – from the point of starting up their investment right through to its sale. National treatment obstructs policies aimed at the "incubation" of new industries and ensuring their longer term survival, which is part of the more active economic development policy of the Labour/Alliance government. To nurture such industries, preferential treatment in the way of grants and support are given. Under the SNZCEP those must be offered to investors with a presence in Singapore (and if agreed, Hong Kong).

It prevents controls on "hot money". Such controls were used very effectively by Malaysia to prevent further damage during the 1997 financial crisis. In a Hong Kong FTIA, that would be even more constraining on future government actions: Hong Kong is a major financial centre attractive to speculators (from any country) and with no restraints on their activities. We have already seen $8 billion in "hot" money moved in and out, so the danger is real. It provides a huge back door for speculators and those wishing to withdraw investments quickly should a New Zealand government need to re-impose capital or exchange controls.

It also prevents more stringent criteria for foreign investment being required: it cements in the current threshold of $50 million for non-land investments requiring the approval of the Overseas Investment Commission, for example. As recently as November 1999 the threshold was $10 million.

The effect therefore is to immediately freeze or weaken the controls currently available, making it more difficult to put in place more stringent controls in future. Further, there is a commitment to progressively weaken even those controls that remain.

Conclusions

Hong Kong-based investors have been active in New Zealand, but rarely have Hong Kong-owned investors put money into areas that would be of most benefit to New Zealand. They will have produced few jobs, and those jobs are likely to be low-paid and insecure. Indeed, there is strong evidence that much of the investment is for tax avoidance purposes rather than any interest in productive investment. Those investments in New Zealand that have some productive purpose generally come from third countries whose investors are using Hong Kong as a port of convenience, presumably to avoid tax or other requirements – or perhaps to gain protection from the IPPA. None of this is a good reference for the activities of "Hong Kong investors" in New Zealand.

It is very difficult to see what gains can be claimed from a wider Hong Kong-New Zealand agreement. Both countries have very open economies. In some ways – particularly in the important services sector – New Zealand has liberalised faster than Hong Kong. That leaves little for a formal agreement to do. Agreements reached in the SNZCEP on recognition of qualifications, for example, could be negotiated separately. Any real concessions by Hong Kong in the services area must be bought at a high price in terms of further commercialisation of our social and environmental services here, or further tariff cuts in our textile, clothing and textiles industries which are extremely vulnerable to Hong Kong's exports.

Yet the dangers are very real. Such an agreement would reinforce the already dangerous IPPA, opening New Zealand to a high risk of continual threats of litigation by corporations who dislike environmental, economic and social policies that adversely affect them. Those threats will be very costly in money terms, and in intimidating central and local government, further reducing their options for policies that provide the social and economic development that New Zealanders need.

It would also reinforce the obstacles already in place against New Zealand being able to reinstate capital controls and effective regulation of overseas investment. Indeed, its intention would be to increase the speed of deregulation. Despite some signs of progress over the last year, New Zealand still has a mountainous foreign debt ($109.1 billion, or 105.3% of GDP at

March 2000), and a precarious current account deficit ($7,336 billion, or 7.0% of GDP at June 2000). That could lead to crisis at any time.

Continued liberalisation in itself will conflict with the Labour/Alliance Government's economic and regional development policies. Many options for economic development, and closing social and regional gaps will be permanently foreclosed to New Zealand national and local governments. It is paradoxical that Hong Kong's own domestic policies for encouraging local development often look more like those of the Alliance than of Labour (let alone National).

The government should declare its intentions with regard to the Hong Kong negotiations with urgency. Rather than continue its current secretive "talking about talking" stance on the negotiations, it should emulate the Canadian and U.S. governments which have recently made public their negotiating positions on the Free Trade Area Of the Americas agreement, and have released a draft text.

If it decides to pursue these negotiations, it should make public its timetable, and periodically release draft texts for public comment. It should encourage and stimulate thorough public debate, rather than repeat its phoney consultation stance in the SNZCEP negotiations. There, "consultation" was a one-way briefing of hand-selected interested parties, and Parliamentary scrutiny was admitted by all involved to be simply an empty formality.

However from the evidence gathered here, there are considerably more dangers than benefits in such an agreement. The government is better advised to announce that it has decided not to proceed.

Instead, it should move to abrogate the Hong Kong-New Zealand and China-New Zealand IPPAs before the dangers of the expropriation and investor disputes provisions are exploited by corporations in the way that is occurring with increasing frequency under NAFTA.

Introduction

The New Zealand and Hong Kong governments are currently engaged in "exploratory talks" with the aim of negotiating a free trade and investment agreement (FTIA). Reportedly, it will be based on the Singapore-New Zealand Closer Economic Partnership (SNZCEP), which came into effect on 1 January 2001. In addition, New Zealand has had, since 1995, an Investment Promotion and Protection Agreement (IPPA) with Hong Kong which has a minimum term of 15 years[2].

The agreement with Singapore was seen as a "Trojan Horse" for further similar agreements with other ASEAN nations and Australia, according to Tim Groser former chief trade negotiator for New Zealand, and now the head of Asia 2000[3]. The government is pursuing full free trade and investment agreements with Chile, ASEAN nations as a group, and the "Pacific 5" (U.S.A., Australia, Singapore, Chile and New Zealand, though South Korea has been suggested as an addition), while continuing to negotiate the widening of the CER agreements with Australia. The Hong Kong negotiations will be used as evidence that that strategy is working, and that the momentum towards free trade among the APEC countries is being maintained. So, like the Singapore agreement itself, the Hong Kong negotiations have wider significance than simply the Hong Kong–New Zealand relationship.

There is an additional feature that would make a Hong Kong agreement unusually significant: the fact that it is part of China. It is deliberately used by China as a door to the world. Much of its trade is channelled through Hong Kong. Its international companies (such as CITIC, and China National Foreign Trade Transportation Corporation, which are both active in New Zealand) maintain active branches and subsidiaries in Hong Kong. Many corporations from Hong Kong and other countries maintain closely related operations in both Hong Kong and China, which may be very difficult for an outside party to disentangle. Therefore the agreement with Hong Kong must be seen, to some degree, as an agreement with China itself.

At the time of writing, there is no publicly available information as to the content of any Hong Kong agreement. That is typical of such negotiations, and increasingly at odds with international practice, such as the Canadian government, which on 13 December 2000 released Canada's written submissions to Free Trade Area of the Americas (FTAA) negotiating groups, the release of a draft FTAA text by the U.S. on 17 January 2001, and the release of drafts of the Multilateral Agreement on Investment at the OECD, admittedly only after intensive public pressure. Without such information being made available during negotiations, public debate is deliberately hamstrung.

This paper therefore uses the plausible assumptions that any agreement will include the provisions of the IPPA, will be based substantially on the Singapore-New Zealand agreement, where it does not weaken the IPPA, and will be consistent with the WTO agreements, notably (in the context of investment), the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Investment Measures (TRIMS). The SNZCEP also referred to

[2] This Agreement (NZTS 1995, No 14) was signed by Don McKinnon in 1995 and entered into force that year. A very similar agreement was signed by David Lange with China itself in 1988, and came into force in 1989 for a minimum of 15 years (NZTS 1988, No.10).

[3] "Beyond CER: new trade options for NZ", address by Tim Groser to the New Zealand Institute for Policy Studies, 15/3/00.

non-binding declarations made under APEC, and deliberately put some of them into concrete and binding form. A Hong Kong agreement is likely to do the same.

This analysis looks at the current investment position with regards to Hong Kong-based investment in New Zealand. It uses that information to anticipate the effects of further liberalisation of investment in the proposed FTIA.

As in the Singapore agreement, it is likely that the area that will be emphasised by the New Zealand Government will be services. It will claim market-opening gains for New Zealand companies in the services sector. Both sides will be trying to extend their commitments in the General Agreement on Trade in Services (GATS) under the WTO. Both have already very liberalised services sectors, but New Zealand even more so than Hong Kong. There are a number of concerns this raises for New Zealanders: how will it affect education, health, environmental and other social services? Will it lead to further concessions and removal of more of the already feeble controls on foreign investment here? Will it make even more difficult the restoration of domestic capacity in depleted areas such as shipping, broadcasting, banking and government procurement?

There is thus cause for concern that this agreement will further liberalise an already almost uncontrolled foreign investment regime, and certainly put yet another obstacle in the way of reclaiming some of the necessary controls in future.

The current situation

Data on the investment relationship between New Zealand and Hong Kong are, like most bilateral data, hard to come by. Statistics New Zealand provide the information shown in Table 1, which has been available only since 1994 and relates only to *direct* investment (investment where control is intended, as distinct from portfolio investment or debt).

It shows a record that is remarkable both for its inconsistency and for the frequently negative investment flows. The end result – the stock of investment of one country in the other – shows Hong Kong NZ$1.65 billion ahead of New Zealand at the end of March 2000. That is because Hong Kong had direct investments worth $1.067 billion in New Zealand, but New Zealand had a *negative* direct investment of $583 million in Hong Kong.

Table 1
Investment between Hong Kong and New Zealand
Years ended 31 March
NZ$million

	1994	1995	1996	1997	1998	1999	2000
Net Flow of NZ Direct Investment to HK	434	774	30	-488	-543	-706	117
Net Flow of HK Direct Investment to NZ	-56	375	-512	-63	720	-95	179
Total NZ Direct Investment in HK	-743	175	-112	-678	-1,086	-1,632	-583
Total HK Direct Investment in NZ	1,153	1,612	1,439	1,355	1,117	875	1,067

(Source: Statistics New Zealand – Direct Investment Statistics by Country and Country Groupings, March 1998, March 1999; New Zealand's International Investment Position, and Balance of Payments, to 31 March 2000)

The negative flows and stock are unusual: the only other country in which New Zealand has a significant negative investment stock is the Netherlands. Given that the negative position with Hong Kong seems to be long-term it must reflect the nature of the investment. It is largely because companies based in New Zealand (not necessarily New Zealand owned ones) are setting up Hong Kong subsidiaries and using them as a channel to borrow funds. We go into this in more detail in the next section.

New Zealand investment in Hong Kong

Statistics New Zealand provided the data in Table 2, which breaks down the direct investment data further for the years 1998-2000. Looking first at the investment stock (total New Zealand Direct Investment in Hong Kong), the latest data, for 31 March 2000, shows that New Zealand-based companies have an equity investment of $5.2 billion in Hong Kong, but *owe* those subsidiaries $5.8 billion in other long-term borrowing, resulting in the $583 million negative investment stock position. In 1998 and 1999, the position was similar, but in changing proportions. In 1998, New Zealand equity in Hong Kong amounted to only $3.1 billion and debt amounted to a *liability* of $4.0 billion; in 1999 equity had risen by almost $1 billion to $4.0 billion, but the debt had risen even faster, to $5.6 billion. Both equity and debt rose further in 2000, but all the debt was by then long-term.

Table 2

Years ended 31 March

NZ$million

Net Flows of New Zealand Direct Investment into Hong Kong

	1998	1999	2000
Equity Capital	C	C	C
Reinvested Earnings	247	174	C
Other Long-Term Capital	C	C	C
Other Short-Term Capital	-	-21	-2
Total Direct Investment flow	-543	-706	117

Total New Zealand Direct Investment in Hong Kong

	1998	1999	2000
Equity Capital	3,087	4,004	5,216
Other Long-Term Capital	C	C	-5,799
Other Short-Term Capital	C	C	-
Total Direct Investment	-1,086	-1,632	-583

Symbols: C – confidential; "-" – nil, zero or too small to be expressed
Source: Statistics New Zealand, January 2001

Statistics New Zealand inform me that the majority of the (positive) $5.2 billion in equity does not belong to those owing the $5.8 billion. There are therefore two distinct types of investment taking place – one for more or less conventional investment purposes, and one simply to use Hong Kong as a base to borrow funds.

In regard to "conventional" investment, there is still much that is unexplained. $5.2 billion is a large amount of investment for New Zealand-based companies – equivalent to about half of the (net) investment in Australia, New Zealand's largest investment destination, for example (which was $10.4 billion at 31 March 2000[4]), and considerably higher than the next largest, Canada ($2.8 billion at 31 March 2000). The main large "New Zealand" investments in Hong Kong are those owned by Brierley Investments Ltd (no longer a New Zealand company, but probably regarded as New Zealand based for at least some of these statistics), but these would not amount to $5.2 billion. It is therefore likely that, as will be seen below with much "investment in Hong Kong", it is there only nominally, for tax and jurisdictional reasons, but in fact represents investment elsewhere, probably in China and elsewhere in Asia.

Turning to those New Zealand-based investors using Hong Kong as a base to borrow funds, it seems likely from the pattern of data which Statistics New Zealand could not release because of confidentiality, that it is a very few companies that are involved in borrowing in this way from Hong Kong.

The overall pattern would therefore suggest that much New Zealand investment in Hong Kong is not productive for Hong Kong. Indeed, Hong Kong deliberately encourages such behaviour.

It should also be borne in mind that "New Zealand" investment represents investment by companies with a legal presence in New Zealand. They are not necessarily New Zealand owned, and the proceeds of those investments may never be remitted to New Zealand. Brierley Investments Ltd (BIL) has already been cited as an example. It is largely overseas owned (83% overseas owned as of October 2000 according to the Overseas Investment Commission, registered in Bermuda, headquartered in Singapore, and controlled by Singapore/Malaysian/Indonesian interests) and has significant Hong Kong investments. However those investments would have been counted as "New Zealand" investments in Hong Kong at least until it moved its registration to Bermuda in 1999, and perhaps beyond that if they were held by one of the BIL's large number of New Zealand-registered shelf companies.

Hong Kong investment in New Zealand

According to Statistics New Zealand, total Hong Kong investment in New Zealand reached a peak in 1996 at $1.6 billion and reduced to not much more than half that in 1999: $857 million. It rose again by $192 million in 2000, but is still only two-thirds (66%) of its peak. The flows indicate disinvestment in 1996 (over half a billion dollars), 1997, and 1999. Some of this is presumably due to the 1997 financial crisis in Asia, but the trend began before that.

However a startlingly different picture is given by the Hong Kong Government's Census and Statistics Department (HKCSD). In March 2000, it published statistics which show Hong Kong's full investment position for the first time. Only those for 1998 are available. Those relating to New Zealand are summarised in Table 3. Note that data on outward investment only (that is, outward from Hong Kong) are available, for reasons discussed below.

Notable is the huge discrepancy between the Hong Kong and New Zealand official data for Hong Kong investment stock in New Zealand in 1998: NZ$9.2 billion versus NZ$1.1 billion respectively. Statistics New Zealand queried the discrepancy with HKCSD when I drew it to their attention because it is almost inconceivable that an investment of $8 billion (equivalent to about half the market value of Telecom at the time) could be missed if it had been invested in companies or real assets. HKCSD pointed out that many companies in Hong Kong spend considerable effort on gaining "tax advantages" (read: tax avoidance). Table 4 below illus-

[4] Source: Statistics New Zealand – New Zealand's International Investment Position to 31 March 2000.

trates the point. It is common to have several accountants devoted to the task, despite Hong Kong's low tax rates. To accomplish this, transfers are frequently made between Hong Kong and the tax havens intensively used for both inward and outward investment. In total, these transfers amount to many times the value of the assets owned and represent in reality only paper transactions rather than real transfers of assets.

The large discrepancy in the data probably represented a few large sums moved to New Zealand for some purpose related to tax advantages, which were very likely moved back out again within a short period. The Hong Kong data is measured as at 31 December (whereas New Zealand data is at 31 March). The large sum could well have been related to a wish to show a particular result on paper at end-of-year.

Table 3

Hong Kong Investment in New Zealand, 1998

	Beginning of year			End of year		
	HK$b	US$b	NZ$b	HK$b	US$b	NZ$b
Net Flow of HK Direct Investment to NZ	NA	NA	NA	**4.6**	0.6	1.1
Total HK Direct Investment in NZ	32.3	**4.2**	7.3	**36.8**	**4.8**	9.2

Data in **bold** are supplied by the Census and Statistics Department of Hong Kong, "External Direct Investment Statistics of Hong Kong in 1998", released 21/3/00. The other data are calculated using US-NZ exchange rates from the Reserve Bank of New Zealand and a Hong Kong-U.S. exchange rate of HK$7.7/$US. (NA = Not Available)

Some of the difference could also be due to the definitions used, as described above in relation to "New Zealand" investment in Hong Kong. "Hong Kong" investors are those with a legal presence in Hong Kong. They are not necessarily Hong Kong owned. It is likely that the $9.2 billion represents ownership from a variety of countries, by companies which use a Hong Kong subsidiary as the formal owner of the New Zealand investment. However they may declare themselves to Statistics New Zealand as being owned in their ultimate country of ownership rather than Hong Kong. This issue is of major significance in relation to investment rules under both the IPPA between Hong Kong and New Zealand, and the likely terms of a FTIA. It will be discussed in more detail below.

Discrepancies could also be caused by "indirect" investment where for example an Australian subsidiary of a Hong Kong-based company reports to HKCSD that it has investment in New Zealand. That indirect investment would then be counted by HKCSD as Hong Kong investment, but by Statistics New Zealand as Australian investment. Further discrepancies could arise from the different definitions of direct investment used by the two authorities: Statistics New Zealand defines direct investment as being where non-residents own 25% or more of the equity of an enterprise, whereas HKCSD uses a 10% threshold (the international standard, which Statistics New Zealand is now adopting). However the HKCSD explanation implies these other discrepancies are relatively minor.[5]

[5] Statistics New Zealand is moving to quarterly reporting of this data, and the use of the 10% threshold for defining foreign investment, which should address some of the problems in comparing data with other countries. The IMF is also trying to achieve some consistency of reporting, and to deal with the substantial reporting difficulties brought about by the funnelling of investment through tax havens.

The reason only Hong Kong investment in New Zealand (and not the reverse) is available is interesting. The HKCSD release lists the top ten countries which are sources of investment in Hong Kong and the top ten investment destinations for "Hong Kong" investment. Unsurprisingly, New Zealand is not among the top ten investing countries in Hong Kong. Surprisingly, it is number six among the top destinations for "Hong Kong" investment – apparently ahead of the U.S.A., and Singapore (8 and 9 on the ranking) and many others such as Japan and Australia, which do not even rank. The top ten in each direction are listed in Table 4.

Table 4

Rank and value of Hong Kong inward and outward investment

at end of 1998

Rank	HK investment abroad	US$b	Rank	Foreign Investment in HK	US$b
1	British Virgin Islands	93.0	1	British Virgin Islands	70.0
2	The mainland of China	70.7	2	The mainland of China	27.6
3	Cayman Islands	12.6	3	Bermuda	26.1
4	Bermuda	11.9	4	The United Kingdom	19.8
5	The United Kingdom	7.3	5	Netherlands	16.1
6	New Zealand	4.8	6	The United States	14.9
7	Panama	2.9	7	Japan	14.0
8	The United States	2.6	8	Cayman Islands	11.1
9	Singapore	2.0	9	Singapore	5.6
10	Philippines	1.4	10	Panama	2.1
	Others	14.7		Others	17.8
	Total	**223.9**		**Total**	**225.1**

Source: Census and Statistics Department of Hong Kong,
"External Direct Investment Statistics of Hong Kong in 1998", released 21/3/00.
Note: in December 1998, NZ$1 was US$0.52

What stands out from the rankings is that, with the exceptions of China, of which it is a part, and its former colonial master, the U.K., the top-ranked sources and destinations of Hong Kong investment are the tax havens of the British Virgin Islands, the Cayman Islands, and Bermuda. The ownership of this investment is certainly elsewhere, including the U.S., Europe, Hong Kong itself, and China. HKCSD says:

> "A distinct feature of Hong Kong's outward direct investment is that a considerable proportion of outward investment are directed to non-operating companies in tax haven economies (offshore financial centres) such as British Virgin Islands, Bermuda and Cayman Islands, for channelling funds mainly to the mainland of China and back to Hong Kong. These arrangements are commonly used by Hong Kong companies for strategic reasons. A majority of such investment was made by Hong Kong companies engaged in investment holding, real estate development and various business services."

Further,

> "Of the total stock of inward direct investment at HK$1,744 billion at end-1998, HK$726 billion was related to investment originated from Hong Kong but channelled through non-operating companies in tax haven economies back to Hong Kong."

It is apparent that Hong Kong is a major port of convenience for investment, particularly to and from China. HKCSD comments that "apart from the tax haven economies, the Mainland featured prominently both as a source of Hong Kong's inward investment and as a destination for Hong Kong's outward investment. This signified the close economic links between the Mainland and Hong Kong." The Mainland accounted for 31.6% of the total stock of Hong Kong's outward direct investment and 12.3% of the stock of inward direct investment.

Table 5

Years ended 31 March

NZ$million

Net Flows of Hong Kong Direct Investment into New Zealand

	1998	1999	2000
Equity Capital	C	-4	-15
Reinvested Earnings	-67	-67	-43
Other Long-Term Capital	65	C	C
Other Short-Term Capital	C	C	C
Total Direct Investment flow	720	-95	179

Total Hong Kong Direct Investment in New Zealand

	1998	1999	2000
Equity Capital	781	580	539
Other Long-Term Capital	297	265	490
Other Short-Term Capital	39	30	37
Total Direct Investment	1,117	875	1,067

Symbols: C – confidential; "-" – nil, zero or too small to be expressed

Source: Statistics New Zealand, January 2001

Hong Kong's outward investment is heavily dominated by the services sector. It is led by investment companies, real estate and business services. Other more productive services follow a long way behind, leaving manufacturing only a minor part. HKCSD says: "43.6% of the stock of outward direct investment at end-1998 was originated from companies engaged in investment holding, real estate and various business services, followed by those engaged in the wholesale, retail and import/export trades, at 11.9%; manufacturing, at 8.7%; transport and related services, at 6.1%; restaurants and hotels, at 4.2%; and non-banking finance, at 4.1%." While HKCSD gives no sector breakdown for New Zealand individually, as will be seen, this picture probably fits Hong Kong investment here well. The dominance of tax havens in Hong Kong's investment also raises the question whether New Zealand is similarly being used for some form of avoidance.

The breakdown of Hong Kong investment in New Zealand reported by Statistics New Zealand (corresponding to Table 2) is in Table 5. It is currently approximately half in the form of equity ownership and half in other forms of capital such as intra-company loans.

A notable feature is that Hong Kong investors are not only failing to reinvest any of their profits in New Zealand, but in fact are paying out more in dividends than they earn, as shown by the consistently negative "reinvested earnings" in Table 5.

Investment income

There are no data available on the investment income flows resulting from this investment, but it seems certain that they are heavily in Hong Kong's favour. The only indications are the reinvested earnings shown in Tables 2 and 5, but without knowing what proportion of profits are reinvested, they are not very useful in estimating the cost to New Zealand in remittances overseas.

Hong Kong's investment policies

Hong Kong and New Zealand appear to take a similar approach to investment. Though that is consistent with Hong Kong's longstanding laissez-faire, free market approach to its general economic policies, the investment policies it has in place look more in keeping with the current New Zealand government's policies than with the previous National government. In some ways the Hong Kong Government is even more active in its own economy than the current New Zealand Government: huge projects like the new airport and major development of its rail system have been used to stimulate the economy at times of recession, as well as for their own sakes. It has well developed schemes to encourage business development in specific sectors. Paradoxically then, its domestic policies often look more like those of the Alliance than those of Labour or the previous government.

A Hong Kong Government website entitled "Doing Business in Hong Kong" (http://www.business.gov.hk) lists support it gives to industry:

- Funding Support Schemes and Programmes
  These include
  - a venture capital fund to support technology ventures undertaken by local companies;
  - financial support on a matching basis to small firms to help them develop research ideas through successful commercialisation;
  - support for local companies to hire graduate students from local universities to assist in proprietary research and development work;
  - funding for private companies to collaborate with universities in proprietary research and development;
  - an Industrial Research Chair Scheme which assists universities and industry to develop research efforts in technology fields having good development potential in Hong Kong in the longer term;
  - funding support for training staff in new technologies;
  - a patent application grant scheme which assists local companies or permanent residents of Hong Kong to apply for patents for their inventions.

- Infrastructure Support to Industries
  - The government provides loans "to ensure an adequate supply of industrial land and premises to industries". Three fully-serviced industrial estates (with a fourth one scheduled for 2004) are managed by the Hong Kong Industrial Estates Corporation, a non-profit statutory organisation funded by government loans. The lots are leased to qualified applicants at development cost.
  - A technology-based business incubation programme of the Hong Kong Industrial Technology Centre Corporation, a statutory body established by Government, provides low-cost accommodation, management, marketing, financial and technological assistance to start-up companies for three years. The Corporation also "facili-

tates the promotion of technological innovation and application of new technologies in Hong Kong industry" and "focuses initially its efforts on technology in four areas, namely multimedia and networking; telecommunications; software and systems; and microelectronics and components".

  - A Hong Kong Science Park is under development, which would make available suitable land or buildings for lease to technology based enterprises to carry out research and development work. Its primary focus is in the sectors of electronics, information technology, biotechnology and precision engineering.

- Other Science and Technology support includes the Clothing Technology Demonstration Centre Company Ltd which demonstrates advanced production technologies and systems for a flexible and quick response mode of production for the textiles and garment industries. It assists the textiles and clothing industries to source and apply technologies and methods to reduce delivery times and increase responsiveness to customer requirements.
- The Hong Kong Export Credit Insurance Corporation provides insurance protection for Hong Kong exporters against normal payment risks arising from commercial and political risks not normally covered by commercial insurers. It also promotes Hong Kong's trade with the world, including "two ways trade in services as well as goods".

The technology funding schemes have a number of conditions including that to be eligible, companies

> "have to be 'Hong Kong companies' and 'local companies'. They refer to companies that are incorporated in Hong Kong and have substantial connection to Hong Kong. This means that a substantial part of their production, research, development, management or general business activities must be located in Hong Kong."

(ref http://www.info.gov.hk/id/ewww/aboutus/function/technology/fund/privatefunds.htm)

This appears to be creeping as close as possible to requiring local ownership without openly breaking "national treatment" provisions in, for example, the GATS or APEC, which require overseas companies to be treated as least as well as local companies, including with respect to the provision of subsidies.

Hong Kong has an almost complete absence of controls on foreign investment in the territory. A government web site boasts:

> As Hong Kong is a free trade city, there are no regulations concerning the minimum capital requirement of a company except for full service banks, insurance companies and trust companies, nor any regulations concerning the relative degree of local/overseas participation in the ownership or capital structure of the company. Joint ventures with local businesses are welcome, but a company may be kept entirely in the hands of overseas owners or shareholders. There are no regulations concerning the relative proportion of local to overseas staff.
>
> In addition, funds, either from profits or capital account, may be transferred at will. There are no foreign exchange restrictions.

> Hong Kong has one of the world's most open and transparent investment regimes. The Government is committed to maintaining a level playing field for foreign and local investors – both in law and business practice. There are no special approval procedures for establishing foreign investments, nor any specific regulations governing the management of investment in Hong Kong. Unlike many regions, the Hong Kong SAR Government does not make local ownership/control a condition for establishing, maintaining or expanding foreign local staff. To sustain the favourable business environment, the Government's approach remains one of minimum interference and maximum support.
> (http://www.business.gov.hk/english/f0103.htm)

As might be expected, this does not give the full picture. Exceptions include statutory insurances (including third party liability for vehicles and vessels, and employers' liability insurance in respect of employees), which must be purchased from insurance authorised in Hong Kong. The chief executive of authorised insurers and other authorised financial institutions must normally reside in Hong Kong. Financial institutions must have not less than one alternative chief executive who must normally reside in Hong Kong. Banks incorporated overseas must obtain a licence in order to operate as a branch in Hong Kong, with conditions including a restriction that offices to which customers have access for banking purposes (including ATMs) cannot be in more than one building, and that they cannot maintain more than two other offices to which customers have access. There are exceptions for banks licensed in Hong Kong before certain dates. An overseas bank can get a licence to run a local subsidiary as a bank as long as the institution "has been an authorised institution for at least ten years and [must] be closely associated and identified with" Hong Kong.

Only corporations incorporated in Hong Kong or people resident in Hong Kong for five of the preceding seven years or partnerships composed of such people may become members of the Stock Exchange of Hong Kong. There is also a residence requirement for dealing in securities or commodity futures. There are restrictions on the movement of managers and specialist employees of foreign companies: to be allowed entry to Hong Kong, they must already be employees of the company they are working for in Hong Kong, and may not change employment in Hong Kong without government approval.

Hong Kong maintains "cabotage" – the right to retain local ownership of coastal shipping. The Hong Kong Post Office retains rights to certain services, and Chubb Electronics (HK) Ltd has had the exclusive right to providing a fire alarm transmission system for relaying fire alarm signals between the government Fire Services Department and public buildings. In international telecommunications, public external telephone services are not allowed; companies using external satellite circuits or virtual private networks may find that connection to the public telephone network at the Hong Kong end is restricted; and those using a mobile satellite service will find that a gateway station is not allowed.

Private monopoly providers of services including electricity, gas, waste disposal and transport operate under government-mandated "schemes of control".

These exceptions (other than the schemes of control) are all documented in Hong Kong's GATS commitments. Surprisingly, Hong Kong's GATS commitments are not as wide-ranging as New Zealand's. Those that have been made are frequently qualified rather than complete, and national treatment commitments relate only to one “mode of supply” – “commercial presence” of service corporations – but not the other three modes: cross-border supply of services, consumption of services abroad, or presence of foreign personnel in Hong Kong to provide services.

For example, New Zealand has committed to allowing overseas companies or individuals to provide professional services in New Zealand in law, accounting, taxation services, architecture, engineering, and veterinary services, in all the first three “modes of supply”. But Hong Kong has committed only to opening to overseas-owned accounting and taxation services, and these only with restrictions as to their nature, and requiring commercial presence in Hong Kong. Hong Kong has recently opened up domestic telecommunications, but has restricted its commitment to opening its international telecommunications to “resale only”, accompanied by a number of restrictions on connection to Hong Kong’s public telephone network (noted above). In contrast, New Zealand has been opened up virtually completely in all areas, the only exceptions being immigration restrictions and the limit on shareholding in Telecom by any single overseas entity to 49.9% and a requirement that at least half its Board must be New Zealand citizens.

Even in the area of construction and related engineering services, in which Hong Kong has strengths, its commitments are limited to interior design services (and there only for specialized consulting services related to the post-construction design and fitting out of interior living and working spaces) and project management services (only for the supervision and coordination of construction projects but not engineering or architectural services). Yet New Zealand has committed to liberalisation over a wide range of construction services without any limitations, including general construction work for buildings and civil engineering, installation and assembly work, building completion and finishing work, site preparation (new construction other than pipelines), and maintenance and repair of fixed structures. In addition, as noted above, it has committed to architecture and engineering services.

No commitments are made at all by Hong Kong in socially sensitive areas such as education and health. In the culturally sensitive sector of audio visual services, the commitments exclude the crucial one of broadcasting and are limited to the production, sale or rental of films and video tapes, services relating to the provision of sound-track, and the translation of the sound track of motion pictures and video tapes from one language to another. In contrast, New Zealand has made commitments in private education, which is having increasing effects on public education, and almost unrestricted access to “Production, distribution, exhibition and broadcasting of audiovisual works”.

Services on which NZ has made commitments either under GATS or the SNZCEP and on which Hong Kong has made no such commitment are:

- education
- research and development
- ambulance services
- residential health facilities services other than hospital services
- dental services
- archive services (except Public Archives as defined in the Archives Act)
- environmental services (as yet undefined but may include waste management, water services and sewage disposal)

- technical testing and analysis
- management consulting, market research and public opinion polling
- services incidental to manufacturing; personnel placement and supply;
- investigation and security services;
- scientific and technical consulting;
- maintenance and repair of equipment;
- packaging;
- printing;
- convention;
- interior design, exhibition management;
- courier services;
- some port services;
- distribution services extended to include franchising.

Nevertheless, Hong Kong's investment regime is indeed extremely open. As a result, the same web site says that,

> The 1999 Regional Representation Survey of Overseas Companies in Hong Kong conducted by the Industry Department has identified 2,490 regional operations of foreign origin. These comprise 840 regional headquarters and 1,650 regional offices.

It says that

> Hong Kong advocates and practises free trade. Its economy is nurtured by a government policy of maximum support and minimum intervention. Its taxes are very low and simple. There are no hidden "extras" like Medicare and sales taxes and certainly no "province" or "city" taxes.

though it omits to note the recent introduction of a compulsory pension fund.

It understandably describes the taxation system as "business-friendly":

> Taxes are levied on three types of income only – on profits, salaries and property. There is no value-added or sales tax or capital gains tax. Only income sourced in Hong Kong is taxable.
>
> Profits are taxed if they arise in or are derived from Hong Kong as a result of a trade, profession or business. The tax rate is 16% for corporations and 15% for other businesses.
>
> Everyone with a Hong Kong income arising from any office, employment or pension is liable to salaries tax. The rate of tax after deductions and allowances is applied on a graduated scale, but the total salaries tax charged will not exceed 15% of a person's total assessable income.
>
> Owners of land and/or buildings in Hong Kong are charged property tax, which is based on the property's rental income. The rate of tax is 15% on

> the annual rent receivable less a statutory deduction of 20% for repairs and out goings.

That only income sourced in Hong Kong is taxable makes the use of tax havens particularly attractive compared to other tax regimes. It also makes it attractive as an investment base in general, as there is no risk of tax avoided elsewhere being visited upon the Hong Kong company, and high returns (like New Zealand's interest rates in recent years) are untaxed in Hong Kong.

Unions are not a problem to business either:

> There is no legal minimum wage in Hong Kong. The wage level prevailing is essentially the result of interplay of supply and demand … In 1999, the number of working days lost due to industrial conflict per 1000 wage earners and salaried employee was only 0.1. During 1999, the Labour Department dealt with 32,180 labour disputes and claims, most of which were grievances involving claims of wages in arrears, wages in lieu of notice, holiday pay, etc. There were three work stoppages, and the number of working days lost was 299. Total membership of employees' union stood at 674,433.

This is from a labour force of approximately 3.3 million.

Hong Kong is also one of only 26 members of the WTO's Agreement on Government Procurement. As then US Trade Representative Charlene Barshefsky commented:

> Hong Kong's accession to the Agreement will ensure U.S. exporters of goods and services access to Hong Kong's valuable procurement market, including contracts awarded by Hong Kong's Airport Authority, Mass Transit Railway Corporation, the Kowloon-Canton Railway Corporation and Hong Kong's Civil Aviation Department. Hong Kong's accession is a significant achievement in the United States' efforts to open government procurement markets around the world by increasing participation in the Government Procurement Agreement." ("Hong Kong Accedes to the WTO Government Procurement Agreement", US Department of State, International Information Program ,19 June, 1997.)

The picture is therefore of a very open international trade and investment regime, but with considerable support given to industry, focusing on sectors the Hong Kong Government considers to be important.

The relationship with China

"The relationship with China" is a misleading description in many ways: Hong Kong is now part of China. It is a "Special Administrative Region" under China's "one country, two economic systems" policy. However Hong Kong's autonomy is used for their own convenience by China, Hong Kong, and the transnational corporations active in them. While this paper does not focus on trade, the trading relationship shows clearly the relationship and increasing integration between the two economies. It is also tied closely to investment, because as will be seen, this trade is closely related to the activities of the transnational corporations active in the region.

The Hong Kong Government's web site quoted above says:

> Hong Kong is the premier gateway for trade and investment moving into and out of the Chinese mainland. Hong Kong is also increasingly a source of expertise and funding for China's efforts to modernize its economy.
>
> Hong Kong continues to handle about half of all exports to Mainland China, and accounts for about half of foreign direct investment there.
>
> Every day there are about 800 sailings, 100 flights, 35 train connections and 27,000 vehicle crossings between Hong Kong and Mainland China.
>
> About 50,000 Hong Kong companies have production facilities in southern China, employing some five million workers in total. Approximately 100,000 Hong Kong expatriates work on the mainland, mainly in managerial and training positions.
>
> The Chinese mainland is also a major investor in Hong Kong's economy. There are approximately 2,000 mainland enterprises registered in Hong Kong with a gross asset value approaching US$200 billion. The mainland is Hong Kong's third-largest source of foreign direct investment.

It considers that China's accession to the WTO "will only enhance [Hong Kong's] status as a key world trading power". It lists opening of the financial sectors, and the telecommunications industry as key areas.

The web site continues:

> Another of Hong Kong's greatest strengths lies in its close ties to a variety of firms in Mainland China and Southeast Asia. Hong Kong traders and manufacturers have the ability to source materials from numerous factories around Asia and India, even as far away as the Middle East and West Africa, quickly and cheaply. Hong Kong garment firms can put together a new shirt according to a retailer's specifications and produce in quantity in a few weeks time. The network of suppliers and factories that Hong Kong firms can call upon, in literally a moment's notice, ensures that partner firms from overseas can get good bargains, top quality merchandise and quick delivery of goods on very short notice.

This "intermediation" function should not be underestimated. Hong Kong is moving rapidly away from manufacturing based on low-cost labour, making money instead from organising production on behalf of buyers – mainly in the industrialised world – using the cheapest raw materials, factories and labour, wherever it can find them. Since China is currently one of the cheapest sources of labour, it is ideally placed for this function. Some data illustrate the extent of this.

Hong Kong's per capita GDP in 1999 was US$23,200 (or NZ$45,600) – 70% higher than New Zealand's NZ$26,700 (December 1999). Hong Kong's per capita GDP had fallen from US$26,100 in 1997 as a result of the financial crisis. While Hong Kong has among the most unequal distributions of income in the world[6] (and this inequality is deepening), increasing poverty, no minimum wage and a large migrant population that is easily exploited, it is no longer a low-wage economy. The average daily wage for production workers in Hong Kong manufacturing is approximately NZ$104 (HK$339). (Sources: Quarterly Report of GDP Estimates, First Quarter 2000, and Average Wage Rates for Employees up to Supervisory Level, 29 December 2000, Hong Kong Census and Statistics Department; and GDP March 2000, Statistics New Zealand.)

Because of that, Hong Kong is moving out of labour-intensive manufacturing. Manufacturing has fallen steadily from 23.7% of GDP in 1980 to 5.7% in 1999 (HKCSD, "Gross Domestic Product by economic activity", 24 November 2000). Instead, according to academics Robert Feenstra and Gordon Hanson[7],

> Since 1980, Hong Kong has begun to specialize more heavily in business services, particularly those related to trade and investment in China. China's export manufacturers are concentrated in southern coastal provinces, especially Guandong which borders Hong Kong. Over the last two decades, many Hong Kong manufacturing firms have moved their production facilities to Guandong, which they manage from headquarters in Hong Kong. Hong Kong firms typically supply plants in China with raw materials and often ship the goods through Hong Kong for inspection, finishing, or packaging before exporting them to a final destination.

Working conditions in China's export zones can be appalling for the migrant workers attracted there. Wages are US$50-100 (approximately NZ$110-220) per month including overtime and bonuses. Reports document workers frequently working 10-16 hour days and 60 hours over a six day week, dangerous working conditions, poor food, military camp-like dormitories for accommodation, oppressive conditions at work such as rules against talking or going to the toilet without permission, insecurity of work, suppression of the right to organise,

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[6] For example the "Study on Sustainable Development in Hong Kong for the 21st Century", by the Planning Department of the Hong Kong Government, gives Gini Coefficients for households as 0.453 in 1986, rising to 0.476 in 1991 and 0.518 in 1996 – (ref Chapter 5, http://www.info.gov.hk/planning/susdev/report_5/sustaina_ch5_3.htm). Though it is not made clear what definition of household income was used, if it is actual market household income, it compares to figures of 0.399, 0.474, and 0.479 respectively in New Zealand. If the Hong Kong figures used a different definition then it is likely to indicate that Hong Kong is even more unequal than New Zealand. New Zealand has among the highest Gini Coefficients – is among the most unequal societies – in the OECD ("New Zealand Now: Incomes", Statistics New Zealand, 1998, pages 69 and 94). (The Gini Coefficient measures inequality, zero corresponding to complete equality, one corresponding to complete inequality.) Sze Pang Cheung, in "Government Procurement and WTO's Neoliberal Project: the Case of Hong Kong" (2000), presents a comparison of Gini Coefficients between Hong Kong and much of the non-OECD, which puts Hong Kong at higher levels of inequality than all those compared, including the most unequal – Sub-Saharan Africa and Latin America/Caribbean. Sze Pang Cheung is a research activist in Hong Kong. He is one of the members in the editorial collective of Globalization Monitor, a Chinese bi-monthly bulletin based in Hong Kong.

[7] "Intermediaries in Entrepôt Trade: Hong Kong Re-Exports of Chinese Goods", by Robert C. Feenstra Department of Economics, University of California, Davis and National Bureau of Economic Research (NBER), and Gordon H. Hanson, Department of Economics and School of Business Administration, University of Michigan and NBER, December 2000. Also published as NBER paper W8088.

and child labour, all on top of the problems of discrimination, loss of rights, and separation from families as migrants.

As a result, Hong Kong's export trade is increasingly "re-exports" – that is, exporting imported goods that have undergone no further processing or only simple processing in Hong Kong. According to Feenstra and Hanson, that simple processing could include "sorting or packaging, or service activities, such as marketing or transport". According to HKCSD's definitions, re-exports have not undergone "a manufacturing process which has changed permanently the shape, nature, form or utility of the product" in Hong Kong. These definitional issues are central to determining "rules of origin" in trade agreements such as the one proposed. However, as will be seen shortly, a hallmark of Hong Kong commerce is the control that Hong Kong traders have over the processing of exports in a large number of countries. In their own interests, and those of their clients, they can be expected to manipulate processing to minimally satisfy any trade agreement's "rules of origin" to gain entry to that market.

Between 1993 and 2000, the proportion of Hong Kong's exports that were "re-exports" rose from 78.7% to 88.5%. A third (33.9% in 1999) of those re-exports are to the mainland of China, and 43.6% of Hong Kong's imports are from the Mainland. Feenstra and Hanson report that "over the period 1988-1998, 53% of Chinese exports were shipped through Hong Kong in this manner".

(Note that in the year to November 2000, 39% of Hong Kong's total trade was with China, according to HKCSD.)

HKCSD reports that

> In January-September of 2000, 52% of Hong Kong's total exports to the Mainland were for outward processing; the figure was 73% for domestic exports and 49% for re-exports. On the other hand, 79% of Hong Kong's imports from the Mainland were related to outward processing. Over the same period, 85% of Hong Kong's re-exports of Mainland origin to other places were produced through outward processing in the Mainland.[8]

Hong Kong intermediaries benefit hugely from this trade, according to Feenstra and Hanson:

> Net of customs, insurance, and freight charges, Chinese goods are much more expensive when they leave Hong Kong than when they enter. For the 1988-1998 period, the average markup on Hong Kong re-exports of Chinese goods was 24%. The income flow from these entrepôt activities is large. In 1996, re-exports of Chinese goods equalled 52% of Hong Kong GDP. In

[8] HKCSD defines "imports from the Mainland related to outward processing" as "processed goods imported from the Mainland, of which all or part of the raw materials or semi-manufactures have been under contractual arrangement exported from or through Hong Kong to the Mainland for processing". "Re-exports of Mainland origin to other places involving outward processing in the Mainland" is defined as "processed goods re-exported through Hong Kong, of which all or part of the raw materials or semi-manufactures have been exported from or through Hong Kong to the Mainland for processing with a contractual arrangement for subsequent re-importation of the processed goods into Hong Kong". Source: Statistics on trade involving outward processing in the mainland of China for 3rd quarter 2000
Friday, December 29, 2000.

> that same year, Hong Kong markups on these re-exports totalled 10% of GDP, while manufacturing accounted for only 7% of GDP.

Some of the re-exporting is after processing of imports which may have been partially processed in Hong Kong:

> Traders are often more than middlemen. Many firms that import goods from China for re-export engage in outward processing. Before importing goods from China, they may purchase raw materials on the world market, process these materials in Hong Kong or elsewhere, and export the unfinished goods to China for yet further processing. Hong Kong's re-exports may then be the final leg in a much longer journey. In 1998, outward-processing trade accounted for 48% of Hong Kong exports to China and 83% of Hong Kong imports from China.

Markups vary greatly. "Markups appear to be highest in the rich regions of North America, Oceania, and Western Europe and lowest in the poor regions of Africa and Latin America." Feenstra and Hanson found that median markups range from 28% to 34%. They appeared to be highest for light manufactured articles and for machinery and transport equipment (where 70% of China's exports are re-exports), and lowest for mineral fuels, and for animal and vegetable oils.

The use of Hong Kong by China appears to be because Hong Kong middlemen have greater knowledge of, and already are established in, certain markets for Chinese goods. Hong Kong tends to take Chinese non-commodity goods which are "differentiated" – that is, sold on the basis of "quality" or branding. It also tends to take goods which have higher price variability.

But the use of Hong Kong is also to allow transnational corporations who manufacture in China to transfer prices, according to evidence presented by Feenstra and Hanson – that is, to make their profits in low-tax countries, rather than where they sell the final goods. The markups raise prices in low-corporate-tax Hong Kong so that profits are made there rather than in China or in North America, Oceania, and Western Europe where the goods are mainly sold. The intensive use of tax shelters by investors in Hong Kong and Hong Kong investors (see above) is consistent with this explanation.

Using Hong Kong middlemen may also enable transnationals to avoid or take advantage of import quotas in the rich countries, especially those under the Multi-Fibre Agreement (MFA) for footwear, clothing and textiles. Markups are 20-22% higher on MFA goods. Contrary evidence is that China re-exports relatively less MFA goods.

Transnational corporations ("foreign-invested enterprises" or FIEs in China's terminology) accounted for 41.9% of China's exports in 1998 – up from 4.7% in 1988. The FIE share in China's exports to Hong Kong is consistently larger than the FIE share in direct Chinese exports, "which may be attributable to the central role that Hong Kong plays in coordinating activities in China by FIEs" according to Feenstra and Hanson.

Hong Kong traders have considerable control of the processing and can be expected to attempt to manipulate that to minimally satisfy whatever "rules of origin" requirements are stipulated in a trade agreement:

> Outward processing is not the sole, or even most well-established, motivation for Hong Kong re-exports of Chinese goods. Many re-exporters own no manufacturing facilities; rather, they serve as middlemen in transactions between buyers and sellers located in distinct foreign markets. One well-known Hong Kong trading house is Li & Fung, which specializes in trading, distribution, and retailing. In 1998 it had global sales of $2 billion and offices in over 20 countries. The typical arrangement is for a foreign manufacturer or retailer to approach Li & Fung with a product they would like to purchase or have produced. In simple transactions, Li & Fung is purely a matchmaker: "The idea is that maybe foreigners don't know which factory to go to, so you perform an introductory role, maybe a quality-control role and there it stops", says its managing director. In more complex transactions, Li & Fung oversee the entire fabrication of a good, from purchasing raw materials and planning production to monitoring manufacturing among the 7,500 independent plants to which it subcontracts orders. In return for its trading services, Li & Fung is reported to earn commissions of 7%-12% on each order it fills.

Given all the above, it is surprising and notable that 58% of Hong Kong's "domestic exports" were still "articles of apparel and clothing accessories" and textiles in the year ended November 2000 – worth about NZ$25 billion. (HKCSD, "Domestic Exports by Principal Commodity" and "Domestic exports to ten main destinations", 9 January 2001). While "domestic exports" are defined for HKCSD's purposes as "the natural produce of Hong Kong or the products of a manufacturing process in Hong Kong which has changed permanently the shape, nature, form or utility of the basic materials used in manufacture", the move of Hong Kong out of manufacturing and its high and increasing integration with external subcontractors – especially in China – implies that the "manufacturing" of these items in Hong Kong is likely often to be minimal. A large part of the value is likely to be markup, with just enough processing to satisfy "Hong Kong origin" requirements of the importing country.

It will be exceptionally difficult to define rules of origin, for either goods or services, that are enforceable and distinguish Hong Kong-made "domestic" products from ones substantially made in China or in the thousands of other low-cost plants around the world used by Hong Kong intermediaries. And unlike Singapore, where it could be said that trade in the most sensitive area – textiles, clothing and footwear (TCF) – was negligible at the time of signing (ignoring the likelihood that the agreement would encourage traders to use Singapore to avoid tariffs), there is huge potential for Hong Kong's exports to devastate the remaining New Zealand TCF sector.

The nature of Hong Kong investment in New Zealand

Official data are not available as to the nature of Hong Kong investment in New Zealand. To provide that data, an analysis of the decisions of the Overseas Investment Commission (OIC) from December 1989 to September 2000 was made. The results are tabulated in the appendix. It should be noted that they are a summary only. Naturally they can reflect only information released by the OIC: some information is suppressed by the Commission as being confidential. If investments are later sold to a New Zealand party, that will not be recorded by the OIC. Further, some investment does not require OIC consent at all. Notably this includes investment, not involving land or fisheries, which is worth less than $10 million, or less than $50 million since November 1999, or involves the acquisition of less than 25% of a company.

An example of the latter escaping OIC records was the controlling interest gained by South East Asian interests in Brierley Investments Ltd (BIL) in 1996. This acquisition eventually led to the company moving its registration to Bermuda and its headquarters to Singapore.

Note also that the OIC has changed its presentation of investor origin over these years. It is therefore possible that some companies which are registered in Hong Kong but owned elsewhere have been missed from this analysis.

The 72 investors listed cover primary and secondary industry, but significantly in terms of the proposed FTIA, are strongly focussed on tertiary industry: services – and primarily property investment. This is consistent with Hong Kong's general pattern of investment overseas.

An important feature of the "Hong Kong" investment is the number of instances where the ultimate ownership is not in Hong Kong. This is consistent with the pattern of "Hong Kong" investment generally as described above. In 12 of the 72 cases listed, no genuine Hong Kong investment was involved, and an additional five included Hong Kong investors among third country investors. Countries represented whose investors are using Hong Kong as a base to invest in New Zealand (in addition to investors from Hong Kong itself) include Australia, Bangladesh, China, Indonesia, Luxembourg, Malaysia, Monaco, Saudi Arabia, Singapore, Switzerland, the U.K., and the U.S.A. In addition, in two instances, New Zealand investors were using Hong Kong companies to invest here.

Fourteen of the 72 investors listed were using tax havens. They came from the following countries: Australia, Hong Kong, Luxembourg, Monaco, Singapore, Switzerland, the U.K., and the U.S.A. The tax havens identified are Bermuda, British Virgin Islands, Cayman Islands, Guernsey, and Jersey in the Channel Islands.

It should also be noted that of the genuinely Hong Kong-owned investments, approximately 27 were small investors in forestry, agriculture, or lifestyle developments with investments of a few tens of thousands of dollars. These forestry investments are essentially passive, with management in the hands of a local forestry company which specialises in selling small blocks of forestry land to raise funds for the forestry development.

On the other hand, some of the Hong Kong-registered companies owned outside Hong Kong are major investors in New Zealand. Examples include

- Hind Properties Ltd of Singapore (commercial property)
- Diverse companies owned by the Tiong family of Malaysia
- Winstone Pulp International Ltd of Indonesia (16th largest forest owner in New Zealand)
- Wenita Ltd, controlled in China (10th largest forest owner in New Zealand)
- Southern Pacific Hotel Corporation (NZ) Ltd of the U.K. (hotels)
- CDL Hotels New Zealand Ltd of Singapore (biggest hotel owner in New Zealand)
- Monaco Corporation (formerly Transmark), of Monaco (appliance distributor)

Further details and other examples are given below.

Primary industry

Interests include forestry, fish farming, sheep, cattle and deer farming, market gardening, flower nurseries, orchards, viticulture, berryfruit, sphagnum moss, coal mining, and lifestyle blocks. A total of 32 of the investors were engaged in primary industry but most of these are relatively small holdings (including 12 small investors in forestry, plus agriculture and lifestyle developments with investments of a few tens of thousands of dollars noted above). The principal exceptions are in sheep and cattle farming, fish farming, forestry and mining.

Sheep and cattle farming

This includes a number of significant stations, among them the historic 13,686 hectare Cecil Peak Station on Lake Wakatipu near Queenstown, one of New Zealand's largest high country stations, owned by the Morningside Asia Group of Hong Kong through Portmore Enterprises Ltd of the British Virgin Islands; a 37.5% interest in a 392 hectare Horowhenua sheep and cattle farm; and a pastoral lease of 8,167 hectares at Mt Pember Station, Lees Valley, a 2,271 hectare sheep and deer farm, and a further 1,889 ha. at Lees Valley, all at Oxford, Canterbury, owned by the same Hong Kong investor.

Fish farming

Fish farming is dominated by the Tiongs, one of Malaysia's most powerful and wealthy families, who own (amongst other assets) 80% of New Zealand's king salmon farming through The New Zealand King Salmon Company Ltd (recently involved in controversial genetic engineering experiments on their salmon). Most of their assets are owned through Hong Kong companies. They bought part of the fish farming interest from Sheikh Suliman Olayan and family, of Saudi Arabia which owned 24.8% of Regal Salmon through their company, Competrol Pacific Ltd of Hong Kong. Other Hong Kong resident investors own smaller fish farming holdings.

Forestry

Forestry exemplifies the variety of nationalities of investors who use Hong Kong as a port of convenience, but also involves a significant proportion of New Zealand's production forestry. The major interests are all from outside Hong Kong, using a Hong Kong company to own the New Zealand forestry assets.

The Tiongs of Malaysia (see above) own Ernslaw One, the sixth largest forest owner in New Zealand, owning or managing 46,000 hectares of forests, and Oregon Forestry (NZ) Ltd.

Two Indonesian residents believed connected to the Suharto regime own Winstone Pulp International Ltd, the 16th largest forest owner in New Zealand, owning or managing 17,000 ha. of forests and the Karioi Pulp Mill through Perfect Match Investments Ltd, registered in Hong Kong.

Wenita Ltd, the 10th largest forest owner in New Zealand with 25,000 ha. of forests mainly in Otago and Southland, is owned 55.4% in China by Sinotrans (NZ) Ltd, a subsidiary of the Government-owned China National Foreign Trade Transportation Corporation, and the balance in Hong Kong.

In addition there are 11 small, essentially passive, Hong Kong investors, most with management in the hands of a local forestry company which specialises in selling small blocks of forestry land overseas to raise funds to undertake the forestry development.

Mining

Mining provides two examples of complex third-party ownership.

Moody Creek Mining Company, which mines high grade bituminous **coal** at Moody Creek near Greymouth is owned by W.E. Futird Ltd, owned in Bangladesh, but registered in Hong Kong.

Lime and Marble Ltd and DML Mining Ltd, owning over 500 hectares of freehold and leasehold land, and Perilya Mines (NZ) Ltd which owns 2,642 hectares at Earnscleugh, Central Otago (the Earnscleugh Gold Project) are owned by Auriferous Mining Ltd, incorporated in the British Virgin Islands, owned equally by three companies: Tangent International Ltd whose major shareholder is Werner Muller of Switzerland; Campanie International Holdings Inc whose major shareholder is Kwok Wai Chiu of Hong Kong; and Rysaffe Trustee Company (CI) Ltd as trustee for Geoff London of the U.K.

Secondary industry

Hong Kong interests in New Zealand's secondary industry are relatively few, and concentrated in a few investors.

Salmond Smith Biolab, owned by the Tiong family of Malaysia mainly through Hong Kong subsidiaries (see above) owns Click Clack International, a manufacturer of plastic containers; Johns Plastics, an Australian based manufacturer of disposable plasticware; and Artel, a plastics and brushware operation.

As mentioned above, Winstone Pulp International Ltd, owned by Indonesian interests through a Hong Kong company, Perfect Match, owns the Karioi Pulp Mill.

Mainguard Packaging Ltd, the fourth largest packaging company in New Zealand and the biggest in the South Island is owned by International Packaging Corporation of Hong Kong, and Schroder Capital Partners (Asia), part of Schroders Plc of the U.K. The OIC described the purchasers as: RIFGAC 47 Ltd, a Rudd Watts and Stone shelf company owned by Asia Pacific Fund II, an investment fund "whose investors are primarily large U.S. and European Institutional Investors"

The Amalco Processors meat processing plant at Westmere, Wanganui is owned by River City Properties Ltd, which is 50% owned by Guangdong (HK) Tours Co Ltd of Hong Kong and 50% by Fukuyama Industrial Holdings Ltd of New Zealand.

Tertiary industry: Services

The bulk of Hong Kong investment lies in this area – in New Zealand as it does internationally. A total of 39 of the 72 investors were engaged in tertiary industry, and with the exception of 11 small lifestyle property purchasers, most are significant holdings. Interests cover civil engineering, commercial property, construction, entertainment, grocery wholesaling and retailing, hotels, housing subdivision, importing and distributing, lifestyle property development, portfolio investment, publishing, retail, tourism and tourist lodges.

The most significant categories are commercial property, hotels, construction and civil engineering, groceries, other retail, importing and distributing, and housing subdivision.

Commercial property

Thirteen of the investors are engaged in commercial property, most with buildings in Auckland's central business district. At least five are owned through tax havens, though as far as can be told, all but four are owned in Hong Kong.

The most significant two are the largest listed property owner in New Zealand, Trans Tasman, and Hind Properties of Singapore.

Trans Tasman is the result of a merger in 1995 of Tasman Properties Ltd (formerly Robert Jones Investments) and SEABIL (NZ) Ltd. SEABIL was a joint venture of Brierley Investments Ltd and SEA Holdings Ltd, registered in Bermuda but controlled by the Lu family of Hong Kong. SEA Holdings now owns 54.79% of Trans Tasman directly, after a long series of public floats and share rearrangements and sales between 1991 and 1998. SEA also has substantial investments in China.

Hind Properties Ltd and Hind Hotels International owned by the Jhunjhnuwala family of Singapore have had substantial property holdings in New Zealand. In 1999 the Jhunjhnuwala family sold 53.9% of the shares in Hind Hotels International (some owned through a Cayman Islands subsidiary) to DBS Land Ltd of Singapore, and as part of the deal they bought the New Zealand properties from Hind Hotels through Hind Properties. The properties include Masport Industrial Estate, Barrack Road, Panmure; Wiri Woolstore, 122 Kerrs Rd, Wiri; and Central Office Park, Penrose, all in Auckland.

Also of note is Colwall Enterprises Ltd, a subsidiary of Indonesian-owned Perfect Match Investments Ltd which also owns Winstone Pulp (see above). Colwall owns the Queen City Centre complex, Albert/Elliott St, Auckland.

Hotels

CDL Hotels New Zealand Ltd, which owns or manages the Kingsgate, Millennium, Copthorne, and Quality chains, is the largest hotel owner in New Zealand. While it is ultimately owned 52.8% by City Developments Ltd of Singapore, it is a subsidiary of CDL Hotels International Ltd, incorporated in the Cayman Islands, and based in Hong Kong. The group owns commercial property and hotels in South-east Asia.

Southern Pacific Hotel Corporation (NZ) Ltd bought the privatised Tourist Hotel Corporation in 1990. Southern Pacific Hotel Corporation is owned by the Hale Corporation Ltd of Hong Kong through a British Virgin Islands subsidiary, Halsey Holdings Ltd. However, its ultimate owner is Bass PLC of the U.K., which bought it from the Pritzker family, Chicago, U.S.A., in 2000.

Carlton Hotels Ltd of Hong Kong, owned by Dr Li Dak Sum and his family interests, owns the Pan Pacific Hotel, Auckland.

Construction and civil engineering

The Downer Group Ltd, a major construction and civil engineering firm formerly based in New Zealand but now headquartered in Sydney with significant international operations is owned 43.9% by Paul-Y-ITC Construction Holdings Ltd. Paul-Y is incorporated in Bermuda, but listed in Hong Kong. Hutchison Whampoa of Hong Kong has a further 12.5%. The remainder of Downer is owned in the U.S.A. and Australia.

Paul-Y is a major company, its subsidiaries providing construction, engineering, mining, resource, infrastructure and telecommunications services. They also manufacture concrete products and develop property. It operates in Hong Kong, China, South East Asia, Australia and New Zealand.

Hutchison Whampoa is a Hong Kong based multinational conglomerate with a market capitalisation of US$62 billion. It is part of the Li Ka-shing group of companies, which together represent over 15% of the total capitalisation of the Hong Kong stock exchange.

Since Paul-Y acquired Downer, it has taken over Works Geothermal Ltd, including 15 hectares of land at Wairakei; Works Civil Construction Ltd; and Bitumix Ltd and bitumen plants at four ports. Works Geothermal and Works Civil Construction were both privatisations from the former Ministry of Works and Development.

Groceries

The 81 supermarket Big Fresh and Price Chopper supermarket chain, Woolworths (New Zealand) Ltd, and Associated Wholesalers are owned by Dairy Farm International Holdings Ltd, part of the old colonial company, Jardine-Matheson. Dairy Farm runs supermarkets, drugstores, and convenience stores in mainland China, Hong Kong, Taiwan, Malaysia, Singapore, Indonesia, Australia, and India. Jardines is incorporated in Bermuda and listed on the Hong Kong, London and Luxembourg stock exchanges. According to its 1999 Annual Report, 52% of its shareholders' funds are in Hong Kong or Mainland China. Jardines was infamous in its distant past for selling opium to China and sparking the Opium Wars.

Other Retail

DFS New Zealand Ltd (Duty Free Shoppers) is owned by a subsidiary of Duty Free Shoppers International Ltd, DFS Holdings Ltd of Bermuda, owned in Hong Kong.

Importing and distributing

Grocery distribution is mentioned elsewhere. Salmond Smith Biolab, owned by the Tiongs of Malaysia (see above), claims, with its sister company Selby-Biolab in Australia, to have the largest scientific distribution network in Australasia (*ComputerWorld New Zealand*, "Biolab uses summit to announce marketplace", http://www.computerworld.co.nz/webhome.nsf/UNID/5B05F534E2A18A30CC25698B000390DC!opendocument, 6/11/00).

Monaco Corporation Ltd (formerly Transmark) distributes consumer products such as toasters, TVs, home security systems, watches and cameras. It is owned by Shriro Pacific Ltd, owned by Mark Shriro of Monaco, through Tectoria of the Cayman Islands, registered in Hong Kong.

Clipsal Industries Ltd (formerly Bluepoint Products Ltd), is an electrical products distributor owned by Stenhouse Investment Ltd of Hong Kong. In March 2001 it bought more than 5% of Christchurch electrical goods manufacturer, PDL Holdings.

Housing subdivision

The Tiongs own Neil Construction which is an active housing subdivision developer, mainly around Auckland. A number of other investors have developed subdivisions in a smaller way

– mainly in rural areas for lifestyle blocks. For example seven Hong Kong residents took a 45% interest in Bridgethorne Holdings Ltd, which owns 103 hectares at Kerikeri, Far North, in 1995 in order to subdivide the land into 12 orchards, 12 lifestyle blocks, a main farmhouse and a small strip for a new golf course. Tenbless Development Ltd of Hong Kong bought 3.8 hectares in North Auckland in 1990 for residential subdivision.

Implications of a Hong Kong FTIA

There are three main points of reference for any agreement with Hong Kong, layered on the situation as described above.

The first is the WTO. The most important aspects of this are tariffs and the GATS. In the case of Singapore, both governments took the stance that their regimes were so open with respect to tariffs and investment that services were one of the few areas in which any visible movement could be claimed. That ignored the effects that changes in tariff and investment rules might make in trade and investment behaviour, and the further obstacles it put in the way of reinstating some controls on foreign investment and capital movements. It is likely that New Zealand negotiators will take the same approach in the case of Hong Kong (despite the potentially devastating effect on our textile, footwear and clothing industries), and so further opening of services is likely to be a major focus, and will build on the GATS commitments. A secondary but important issue is the Agreement on Government Procurement, which Hong Kong is a signatory to, but New Zealand reportedly did not sign because it was insufficiently deregulatory. New Zealand does have commitments on procurement under CER (goods only) and the SNZCEP (both goods and services).

The second point of reference is the existing IPPA, because it will need either to be incorporated into any agreement, or be read alongside one, hugely intensifying its investment, deregulatory and economic development implications.

The third is the SNZCEP on which it is probable that a Hong Kong FTIA will be modelled. It goes further than the GATS and the IPPA in a number of respects.

WTO

GATS

As described above, Hong Kong's GATS commitments are not as wide-ranging as New Zealand's. New Zealand negotiators will be trying to expand Hong Kong's GATS commitments in a way that is consistent with GATS, but pushes further towards complete liberalisation of services.

Education, and professions including architecture and engineering were New Zealand targets in Singapore and are likely to be in Hong Kong. Hong Kong can be expected to demand concessions in return. New Zealand has relatively little to give in services: it already has one of the most wide-ranging commitments of any WTO member.

If Hong Kong asks for like-for-like concessions, then New Zealand's public education and health systems, both of which have become commercialised and open to private sector competition, are at risk of being locked opened to commercial competition from companies based in Hong Kong. That would undermine the government's proclaimed intention to restore the public dimension to these systems. Similarly, the professions risk being locked into international competition, potentially undermining any special contributions they make to New Zealand society culturally, socially, in terms of quality or in raising skill levels.

Education – particularly tertiary education – has been a strongly disputed aspect of GATS, in New Zealand and internationally because of its importance in the social and cultural – as well as economic – development of the nation. For many people – but not previous New Zealand governments – there is a strong aversion to it being treated as a commodity, which is what its inclusion in GATS (or similar provisions in a FTIA) mandates.

New Zealand's tertiary funding system provides grants to private education providers on the same basis as the public institutions. Even if that changes, it seems likely that there will still be substantial subsidies to private tertiary education providers. That makes a tempting target for overseas education companies which under GATS are entitled to the same or better treatment than locally owned private ones. There is a high risk of increased privatisation and overseas capture of New Zealand's tertiary education system by stealth.

There are already numerous examples of this, including Nord Anglia Education PLC of the U.K., the first education company to be floated on the London Stock exchange, which took over the Christchurch Design and Art College with a staff of 46, and 200 students in 1997; the Japanese-owned International Pacific College at Palmerston North; Singapore-owned computer dealer Computerland by associating with the private NZQA-approved Canterbury Institute is offering courses which attract government subsidies; the proposal by the University of Limerick (Ireland) and Victoria University of Wellington to set up a "university college" in Taupo; and the central role of Canadian media giant, Thomson Learning, in the plans of the international Universitas 21 consortium of universities, of which University of Auckland is a member, to run an international on-line University.

Amendments to the New Zealand Qualifications Authority's powers currently before Parliament would authorise it to approve both courses from overseas providers (including those supplied across the border via Internet) and the overseas providers themselves. Approval would entitle foreign providers to receive access to tuition subsidies equal to that received by private providers: indeed, GATS commitments would prevent discrimination against them. So public tertiary tuition subsidies could flow straight out of the country.

New Zealand has been an enthusiastic, but not terribly successful, education "exporter" – for a long time through overseas students coming to New Zealand universities. The New Zealand government is seeking to expand those "exports", in schools as well as tertiary institutions.

More recently New Zealand tertiary institutions have begun to "export" education by providing courses through a physical presence in Malaysia, Singapore and elsewhere. This is undoubtedly one of the gains the New Zealand government will be hoping to make in the Hong Kong FTIA. However it is difficult to see New Zealand benefiting from it. Hong Kong has a well developed tertiary education system, with considerably better student:teacher ratios than New Zealand, particularly in tertiary education (see Table 6). There is still a shortage of facilities, leading to many tertiary students going to the U.K. and elsewhere overseas (including 400 full fee-paying students enrolled in New Zealand tertiary education at 31 July 2000 according to the Ministry of Education, and approximately another 400 in schools). That shortage may make it a tempting market, but it will favour providers with plentiful capital resources and high reputations because of the high costs (particularly of office space), high incomes of students' families, and high standards of existing facilities. It will therefore be considerably harder to establish a place in than elsewhere in Southeast Asia and will likely require commitment of financial resources at a time when shortage of funding is causing real concerns about the quality of New Zealand education at all levels.

Table 6
The Hong Kong Education System, 1999
(Source: HKCSD)

Level/Type	Institutions	Students	Student:Teacher ratios
Kindergarten	756	171,138	12.6
Primary School(2)	819	491,851	22.4
Secondary School(2)	519	465,250	18.9
Adult Education Institution(3)	859	142,152	-
Special Education School(4)	74	9,687	5.6
Subtotal	*3027*	*1,280,078*	
Hong Kong Institute of Vocational Education(6)	1	54,781	19.5
UGC-funded Institution	8		12.5
Sub-degree		20,916	
First Degree		47,467	
Postgraduate		15,371	
The Open University of Hong Kong(7)	1	25,654	*Not available*
The Hong Kong Academy for Performing Arts	1	704	8.9
Approved Post-secondary College	1	2,361	21.1
Subtotal: Total formal tertiary	*12*	*167,254*	
Total	**3,039**	**1,447,332**	

Notes (as provided by HKCSD) :

(1) Figures include schools operated under the English Schools Foundation (ESF) Schools and International Schools.

(2) Figures include evening schools.

(3) Adult education institution refers to government evening institutes and various private schools offering a variety of subjects including commercial classes.

(4) Include Special Schools, Practical Schools and Skills Opportunity Schools.

(5) The Technical Colleges and the Technical Institutes were renamed the Hong Kong Institute of Vocational Education in 1999.

(6) The Hong Kong Institute of Vocational Education was formed in 1999. It is composed of nine campuses of which two are the formerly Technical Colleges and seven are the formerly Technical Institutes.

(7) The Open Learning Institute of Hong Kong was established in June 1989. It was retitled The Open University of Hong Kong on 30 May 1997.

The government may instead seek to attract more students from Hong Kong (and China) to study in New Zealand. It is unclear how any agreement would help promote that, and to the extent that inter-government cooperation would help, could easily be done outside the context of a full FTIA. Students are already coming to New Zealand, and there do not appear to be any regulatory barriers to them. Any advantage that New Zealand has over other educational destinations comes from cost and lifestyle. It would be foolhardy to compete simply on the basis of cost: it would have to be achieved primarily through lower incomes to those working in education, or by reducing quality through worsening student:teacher ratios. Preserving the attractive lifestyle and the FTIA appear fundamentally contradictory. It is commonly accepted, even by proponents of trade and investment liberalisation, that such policies further heighten inequalities and thus tensions in society. Lifestyle will inevitably suffer.

Of further concern is what concessions will be required in return. In the Singapore agreement, the New Zealand government proposed to introduce new uncertainties with new wording on education and only under pressure maintained the education status quo that it had committed to under GATS. That is already one of the most liberalised of all WTO members. Only thirty countries made commitments to open their education to international competition under GATS, and only 21 of those opened it in higher education, 23 in secondary and 21 in primary, according to the WTO secretariat ("Education Services, Background Note by the Secretariat", 23/9/98, document S/C/W/49, Council for Trade in Services).

These existing commitments have already posed constraints on policy options for the tertiary sector, such as not allowing New Zealand to limit the total number universities in the country. The government would be well advised to try to withdraw from these commitments. Instead, the SNZCEP cements in that highly undesirable position for Singapore; a repeat for Hong Kong would make withdrawal even more ineffectual and difficult.

Similar problems have emerged in the audio-visual sector, with the proposed introduction of local content broadcasting quotas falling foul of existing GATS and CER commitments. The government, under the Prime Minister's instruction, did not repeat those commitments in the SNZCEP, although it was unable to create a watertight right to reintroduce such quotas. Clearly the government is aware of the problems, and has been willing to move in areas where its specific policies are threatened. Yet this treats only individual symptoms of the broadly deregulatory policies that GATS represents. Further threats to policies New Zealand wishes to follow will inevitably arise across a broad range of services. The entire GATS commitment (and similar commitments under SNZCEP and CER) need review rather than being reinforced in a new FTIA.

As well as like-for-like concessions in services, Hong Kong will almost certainly ask for concessions in other areas such as the remaining TCF tariffs (frozen in fulfilment of an election promise by the present government), in government procurement, particularly in relation to local government (see below), or investment.

Yet, given the overwhelming focus of Hong Kong investment on commercial property, construction, importing, wholesaling and retailing, it is difficult to justify any claim that it can provide investment in services that are of any advantage to New Zealand. The Hong Kong interest in business services and construction and related services also has obvious impacts on government procurement, in which construction is significant (see next section).

The New Zealand government argued in the Singapore context that openings for our engineering and related consultancies, including recognition of engineering qualifications, was an important gain, yet this has never been quantified. Such firms have been active in many ASEAN countries without any need for further agreements. Mutual recognition of qualifications is a reciprocal benefit that could be negotiated outside the context of a full FTIA. To make inroads into Hong Kong's relatively sparse GATS commitments in construction and engineering would have to be at the cost of substantial concessions on New Zealand's part.

Agreement on Government Procurement

Government procurement was a feature of the Singapore agreement that went well beyond existing WTO and CER commitments. That Hong Kong has already made concessions in this area suggests that New Zealand will try to persuade it to make further concessions, which will again require concessions on New Zealand's part. This area is particularly contentious because it directly affects local government.

In the SNZCEP, all government procurement of goods and services over the equivalent of $125,000[9] were opened to Singapore on an equal basis to local companies. The competitive position of local goods suppliers was weakened by the Rules of Origin in that agreement which meant that goods had to be treated as coming from Singapore or New Zealand even if only 40% of the content was created in either of the countries. That is likely to be of even greater concern in the case of Hong Kong. It also only applied to procurement that was subject to tenders or open advertising, which is the routine practice in New Zealand but not in many other countries.

Local service suppliers may find themselves competing with companies from around the world using a Hong Kong base for tendering. While the SNZCEP does not bind local government directly, it requires central government to use its "best endeavours" to secure compliance from local government. Failure to do so can lead to a dispute under the agreement. The requirement for local authorities to comply is therefore indirectly enforceable and local government will come under enormous pressure to comply.

An example of a service generally the responsibility of local government covered in the SNZCEP is environmental services – rubbish collection, sewerage, and perhaps services in relation to water supply, all of which are an important and often contentious part of local services. Some (such as waste recycling) are often provided by non-profit or even voluntary organisations but would be required under this regime to be advertised to international competition, unless they are run by the local government's own departments or are less than $125,000 in value.

There are important restrictions in the SNZCEP on achieving social ends in procurement (SNZCEP Article 53): central or local governments cannot "impose seek or consider" making conditions on suppliers that would "encourage local development or improve the balance of payments accounts by requiring domestic content, licensing of technology, investment, counter-trade or similar requirements."

Similarly, governments must "use value for money as the primary determinant in all procurement decisions" (SNZCEP Article 49), where "'value for money' means the best available outcome for money spent in terms of the procuring agency's needs. The test of value for money requires relevant comparison of the whole of life costs and benefits relating directly to the procurement. 'Whole of life costs and benefits' include fitness for purpose and other considerations of quality, performance, price, delivery, accessories and consumables, service support and disposal." (SNZCEP Article 48(g))

The effect of these provisions is likely to be that central government and, more often, local government, will not be able to use its spending power to simultaneously achieve social aims.

[9] Actually 50,000 Special Drawing Rights (a unit used by the IMF) which was equivalent to approximately NZ$125,000 when the SNZCEP was signed.

Those aims typically include supporting non-profit groups, creating employment, and regional economic development. Commercialisation will be encouraged, as described in relation to services.

On the other hand, government-owned corporations perform many public functions in Hong Kong, but such “bodies corporate” with the power to contract in their own right are not covered by these procurement provisions (see SNZCEP Article 48(e)).

The Investment Promotion and Protection Agreement

The New Zealand-Hong Kong IPPA (New Zealand Treaty Series 1995, No. 14) was signed in 1995, and is very similar to one signed with China in 1988 (New Zealand Treaty Series 1988, No. 10, which came into force in 1989). Both have minimum 15 year terms, with protection to continue for a further 15 years for any investment in place if the agreement is subsequently terminated. Hong Kong has signed very similar agreements with at least 13 other nations[10].

In addition to the rigidity of this lengthy term, two features stand out (as in similar agreements signed by the previous government with Chile and Argentina which await only ratification).

These are the expropriation provisions (which are not contained in the SNZCEP), and the disputes procedure.

These provisions are very similar to what was proposed in the OECD-sponsored Multilateral Agreement on Investment (MAI) which was defeated in 1998 after widespread international opposition. The MAI’s expropriation and disputes procedures were at the centre of that concern. Those provisions were in turn modelled on ones in NAFTA[11]. Events since the defeat of the MAI have well justified the concern, though dismissed at the time by the MAI’s proponents.

The heart of the problem lies in the definition of expropriation. In the Hong Kong-New Zealand IPPA it is defined (IPPA Article 6) as follows:

> Investors of either Contracting Party shall not be deprived of their investments nor subjected to measures *having effect equivalent to such deprivation* in the area of the other Contracting Party except lawfully, for a public purpose related to the internal needs of that Party, on a non-discriminatory basis, and against compensation. [My emphasis.]

The “equivalent effect” provision has profound implications. In NAFTA it has been interpreted to include loss of an investment’s value through loss of profitability. It means that any change in environmental regulations by central or local government which reduced the profitability of an enterprise (and hence the value of a permit or asset) could result in awards of

[10] Australia, Austria, Belgium-Luxembourg, Denmark, France, Germany, Italy, Japan, Korea, Netherlands, Sweden, Switzerland, and the U.K. Their terms are up to 20 year terms (plus a further 20 years for existing investments; France) and in some cases are extended in 10 year periods beyond the initial term (Switzerland, Netherlands, Italy, France), rather than having the ability to terminate after the first term at one year’s notice.

[11] Article 11. NAFTA Article 1110 states: No Party may directly or indirectly nationalize or expropriate an investment of an investor of an-other Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment (“expropriation”), except: a) for a public purpose; b) on a non-discriminatory basis; c) in accordance with due process of law and Article 1105(1); and d) on payment of compensation in accordance with paragraphs 2 through 6.

compensation and perhaps reversal of a change in law or regulation. It could be subject to lengthy litigation as to whether it was "lawful", "for a public purpose related to the internal needs" of New Zealand, and "non-discriminatory".

The implications are widened even further by the definition of investment which, as well as all property rights (such as mortgages), shares (whether as short term portfolio investment or long term direct investment), and intellectual property, includes "business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources". That includes mining permits, resource consents under the Resource Management Act and other concessions and exemptions. If the value of such permits (or the underlying assets for which they are used) is reduced by for example a general tightening of environmental, health, safety or working conditions, then corporations affected could make a claim for compensation or reversal of the government actions if they are owned, or have a legal presence, in Hong Kong. Though local governments are not bound by the IPPA, central government can be forced to compensate for their actions, almost certainly leading to law changes or pressure on local governments to restrain their actions.

Even the threat of such actions, with its heavy cost in legal fees and time, is a brake on government actions that would otherwise have been taken in the interests of its citizens.

These points have been demonstrated by decisions under NAFTA, in what one U.S. attorney, Lydia Lazar, describes as "a strategic windfall for companies unhappy with actions taken by local or federal governments, actions that impede or thwart their corporate ambitions"[12]. More challenges are in the pipeline. Claims by corporations regularly amount to hundreds of millions of U.S. dollars, and settlements in the tens of millions. Some examples:

The Ethyl Corporation sued the Canadian government for restricting use of a petrol additive produced by the corporation, MMT. Canada had restricted it on the grounds that it caused nervous-system damage and interfered with car emission control systems. Ethyl sought about US$250-million, claiming not only lost Canadian profits but damages to its worldwide interests, saying the Canadian action sullied its reputation. Ottawa agreed to repeal the cross-border ban, pay US$13-million in damages to Ethyl and provide an admission that there is no scientific evidence to back automakers' claims that MMT interferes with emission-control equipment or poses a health threat. In return, Ethyl dropped all trade and court cases.

A case is currently in progress where Vancouver-based Methanex Corporation is suing the Californian State government claiming its ban on methyl tertiary butyl ether (MTBE), made by the company in New Zealand and Chile, amounts to expropriation. MTBE was introduced to reduce air pollution but in 1999, California ordered the removal of MTBE from gasoline supplies by 2003 as a way to protect water supplies after a University of California study found that MTBE had affected at least 10,000 groundwater sites throughout California. Other studies have shown that MTBE may cause cancer as well as neurological, dermatological, and other problems in humans. Other U.S. states have banned or proposed banning MTBE, and the United States Senate Environment and Public Works Committee voted recently to ban MTBE across the United States. Methanex is claiming US$970 million in damages, described as expropriation of their expected business profits.

[12] *Journal of Global Financial Markets*, "NAFTA dispute Resolution: Secret Corporate Weapon?", by Lydia Lazar, Vol 1. No. 3, Winter 2000.

In a Mexican case, Lazar describes the situation as follows. Metalclad Corporation, a US waste disposal company, accused the Mexican government of violating Chapter 11 of NAFTA when the state of San Luis Potosi refused it permission to re-open a waste disposal facility. In 1993, Metalclad purchased a landfill in San Luis Potosi with the permission of the Mexican government. The company removed 20,000 tons of waste illegally dumped there. However following elections in 1994, popular opposition grew after it was revealed that sub-terranean streams supplying water to the local community ran under the landfill. The State Governor ordered the site closed down and declared it part of a 600,000 acre ecological zone. Metalclad successfully claimed that its property had been illegally taken by the Mexican government, which should pay compensation under NAFTA. Metalclad presented a valuation of the landfill business at $90 million. It was awarded US$16.7 million. Metalclad spent nearly $4,000,000 in legal expenses, and Mexico's expenditure was believed to be significantly higher. The Mexican government is challenging the decision in a Canadian provincial court – an option that would not be available in the case of a Hong Kong-based company winning such an action against New Zealand under the IPPA.

In the words of Mexico's general counsel for trade negotiations and lead counsel in the Metalclad case, Hugo Perezcano, the municipality followed various constitutional and legislative provisions in its refusal to grant Metalclad a permit. "Metalclad knew the local community opposed it and they decided to force the situation, ignored the issue of the local permit and built without having a permit. It should have been no surprise that they had overstepped that jurisdiction." (Source: "NAFTA: Sovereignty versus Chapter 11", *Vancouver Sun*, 15/2/01, by Sarah Schmidt.)

The latter two cases are particularly significant in that they involved sub-national governments – a U.S. state and Mexican local government – which were not signatories to NAFTA. There are clear warnings here for New Zealand local government. Their actions are subject to challenge and compensation, but they will have no standing in the closed tribunals that decide the outcome. A central government unsympathetic or hostile to, for example, regional development or environmental policies followed by a local authority, could decide not to defend, or defend half-heartedly, a case which would then give it leverage to amend legislation, funding or conditions on funding.

New Zealand examples of recent years that could lead to such litigation include

- Auckland City Council's halting of the Britomart scheme. The loss of the consent for the scheme is both the loss of "business concessions conferred by law or under contract", and led to the loss of future profits and the value of the company promoting the scheme (indeed, it could be claimed, its eventual failure). There is therefore a strong argument that it is expropriation in the language of the IPPA, in that it has an "effect equivalent to such deprivation" of the assets.
- The renationalisation of ACC arguably led to the loss of "business concessions conferred by law or under contract", and certainly to loss of expected profits and the value of insurance company assets, again leading to arguments that this is expropriation.
- The slowing of the fast ferries in the Marlborough Sounds by the Marlborough District Council, because of the damage they were causing to surrounding shores and sea life, and concerns about the safety of small vessels using the Sounds. The ferry owners – Tranz Rail and Top Cat – claimed the action reduced their profitability (and hence the value of their assets). Top Cat went out of business shortly afterwards, claiming the District Council's actions as a factor.

- The Electricity Industry Reform Act 1998 banned any company from owning an electricity supply network (lines) operation as well as either an electricity retailing or generation operation. It forced many companies to sell parts of their operations – in most cases unwillingly. In the event, most made extraordinary capital gains (at the expense of consumers) from the sales and purchases that ensued. Had any made a loss, they would have had a strong argument that this amounted to expropriation through loss of their assets or their value.

Each case could lead to large compensation claims if the NAFTA examples are a guide, but they would also lead to challenges as to whether the actions by authorities were taken "lawfully, for a public purpose related to the internal needs of that Party". Both those ingredients were disputed at various times in all these examples. If a tribunal upheld such challenges, it could require reversal of the actions as well as compensation (as in the Ethyl Corporation vs Canada case above).

In most of these cases, rights have been created by the IPPA beyond those existing under New Zealand domestic law. These rights are not available to most New Zealand citizens or companies.

While none of the above involved Hong Kong investors, it would be a very simple matter for the owners to move the legal ownership of the assets to a Hong Kong subsidiary in order to gain these rights. The IPPA's definition of investor includes "corporations, partnerships and associations or other legally recognised entities incorporated or constituted or otherwise duly organised under the law in force" in Hong Kong. Foreign companies can be (and are) registered in Hong Kong quickly, easily and without restriction, immediately gaining protection for their New Zealand investments. This tactic is not only consistent with Hong Kong's role as a haven for companies wishing to select the most advantageous legislative environment, but has a recent precedent in Bolivia, involving the Bechtel Corporation. Canadian journalist, Murray Dobbin reported ("Water: right or commodity?", *National Post*, 8/2/01):

> In February, 1999, the World Bank told the mayor of Cochabamba [in Bolivia] that if the city did not privatize its water system it would not receive another cent of financial assistance for local water development. Then, after judging the resulting Misicuni privatization project financially unviable, the Bank proceeded to back it anyway, insisting on water pricing that would cover the excessive costs, and guarantee that Bechtel would earn a 16% profit.
>
> Water prices for many locals tripled, meaning some people were paying 20% of their income for water…
>
> The resulting citizens' revolt shook the Bolivian government. It led to a week of protests, general strikes, and highway blockages which brought major areas of the country to a virtual standstill. The government caved and told Bechtel to leave. The privatization was reversed and the water system handed over to the town.
>
> But Bechtel had not given up. Apparently anticipating trouble, Bechtel made moves before its expulsion that guaranteed it access to one of the world's 1,500 powerful Bilateral Investment Treaties (BIT). These treaties –

> mini-MAIs with all of the intrusive power of the failed Multilateral Agreement on Investment – allow corporations to sue governments directly. And Bechtel, knowing that Bolivia had such an agreement with Holland, transferred its holding company from the Caymen Islands to Holland. It is now using the BIT to sue Bolivia for US $40 million.

In addition, a Hong Kong national, or anyone with "right of abode in Hong Kong", who is resident in New Zealand, has the same rights under the IPPA. This creates an extraordinary "super-investor" class within New Zealand which has much greater rights than the ordinary New Zealand citizen or company.

The man behind the Britomart fiasco, Jihong Lu, provides an example under the IPPA with China. Lu is a national of China. Even after his New Zealand-registered companies associated with the project have exhausted legal processes within New Zealand to extract compensation for its cancellation, he could, as an individual, take action under the New Zealand-China IPPA for compensation for loss of his assets, namely the value of his shares in the companies. He has a strong incentive to pursue such a course because he is now bankrupt as a result of other business deals.

If the expropriation provisions of the IPPA are a threat to New Zealand's ability to follow its preferred social, economic and environmental policies, the disputes procedure under which such actions are taken, is of equal concern. Article 9 of the IPPA provides for investor enforcement: it gives investors the right to force such disputes to arbitration under the Arbitration Rules of the United Nation's Commission on International Trade Law (UNCITRAL). Effectively this gives corporations equal standing with governments and a potentially greater right to enforce outcomes of disputes arising under the agreement than the governments themselves – an unprecedented development in the history of nations' sovereignty.

As Lazar states in reference to NAFTA and the U.S.A.:

> The fact that NAFTA mandated the use of arbitration to resolve such sovereign/investor disputes has had a profound impact on the balance of power between private economic interests and sovereign states, one that deserves to be more fully debated. That impact can be seen when considering the recent arbitral award against Mexico, which will soon take on the force of a legal judgment. When it does, a sea change in the balance of power between corporations and sovereign states will have occurred.
>
> To understand why, consider how our judicial system handles arbitral awards. It is comparatively difficult to convince a U.S. court to overturn an arbitral award, and U.S. courts have traditionally accorded deference to foreign arbitral awards. Now, however, when just the threat of a Chapter 11 action may suffice to wrest a financial settlement from a government, investors have unprecedented leverage against states. As international arbitration becomes the de facto global legal regime between economic entities and sovereign states, widespread notions about "global governance without global government" need to be critically re-evaluated.

Lazar argues that such agreements undermine "sovereign immunity". Her references to NAFTA can be just as well applied to the IPPA and similar investment agreements.

> This judicial doctrine holds that a state cannot be sued without its consent. Over the course of the last century, sovereign states have become less immune to legal process by their creditors through the emergence and acceptance of the so called "restrictive" theory of sovereign immunity, which states "accept" by signing international conventions, implementing statutes, or through case law decisions. This theory is based on the idea that a sovereign can either explicitly waive its immunity to being sued without its consent (for example, in a contract or a treaty) or implicitly waive its immunity when engaging in commercial activity.
>
> NAFTA added a new wrinkle to the restrictive theory of sovereign immunity because it altered the longstanding presumption that, apart from the two exceptions noted above, only states and state based international organizations had legal standing to pursue noncontractual claims against one another under international law. Under NAFTA, a corporation (referred to throughout NAFTA as an 'investor') is now empowered to force the signatory countries into arbitration[13] when it believes it has been economically harmed by any governmental activity, whether or not commercial.

The slogan of UNCITRAL, under which IPPA investor-government disputes are arbitrated, is "ONE WORLD OF COMMERCE: towards ONE COMMERCIAL LAW". Its Arbitration Rules (AR)[14] are typical for such proceedings. UNCITRAL itself takes no part in the proceedings: it has solely created a set of model rules that will be used by the parties to disputes under the IPPA. The process can be seen as a privatisation of the commercial justice system.

The arbitral tribunal is appointed by the parties to the dispute. No third parties, such as a local authority, affected neighbours, employees or other citizen groups, have any standing in hearings, if hearings do occur (all submissions may instead be writing). Indeed "hearings shall be held in camera unless the parties agree otherwise" (AR Article 25(4)), and third parties will not normally even be aware that the dispute is being heard unless called by one of the parties as witnesses or appointed by the tribunal as an expert. There is no right for the public to listen to proceedings or view evidence or submissions presented. The final "award may be made public only with the consent of both parties" (AR Article 32(5)) so the corporation party to the dispute can veto any decision being made public. So can a government which is embarrassed or nervous of public or investor reactions. Arbitral decisions are not bound by – nor do they create – legal precedents, although they do "help create international custom and usage", according to Lazar. She describes the nature of the tribunals as follows:

> Substantively, arbitral decisions reflect the economic interests of businesses. Arbitrators do not explicitly incorporate any other interests, such as environmental, social, or political concerns. Yet through its incorporation into the NAFTA regime, arbitration will continue to become, substantively, one of the leading legal mechanisms governing international commercial disputes. Should this occur, those whose interests are not represented are even

[13] The investors cannot "sue" the U.S., Canada or Mexico (i.e., file a complaint in a court of law); rather, they are empowered to submit claims against the states for resolution by arbitration according to the rules and procedures mandated by NAFTA [Lazar's footnote].
[14] UN General Assembly Resolution 31/98

> less likely to support global institutions and less likely to see international law as a positive tool for resolving problems. In the end, disaffected groups will support policies that challenge or obstruct efforts to integrate national economies into global trading regimes.

Investor enforcement is a potent basis for expensive litigation, the very threat of which gives overseas investors additional power in dealing with central government, and local government if central government (as is likely) passes on the results of a dispute. Note that it is discriminatory in that the same power is not available to New Zealand investors with respect to the New Zealand government – although they could gain it by owning their companies through a Hong Kong subsidiary!

The IPPA makes arbitration mandatory when a dispute between investors and the government cannot be resolved amicably and procedures for settlement have not been agreed within six months. The precedents outlined above give strong incentives to the investor not to settle amicably. International arbitration awards made outside New Zealand are enforceable against the New Zealand government in New Zealand domestic courts under the Arbitration Act 1996, except where the court finds that the subject matter of the dispute is not capable of settlement by arbitration under New Zealand law, or the recognition or enforcement of the award would be contrary to the public policy of New Zealand. That would prove a most unreliable backstop for the government if it considered that it was not in New Zealand's interests for it to settle with the investor or for the dispute to proceed.

It is also important to compare the IPPA's disputes procedure with that under the SNZCEP. If negotiations towards a FTIA proceed, then the IPPA and the FTIA will need to be made consistent. Although the SNZCEP has no expropriation provision, it has an even stronger investor-government disputes procedure than the IPPA. So it is likely that the IPPA's disputes procedure will be strengthened (becoming even more threatening) if an FTIA is completed.

SNZCEP's Article 34 parallels the IPPA Article 9 provision for investor enforcement. The SNZCEP article differs from that of the IPPA in two main respects. First, the arbitration (if no other procedure is agreed) is under the International Centre for Settlement of Investment Disputes (ICSID), rather than UNCITRAL. That has an escape provision that allows a country to withhold its consent to arbitration. The second difference between the SNZCEP and the IPPA provisions is that that escape provision is provided for, which would allow New Zealand to refuse arbitration. However, whether that escape route would be used is doubtful: recent New Zealand governments have been much more preoccupied with retaining "investor confidence" than the integrity of the country's policy options. There is also an expectation that a government enters into an agreement with the intention of complying with it. They would recite those arguments in meekly submitting to the disputes procedure. Once into ICSID arbitration, the outcome is directly enforceable in New Zealand courts through the Arbitration (International Investment Disputes) Act 1979, a stronger position than under UNCITRAL under the IPPA. ICSID procedures have the same weaknesses as UNCITRAL as described above.

The SNZCEP also has stronger national treatment provisions than the IPPA, preventing a government from giving favourable treatment to local citizens or companies.

The SNZCEP provisions are discussed in more detail below.

The Singapore New Zealand Closer Economic Partnership

The main provisions of the SNZCEP relating directly to investment are as follows. Some investment provisions are substantially identical to the IPPA. However, if others become part of an agreement with Hong Kong, they will reinforce the already dangerous IPPA, and add new problems for New Zealand's economic development. The SNZCEP services provisions relate directly back to GATS.

Investment

The very wide definition of investment (SNZCEP Article 27(1)) is reminiscent, though not identical to that in the ill-fated Multilateral Agreement on Investment.

The SNZCEP definition includes intellectual property. When combined with the disputes procedure (SNZCEP Article 34), National Treatment (SNZCEP Article 29) and the Repatriation and Convertibility provision (SNZCEP Article 31), this could have significant results that are difficult to predict. Under some circumstances it could act as a back door means of giving investors the right to directly enforce the WTO's TRIPs (Trade-related Intellectual Property Rights) agreement, which forms the intellectual property provision of this Agreement.

For example, suppose measures were put in place to encourage local manufacture and use of generic pharmaceuticals, as occurs in Canada and other countries. A transnational pharmaceutical manufacturer of a brand-name equivalent could take action claiming it as a breach of National Treatment because it is put at a disadvantage in the operation of its investment in New Zealand (even if it was free to manufacture locally itself). It could even claim it was a form of expropriation because it reduces its profitability, which then could be enforced under the IPPA.

As with the IPPA, the investment definition also includes "business concessions conferred by law or under contract, including any concession to search for, cultivate, extract or exploit natural resources", which has major implications in association with the IPPA's expropriation provision, as discussed in the previous section.

The SNZCEP definition extends that used in the IPPA by adding "derivative instruments" which are frequently used for speculation or to facilitate speculation and rapid international movements of money. The effect of the definition is to include short term financial instruments, meaning that "hot money" has the same protection as productive and more stable direct investment. We will return to this shortly.

Similarly the definition of "proceeds from investment" (SNZCEP Article 27(2)) is very wide, including some capital such as capital gains, the proceeds of the liquidation of an investment, and loan payments. That means that there is little real distinction, in terms of controlling capital flows, between investment and its proceeds. It is somewhat wider than the IPPA's definition of "returns", but more significant are the provisions guaranteeing treatment of those proceeds, which we will come to shortly.

As with the IPPA, the definition of "investor" (SNZCEP Article 27(3)) does not capture what would commonly be thought of as a "Singapore" or "Hong Kong" investor. It includes "any company, firm, association or body, with or without legal personality, whether or not incorporated, established or registered under the applicable laws in force in a Party, making or having made an investment in the other Party's territory". That means that the company (etc) need not be owned in Singapore: all it needs is some form of presence there. Unlike a service provider, which must (SNZCEP Article 25) "engage in substantive business operations in the territory of one or both Parties" to be covered by the SNZCEP, an investor can be covered if it is merely "established or registered" under the laws of one or other country. It widens the IPPA to cover unincorporated entities. As discussed above, this would allow any transnational company to take advantage of the provisions of the agreement by the simple arrangement of passing ownership of its New Zealand subsidiaries to its Singapore subsidiary.

For example, if Deutsche Bank (which took over the notorious speculator, Bankers Trust, in 1999) decided it wanted a guarantee it could get its money out of New Zealand quickly whatever the circumstances, using SNZCEP Article 31, it could simply transfer the ownership of its New Zealand subsidiaries to its Singapore or Hong Kong subsidiary.

Or suppose the threshold for investments requiring the oversight of the Overseas Investment Commission were returned to $10 million from the current $50 million which is bound into the SNZCEP and a less formal agreement (an exchange of letters) with Australia. That could be done unilaterally for all but Singapore, and Hong Kong (if the same provisions are negotiated). Then a company controlled by individuals who were not of "good character" (under the Overseas Investment Act) could, if taking over a company of between $10 and $50m, simply use a Singapore or Hong Kong subsidiary to quite legally avoid having their investment refused entry.

Of course there is no need to avoid oversight at present, because the current criteria are so weak. But if New Zealand wanted to pull back from its cowboy reputation for the investors it attracts, and the lack of greenfield investment (most overseas investments are takeovers), it would be frustrated in doing so by these provisions.

SNZCEP Article 29 introduces "National Treatment" for investment. That is the principle that overseas investors must be treated at least as well as local investors. It covers the "establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer (or other disposition), protection and expropriation (including any compensation) of investments". That is considerably wider than the IPPA, covering establishment, acquisition and expansion of investments (rather than just existing investments), and liquidation, sale, transfer, protection and expropriation (including any compensation).

By including "establishment" of investments, the agreement opens the possibility of investor disputes if they can claim they were treated less favourably than investors from New Zealand or other countries during the process of financing and acquiring permits etc for an investment project. Again, that has implications for local as well as central government.

National treatment has very important implications for the "incubation" of new industries and ensuring their longer term survival, which is part of the more active economic development policy of the Labour/Alliance government. To nurture such industries, preferential treatment in the way of grants, and potentially other incentives and concessions, may be given. Under this provision, those can only be given if equivalent benefits are made available to Singapore investors. That may mean nurturing competitors who will knock out their local equivalents, negating the purpose of the measures. Significantly, under the IPPA national treatment is subject to New Zealand laws and regulations, unlike the SNZCEP. If the SNZCEP provision is applied to the IPPA in a renegotiated FTIA, it will even further weaken the government's ability to nurture economic development.

SNZCEP Article 31, on Repatriation and Convertibility, in most circumstances prevents New Zealand from placing controls on capital transfers, or the proceeds from investments (see the definition above). That prevents New Zealand from instituting capital controls in any form on transfers to and from Singapore, with a limited number of exceptions which would be of little use to stabilise capital flows. It very significantly extends the comparable provisions in the IPPA, which provide only the "right to transfer their investments and returns abroad, in accordance with [each country's] laws and regulations, and on a non-discriminatory basis". This still allows for changes in our laws on capital and exchange controls as long as they are non-discriminatory between Hong Kong and other countries.

The relevance and importance of these controls in the Hong Kong context is emphasised by the $8 billion moved in and out of New Zealand around December 1998 by Hong Kong based investors, described previously.

The most useful exception to this mandating of unrestrained capital flows is in SNZCEP Article 73, which provides for "Measures to Safeguard the Balance of Payments". This provision allows controls on capital and income flows "in the event of serious balance of payments and external financial difficulties or threat thereof". That is obviously aimed at a problem which is imminent or existing. It does not allow for preventive measures, when such controls might be most useful. The measures taken must be temporary, and "consistent with the Articles of Agreement of the International Monetary Fund".

It is essential if New Zealand wishes to regain any substantial degree of economic sovereignty, and if we wish to maintain our own currency.

These provisions rule out a potent economic instrument that has been used in Malaysia, Chile, China, and other countries, particularly in dealing with the problems caused by flows of hot money. As at 31 March 2000, half (49.6%) of New Zealand's total overseas debt was due in less than one year, making the country susceptible to rapid withdrawal of capital. Rapid reversals of capital flows were the immediate cause of the 1997 financial crisis that began in Asia. They are the main reason for the volatility in our currency, leading to recent suggestions that we abandon it altogether.

Malaysia made a successful response to the financial crisis by freezing capital movements. Chile until recently had controls on capital that require deposits to remain for at least 12 months. Even mainstream economists are again looking at capital controls seriously (e.g. Paul Krugman, "Crises: The Price of Globalization?", August 2000, unpublished).

It is therefore essential that New Zealand maintains the ability to control international capital movements and the proceeds from investments. The SNZCEP rules this out. A precedent exists in the IPPA signed with Chile (but awaiting Chilean ratification to come into effect). This does allow such controls to be maintained, probably at Chile's insistence.

SNZCEP Article 34 parallels the IPPA Article 9 provision for investor enforcement of alleged breaches of the investment provisions, and has been discussed in the section on the IPPA. The exceptional dangers of such provisions would be exacerbated by the SNZCEP's enforcement procedure.

Finally, under SNZCEP Article 32, an investment limitation may be changed only if it "does not decrease the conformity of the limitation" to National Treatment and Most Favoured Nation Treatment (treating the other country at least as well as any third country is treated), and if it "does not affect the overall level of commitments" of the country under the investment provisions. Further there will be reviews of the limitations at least every two years "with a view to reducing the limitations or removing them". In essence, our investment controls can only be further liberalised (i.e. weakened), from the date of signing of the Agreement.

The effect of this must be interpreted in the light of the Annexes to the SNZCEP on New Zealand, and includes the following.

- The $50 million threshold, below which most investment does not require the approval of the Overseas Investment Commission (OIC), is locked in. Until November 1999 it was a tighter $10 million, but raised after an agreement between Australian and New Zealand ministers. New Zealand could still change the threshold back to $10 million for all but signatories to the SNZCEP. It could not take it any lower because a commitment at that level was made by a previous government in the GATS. However, as noted above, the SNZCEP provides loopholes for investors from any country.
- The threshold at which a company is regarded as an "overseas company" is set at 25% overseas ownership. That is also locked in by GATS. It is higher than many other countries, which have values ranging from anything above zero. Australia requires approval for *any* direct investment and for 5% portfolio investments in media companies, and in general regards a 15% holding by a single overseas investor as a "substantial foreign interest". The authoritative United Nations "World Investment Report 1999" describes a 10% stake as being "normally considered as a threshold for the control of assets" (p.465). Again, we are prevented from tightening our exceptionally permissive standards: we can only loosen them further.
- Similarly, a 25% ownership of fishing quota, or of a company owning fishing quota, is locked in.
- With regard to land sales, a threshold of $10 million is preserved for OIC scrutiny of land sales wherever the land is situated, and for the sale of any land outside urban areas exceeding five hectares, scenic reserve land (including historic or heritage areas, the foreshore and lakes), land over 0.4 hectares on specified off-shore islands, and any land on all other islands. Notably, the exception for urban land worth less than $10 million is not part of the Overseas Investment Act criteria, but was put in regulations by the previous government and cannot be reversed for Singapore.
- The "screening regime", which presumably includes the criteria used to judge whether an investment should be allowed, may still be changed. However, this may be an empty power. The criteria – which have been shown to be inadequate to prevent substantial sales of land and major strategic assets – have probably been substantially locked in by the GATS agreement, although this is a matter of interpretation which would require further investigation.

The effect therefore is to immediately freeze or weaken the status quo, making it more difficult even than under GATS to put in place more stringent controls on overseas investment. However, there is a commitment to progressively weaken even those controls that remain. It places a further block in the way of reversing the extreme deregulatory policies instituted by governments of the last two decades.

Services
In Services, the SNZCEP, while taking the same approach as the GATS agreement (see above), increases the pace of liberalisation. SNZCEP Article 14 commits to "progressive liberalisation through successive reviews". Though it gives a nod towards "recognising the rights of both Parties to regulate, and to introduce new regulations, giving due respect to national policy objectives including where these reflect local circumstances", that must be seen in the wider context of the agreement.

That is seen most directly in SNZCEP Article 20 which provides that (at least) two-year reviews under its Article 68 will "progressively expand these initial commitments … in accordance with the APEC objective of free and open trade in services by 2010". That is, the aim is complete removal of any limitations on overseas suppliers to provide our services within nine years. Though they recognise this might be unrealistic ("trade in a particular number of services sectors and measures affecting trade in services may not be fully liberalised by 1 January 2010") and so agree to meet before 2008 to identify a list of the remaining exceptions, the aim is to travel in one direction only: towards greater liberalisation.

What that would mean for social services such as education and health is left to the mercies of the governments in power in 2007.

Commitments in the Services area, like the GATS, are listed by sectors the country is prepared to open up, in Annex 2 of the SNZCEP . Amendments can be made to the list, but they must expand the list or at least ensure that the "overall balance of benefits under the Agreement is maintained". Again, there is no going back.

There is also a commitment towards greater mutual recognition of qualifications. While there is much of merit in this, care must be taken that local culture elements (such as New Zealand history and Treaty of Waitangi content in courses) is not "harmonised" out. Indeed, the provision that "measures relating to professional qualification and registration requirements and procedures do not constitute unnecessary barriers to trade in services" does not bode well. Neither do provisions imported from the GATS Article IV.4 that the qualifications should be "based on objective and transparent criteria, such as competence and the ability to supply the service" and be "not more burdensome than necessary to ensure the quality of the service". Trade, "competence", and provision of services come before general educational values and breadth of knowledge.

New Zealand added a significant number of Service sectors to its commitments in SNZCEP compared to GATS. These additions included urban planning and landscape architecture, dental services, research and development services on social sciences and humanities, except those undertaken by tertiary institutions, market research, management consulting, technical testing and analysis, placement and supply of personnel, investigation and security services, equipment maintenance and repair, photography, packaging, printing, conventions, interior design, couriers, environmental services, ambulances, residential health facilities other than hospitals, archiving, sports and recreation, maritime agency, maritime brokerage, international towage, and certain port services.

Of concern was the addition of environmental and ambulance services. The inclusion of environmental services will be very significant for local government, which carries responsibility for important environmental services such as sewerage, and rubbish collections. Ambulance services may be similarly forced into commercialisation.

Whether the same services would be liberalised for a Hong Kong agreement is yet to be seen, but the above gives some indication of the dangers involved. Because New Zealand has a more liberalised services sector than Hong Kong, it has left itself with considerably less bargaining power in negotiations, even if further liberalisation were desirable.

The effect is to lock the growing services sector into rapidly increasing commercialisation and overseas ownership. We have seen the effects of this on social services, rural areas and on small users of services, in telecommunications, electricity, rail, banks, local government services and many other sectors.

Jobs created in service industries are of very mixed quality. Those created in the sectors favoured by Hong Kong-based investors are likely to be largely in hotels – jobs which are notoriously low paid, insecure, casualised and deunionised. Its investment in property and business services is unlikely to provide many jobs – if it is productive investment at all.

Conclusion

Hong Kong-based investors have been active in New Zealand, but rarely have Hong Kong-owned investors put money into areas that would be of most benefit to New Zealand. They will have produced few jobs, and those jobs are likely to be low-paid and insecure. Indeed, there is strong evidence that much of the investment is for tax avoidance purposes rather than any interest in productive investment. Those investments in New Zealand that have some productive purpose generally come from third countries whose investors are using Hong Kong as a port of convenience, presumably to avoid tax or other requirements – or perhaps to gain protection from the IPPA. None of this is a good reference for the activities of "Hong Kong investors" in New Zealand.

It is very difficult to see what gains can be claimed from a wider Hong Kong-New Zealand agreement. Both countries have very open economies. In some ways – particularly in the important services sector – New Zealand has liberalised faster than Hong Kong. That leaves little for a formal agreement to do. Agreements reached in the SNZCEP on recognition of qualifications, for example, could be negotiated separately. Any real concessions by Hong Kong in the services area must be bought at a high price in terms of further commercialisation of our social and environmental services here, or further tariff cuts in our textile, clothing and textiles industries which are extremely vulnerable to Hong Kong's exports.

Yet the dangers are very real. Such an agreement would reinforce the already dangerous IPPA, opening New Zealand to a high risk of continual threats of litigation by corporations who dislike environmental, economic and social policies that adversely affect them. Those threats will be very costly in money terms, and in intimidating central and local government, further reducing their options for policies that provide the social and economic development that New Zealanders need.

It would also reinforce the obstacles already in place against New Zealand being able to reinstate capital controls and effective regulation of overseas investment. Indeed, its intention would be to increase the speed of deregulation. Despite some signs of progress over the last year, New Zealand still has a mountainous foreign debt ($109.1 billion, or 105.3% of GDP at March 2000), and a precarious current account deficit ($7,336 billion, or 7.0% of GDP at June 2000). That could lead to crisis at any time.

Continued liberalisation in itself will conflict with the Labour/Alliance Government's economic and regional development policies. Many options for economic development, and closing social and regional gaps will be permanently foreclosed to New Zealand national and local governments. It is paradoxical that Hong Kong's own domestic policies for encouraging local development often look more like those of the Alliance than of Labour (let alone National).

The government should declare its intentions with regard to the Hong Kong negotiations with urgency. Rather than continue its current secretive "talking about talking" stance on the negotiations, it should emulate the Canadian and U.S. governments which have recently made public their negotiating positions on the Free Trade Area Of the Americas agreement, and have released a draft text.

If it decides to pursue these negotiations, it should make public its timetable, and periodically release draft texts for public comment. It should encourage and stimulate thorough public debate, rather than repeat its phoney consultation stance in the SNZCEP negotiations. There, "consultation" was a one-way briefing of hand-selected interested parties, and Parliamentary scrutiny was admitted by all involved to be simply an empty formality.

However from the evidence gathered here, there are considerably more dangers than benefits in such an agreement. The government is better advised to announce that it has decided not to proceed.

Instead, it should move to abrogate the Hong Kong-New Zealand and China-New Zealand IPPAs before the dangers of the expropriation and investor disputes provisions are exploited by corporations in the way that is occurring with increasing frequency under NAFTA.

18 March, 2001

Appendix: Hong Kong investment in New Zealand as notified by the OIC to CAFCA between December 1989 and September 2000

Note: These are a summary only. Further details are available from CAFCA and/or the author, or the OIC itself. Naturally they can reflect only information released by the OIC: some information is suppressed by the Commission as being confidential. If investments are sold to a New Zealand party, that will not be recorded by the OIC. Further, some investment does not require OIC consent at all. Notably this includes investment, not involving land or fisheries, which is worth less than $10 million, or less than $50 million since November 1999, or involves the acquisition of less than 25% of a company. An example of the latter escaping OIC records was the controlling interest gained by South East Asian interests in Brierley Investments in 1996. Note also that the OIC has changed its presentation of investor origin over these years. It is therefore possible that some companies which are registered in Hong Kong but owned elsewhere have been missed from this analysis. Where an investor makes multiple investments under a single industrial category, they are collected below under the date of the first investment.

*(Shaded items once were Hong Kong owned but were later sold. Where the ultimate ownership of a Hong Kong company is known to be other than in Hong Kong, its origin is highlighted in **bold**.)*

Ref	Sector	Date	Company/asset	Owner	Comments
1	Commercial Property	Feb, Mar 90	BNZ Tower, Kensington Swan Building, Auckland	Qulu Enterprises Ltd, Zebra Investments and Morgas Enterprises Ltd owned by the Chan Family of Hong Kong	
2	Commercial Property	May 90	West Plaza Building, Auckland	Islington Corporation, Hong Kong	
3	Commercial Property	Jun 90	290 Queen St, Auckland	Nan Fung, Hong Kong	
4	Commercial Property	Aug 90	Royal Insurance Centre, 33 Federal St, Auckland	Ephesis Investments Ltd, based in Hong Kong but registered in **Jersey, Channel Islands**.	
5	Commercial property	Feb 91	54.79% of Trans Tasman Properties Ltd, the largest listed property investor in New Zealand, and with substantial investments in Australia. Trans Tasman is the result of a merger in 1995 of Tasman Properties Ltd (formerly Robert Jones Investments) and SEABIL (NZ) Ltd.	S.E.A. Holdings Ltd, registered in **Bermuda** but controlled by the Lu family of Hong Kong. SEABIL was a joint venture of Brierley Investments Ltd (30%) and S.E.A. Holdings (70%).	This shareholding was arrived at between 1991 and 1998 via the SEABIL joint venture between SEA and Brierley Investments, various public floats, and rearrangements and sales of BIL's shareholding. SEA also has substantial investments in China.
6	Commercial	Aug 91	Rural Bank House, Christchurch	Mirassou Holdings of Hong Kong	

Ref	Sector	Date	Company/asset	Owner	Comments
	Property				
7	Commercial Property	Sep 93	Jetset Centre, Emily Place and Anzac Ave, Auckland.	Beauchamp Investments Ltd of **British Virgin Islands**, controlled by Hong Kong interests.	Beauchamp Investments is a property investment company with significant investments in the U.K. and Asia
8	Commercial Property	May 95	Approximately two ha. of land in Symonds St, Auckland	Surelight Holdings Ltd owned by "Messrs Chan, Li, Wong and Chan" of Hong Kong	Propose to develop the property into a residential, retail and commercial complex.
9	Commercial Property	Sep 96	Pacific Plaza Shopping Centre, Whangaparaoa	Aral Property Holdings Ltd, registered in the **British Virgin Islands**, owned 50/50 in Hong Kong and **Singapore**.	
10	Commercial Property	Jun 97	1.32 ha. in Symonds St, Auckland for hotel	Great Eagle Holdings Ltd, registered in **Bermuda**, listed on the Hong Kong stock exchange and majority owned by Mr Lo Ying Shek and his family of Hong Kong	
11	Commercial Property	Aug 97	155-165 The Strand, Parnell, Auckland	Mr Lau Kwok Hung, a resident of Hong Kong and a citizen of **Australia**	
12	Commercial Property	Sep 99	Masport Industrial Estate, Barrack Road, Panmure; Wiri Woolstore, 122 Kerrs Rd, Wiri, Auckland; Central Office Park, Penrose, Auckland	Hind Properties Ltd owned by the Jhunjhnuwala family of Singapore.	Hind Properties has substantial property holdings in New Zealand. Some was previously held through Hind Hotels International. In 1999 the Jhunjhnuwala family sold 53.9% of the shares in Hind Hotels International (some owned through a Cayman Islands subsidiary) to DBS Land Ltd of Singapore, and as part of the deal they bought the New Zealand properties from Hind Hotels through Hind Properties (source: letter to the Stock Exchange of Singapore from DBS Land, 14/4/99, and OIC).
13	Conglomerate, including forestry, fish farming, manufacturing, food processing,	Aug 90	Crown forest licences at Whangapoua Forest, Coromandel; Lismore Sand Forest, Wanganui; Santoft Forest, Bulls; Tangimoana Forest, Bulls; and Tapanui Forest, Otago. Also purchase the Conical Hill sawmill including 33 ha. rural land, Tapanui, Otago.	Callander Ltd (Hong Kong) 80%, Habacus PTE Ltd (**Singapore**) 10%, Shiang Yang International Ltd (Hong Kong) 10%. These companies work through Ernslaw One for forestry, and are actually owned by the	The Tiongs have substantial assets in New Zealand. It is not clear how many are owned through Hong Kong companies such as Callander and Shiang Yang, though these appear to be their main ultimate holding companies. The Tiongs' assets include – Ernslaw One;

Ref	Sector	Date	Company/asset	Owner	Comments
	marketing, housing sub-division, entertain-ment		Ernslaw One is the sixth largest forest owner in New Zealand, owning or managing 46,000 ha. of forests.	Tiong family of **Malaysia.**	The Oregon Group; Salmond Smith Biolab (Artel Industries Ltd, a plastics and brushware operation; Biolab Scientific Ltd, Click Clack International Ltd, McDonald Dixbro Pty Ltd, Selby Scientific Ltd, Newman's Export, processors and marketers of berryfruit and owners of a sphagnum moss operation; the New Zealand and Australian business of Rhone-Poulenc Laboratory Products Australia, a scientific products group; Johns Plastics, an Australian based manufacturer of disposable plasticware) with its sister company Selby-Biolab in Australia it claims to have the largest scientific distribution network in Australasia; The New Zealand King Salmon Company Ltd (80% of New Zealand king salmon farming); Neil Construction (housing subdivisions); Ascot Management Corporation, for some time had a minority interest in Force Corporation (cinemas); Between 1995 and 1998 owned Talk Radio Bay of Plenty in Tauranga and Rotorua. The Tiongs are one of Malaysia's most powerful and wealthy families. They own controversial rainforest logger, Rimbunan Hijau, newspapers and magazines.
14	Construc-tion, civil engineering	Jun 94	Downer Group Ltd, major construction and civil engineering firm, formerly based in New Zealand but now headquartered in Syd-	43.9% Paul-Y-ITC Construction Holdings Ltd, incorporated in **Bermuda**, but listed in Hong Kong.	Works Geothermal and Works Civil Construction were both privatisations from the former Ministry of Works and Development

Ref	Sector	Date	Company/asset	Owner	Comments
			ney, with significant international operations. Since Paul-Y's acquisition, Downer has taken over: Works Geothermal Ltd, including 15 ha. at Wairakei; Works Civil Construction Ltd; Bitumix Ltd and bitumen plants at four ports.	23.1% Capital Z Asia of the **U.S.A.** 12.5% Hutchison Whampoa of Hong Kong. 9.9% CSR, **Australia** 6.9% ERG, **Australia** 3.7% **Australian** public listings.	(corporatised as the Works and Development Services Corporation). In 1999, Caltex New Zealand Ltd bought a 50% share in Roading Surfaces Ltd from Works Civil.
15	Entertainment	Jul 93	Unsuccessful bidder for the Auckland Casino licence	Auckland Casino Ltd and Auckland Casino Development Ltd, both 50% owned by New World Development Company Ltd of Hong Kong and 50% by the National Maori Congress. Donald Trump of New York was associated with the bid.	
16	Farming – sheep	Feb 91	Cecil Peak Station, Lake Wakatipu, Otago, 13,686 ha.	According to the OIC, Portmore Enterprises Ltd of the **British Virgin Islands**, but according to news reports, the Morningside Asia Group of Hong Kong.	One of New Zealand's largest and most historical sheep stations.
17	Farming – sheep and cattle	May 95	37.5% interest in Rangeview Ltd which owns a 392 ha. Horowhenua sheep and cattle farm	Hong Kong resident	
18	Farming – sheep and deer	Jun 96	A pastoral lease of 8,167 ha. at MT Pember Station, Lees Valley; a 2,271 hectare sheep and deer farm; and a further 1,889 ha. at Lees Valley, all at Oxford, Canterbury.	Wharfdale Farming Co. Ltd, owned by Blue Point Products Ltd (later renamed Clipsal Industries Ltd), owned by Stenhouse Industries Ltd, ultimately owned by Mr A. Chu of Hong Kong.	See also May 1994 for further on Blue Point and Stenhouse, which gives different owners for Stenhouse. In March 2001 Clipsal bought more than 5% of Christchurch electrical goods manufacturer, PDL Holdings (*Press*, "Clipsal buys 5% of PDL", 2/03/01, p.14).
19	Farming (unspecified)	Dec 95	Maraekowhai Station Ltd which owns the 2,031 ha. Maraekowhai Station and a nearby 1,250 ha. property, near Taumarunui, King Country.	89% by the Maraekowhai Australian Unit Trust, owned by Mr W. Peters, a **New Zealand** citizen resident in Hong Kong, 11% by three other New Zealanders.	
20	Fish farming	Aug 93	49.9% of Regal Salmon Ltd	Sheikh Suliman Olayan and family, of **Saudi Arabia**, through the Olayan Group, which	Salmon Smith Biolab, owned by the Tiong Family of Malaysia, was a rival bidder for

Ref	Sector	Date	Company/asset	Owner	Comments
				owns Competrol Pacific Ltd of Hong Kong, the local agent for the purchase.	Regal Salmon. Olayan reached 24.8% before the Tiongs took control in 1995 and finally buying it completely in 1996.
21	Fishing, fish farming	Sep 90	4.6 ha. rural property at Brighams Creek, Riverhead, Auckland for fish farming	Hong Kong resident who with his family were shortly to become permanent residents of New Zealand	
22	Fishing, fish farming	Sep 90	Shares in Ika Aquaculture	Nga Mihi (NZ) Ltd, owned by five Hong Kong citizens	Already owned 7.6% of Ika Aquaculture
23	Flower nursery	Oct 93	3.6 ha. flower nursery, SH 26, Newstead, Waikato	Full Boom Nurseries Ltd, owned by Mr Ho Kwok Hoi of Hong Kong	Mr Ho and his family had been granted permanent residence in New Zealand.
24	Forestry, Commercial Property	Feb 90	Winstone Pulp International Ltd, the Karioi Pulp Mill, Waimarino Forest, Crown Forest licence and assets (excluding land) of the Karioi Forest, Wanganui. Winstone is the 16th largest forest owner in New Zealand, owning or managing 17,000 ha. of forests, and the Karioi Pulp Mill. Queen City Centre complex, Albert/Elliott St, Auckland	Winstone Pulp International, owned by Perfect Match Investments Ltd registered in Hong Kong, but owned by two **Indonesian** residents believed connected to the Suharto regime. Colwall Enterprises Ltd, a subsidiary of Perfect Match Investments Ltd	Owned 95% of Winstone Pulp from 1988, acquired remaining 5% in 1990. Acquired Karioi Forest licences in 1991, but had been pulping the forest, with Korean partner, Samsung, for some time before that.
25	Forestry	Oct 90	Wenita is the tenth largest forest owner in New Zealand, mainly in Otago and Southland. It owns or manages 25,000 ha. of forests.	Wenita Ltd, a Hong Kong company, actually owned 55.4% in **China** by Sinotrans (NZ) Ltd, a subsidiary of the Government-owned China National Foreign Trade Transportation Corporation, 6.6% by Chen Wen Dong of Hong Kong, and 38.0% by Togen Ltd owned by the Liu family of Hong Kong.	Much of the forest has been acquired from privatisation of Crown Forest licences.
26	Forestry	Sep 93	75 ha. forestry cutting rights on the West Coast, and 48 ha. of forestry cutting rights in Canterbury	Excella Ltd, owned by Dickwin Ltd of Hong Kong, owned 40% by Mr Ngo Chen Long of **Singapore** and 40% by Mr Lee Sai Wan of **Indonesia**.	
27	Forestry	Jun 94	489 ha. of afforested land in Broadwood, Far North; 60 ha. in Humphries Rd, Kohukohu,	Asian Power International Ltd, owned by two Hong Kong residents, Chan Lau Siu	

Ref	Sector	Date	Company/asset	Owner	Comments
			Far North; 20 ha. at Mangamuka, Northland; 129 ha. in Far North.	Tuen Lucy and Chan Wai Tong Kelvin	
28	Forestry	Jul 94	61 ha. forestry block, Broadwood, Far North	Hanbrook Properties Ltd, owned by three Hong Kong residents	
29	Forestry	Aug 94	30 ha. forestry block, Iwitana Rd, Broadwood, Far North	Swipe NZ Ltd owned by a Hong Kong couple.	
30	Forestry	Aug 94	30 ha. forestry block, Broadwood, Far North	Two Hong Kong residents	
31	Forestry	Nov 94	20 ha. forestry block, Broadwood, Far North	Two Hong Kong residents	
32	Forestry	Mar 95	148 ha. in eight forestry blocks, at Peira, Far North	Eight Hong Kong residents respectively.	
33	Forestry	Jul 95	30 ha. of land at Paparangi, Wanganui	Spruce Forest Company Ltd, Hong Kong.	
34	Forestry	Jul 95	20 ha. of land at Peria, Far North	Codima (NZ) Ltd, owned by three Hong Kong residents.	
35	Forestry	Aug 95	42 ha. at Cambridge, Waikato	Brookbank Properties Ltd owned by a Hong Kong resident.	Purchaser "is currently taking up New Zealand permanent residency".
36	Forestry	Jul 97	10 ha. at Paponga Rd, Broadwood, Far North	Ms Hon Ching Claudia Lung of Hong Kong	
37	Grocery wholesaling and retailing	Jul 90	Woolworths (New Zealand) Ltd, Big Fresh, Price Chopper, Associated Wholesalers	Dairy Farm International Holdings Ltd (owned by Jardines of Hong Kong) – **Bermuda** incorporated, listed on the Hong Kong, London and Luxembourg stock exchanges	There are 81 supermarkets in the Big Fresh and Price Chopper chain (*New Zealand Herald*, "HK giant likes its Kiwi supermarkets", 24/1/01, p.E3)
38	Hotels	Jun 90	Tourist Hotel Corporation	Southern Pacific Hotel Corporation (NZ) Ltd owned by the Hale Corporation Ltd of Hong Kong through a **British Virgin Islands** subsidiary, Halsey Holdings Ltd. Ultimate owner Bass PLC, of the U.K., which bought it from the Pritzker family, Chicago, **U.S.A.** in 2000.	Some assets of the THC later on-sold – e.g. Wairakei Golf Course; THC Hotel, Queenstown (in Oct 91).
39	Hotels	Jan 92	89% of Euro-National Corporation Ltd as shell for investing in hotels in New Zealand and Australia	CDL Hotels New Zealand Ltd, a subsidiary of CDL Hotels International Ltd, incorporated in the **Cayman Islands**, based in Hong Kong, and owned 52.8% by City Developments Ltd of **Singapore**, which owns commercial property and hotels in South-east	Euro-National was a merchant bank that rose and fell during the feeding frenzy of the 1980's, and surrounded in scandal, from which CDL extricated it. CDL now is the biggest hotel owner in New

Ref	Sector	Date	Company/asset	Owner	Comments
				Asia.	Zealand.
40	Hotels	Oct 93	Lakeland Hotel, Queenstown, Otago	Tropical Resorts Ltd, owned by the Wah-Chang Group of **Singapore** (40%), Natsteel Resorts International Ltd of Singapore (19%), Chang-Fung Company Ltd of Hong Kong (12%), Asian Strategic Capital Ltd of Hong Kong (10%), and Japan-Asia Investment Company Ltd of **Japan** (19%).	Purchased from Noahs Hotels Ltd, part of the Amalgamated Holding Group of Australia, which continued to manage the hotel after the purchase, and bought it back in 1998.
41	Hotels	Nov 94	Pan Pacific Hotel, Auckland	Carlton Hotels Ltd of Hong Kong, owned by Dr Li Dak Sum and his family interests	
42	Importing and distributing	Aug 91	Transmark Corporation, which bought 41.5% of U-Bix Business Machines Ltd in 1995-96, but sold it to the Blue Star Group in 1996. Transmark has been wound up, but its operations continue as Monaco Corporation Ltd.	Shriro Pacific Ltd, owned by Mark Shriro of **Monaco**, through Tectoria of the **Cayman Islands**, registered in Hong Kong. Shriro owned Transmark through Gandava Investments Ltd, which changed its name first to Shriro (NZ) Ltd, then in 2000 to Monaco Corporation (100% owned by Tectoria).	Transmark was already 42.97% overseas owned in 1991 when the takeover commenced. The companies import and distribute electronic products: Transmark/Monaco consumer products such as toasters, TVs, home security systems, watches and cameras. U-bix distributes photocopiers and telephone equipment.
43	Importing and distributing	May 94	Bluepoint Products Ltd, an electrical products distributor (later renamed Clipsal Industries Ltd).	Stenhouse Investment Ltd, owned by V. Lo and P. Ho of Hong Kong (but see comment).	Internal restructuring: Bluepoint was also owned by Lo and Ho. See Also June 1996 for farms owned by these companies, which gives a different owner for Stenhouse.
44	Manufacturing – packaging	Dec 96	Mainguard Packaging Ltd, fourth largest packaging company in New Zealand and the biggest in the South Island	International Packaging Corporation of Hong Kong, and Schroder Capital Partners (Asia), part of Schroders Plc of the **U.K.**	The OIC described the purchasers as: RIFGAC 47 Ltd, a Rudd Watts and Stone shelf company owned by Asia Pacific Fund II, an investment fund "whose investors are primarily large U.S. and European Institutional Investors"
45	Market Gardening	Mar 93	50% of a fruit and vegetable growing business which owns 15 ha. of land near Wellington	A Hong Kong resident seeking New Zealand residency. The other 50% is owned by relatives.	
46	Market gar-	Sep 93	Seven ha. rural land at Te Horo, Wellington	Partnership owned 50% by a Hong Kong	

Ref	Sector	Date	Company/asset	Owner	Comments
	dening			resident and 50% by two **New Zealand** residents	
47	Meat processing	Apr 93	Amalco Processors disused meat processing plant on two ha. land, SH 3, Westmere, Wanganui.	River City Properties Ltd, 50% owned by Guangdong (HK) Tours Co Ltd of Hong Kong and 50% by Fukuyama Industrial Holdings Ltd of **New Zealand**.	Re-opening of the plant would create approximately 50 jobs, according to the OIC.
48	Mining	Jun 91	Moody Creek Mining Company, which mines high grade bituminous coal at Moody Creek near Greymouth	W.E. Futird Ltd, owned in **Bangladesh**, registered in Hong Kong.	Was given OIC approval to buy the company in May 90, via Harus Ltd, but gained renewed approval in June 1991 via W.E. Futird Ltd.
49	Mining	Feb 97	Lime and Marble Ltd, and DML Mining Ltd, including 102 ha. of freehold land and 297 ha. of leasehold in Westland, 92 ha. at Glenmore, Milton, Otago; 33 ha. at Waikaka Rd, near Gore, Southland, for gold mining; Perilya Mines (NZ) Ltd including 2,642 ha. at Earnscleugh, near Clyde, Central Otago, the Earnscleugh Gold Project.	Auriferous Mining Ltd, incorporated in the **British Virgin Islands**, owned equally by three companies: Tangent International Ltd whose major shareholder is Werner Muller of **Switzerland**; Campanie International Holdings Inc whose major shareholder is Kwok Wai Chiu of Hong Kong; and Rysaffe Trustee Company (CI) Ltd as trustee for Geoff London of the **U.K.**	
50	Orchard	Mar 94	19 ha. orchard in Kerikeri, Northland	B & Y's Orchards Ltd owned by Stanley So of Hong Kong	
51	Orchard	Aug 94	70% of Starlight Properties Ltd which owns a 26 ha. orchard block at Waimate North Road, Kerikeri	Two Hong Kong residents and one from the U.S.A.	
52	Orchard	Nov 94	Emerald Properties Ltd which owns a 20 ha. Kerikeri orchard	Two Hong Kong residents.	They intend to plant feijoas, macadamias, persimmons, avocadoes and dweetes Seven ha. sold to two other Hong Kong resident in July 1995
53	Orchard	Jul 95	Seven ha. at Kerikeri, Far North.	Darleigh Properties Ltd owned by two Hong Kong residents.	Bought from Emerald Properties (see November 94). The purchasers "state their long term plan is to immigrate to New Zealand".
54	Portfolio investment	Jun 94	Up to 45% of U-Bix Business Machines Ltd	Global Asset Management (HK) Ltd, a subsidiary of Global Asset Management Ltd of	Acquired "with the sole purpose of achieving maximum investment performance for

Ref	Sector	Date	Company/asset	Owner	Comments
				Hong Kong.	[its] clients through capital appreciation in the securities invested." Sold to Transmark in July 95 (then owned 35% by GAM).
55	Publishing	Mar 91	Adis International	Sold to its **New Zealand** management, via a Hong Kong company, Adis Holdings (N.Z.) Ltd (formerly Cabras Investments Ltd)	Provides pharmaceutical drug information to doctors. Adis International now has offices in US, Europe, Japan, New Zealand, Australia and Hong Kong, and is a "member of" the Amsterdam-based Wolters Kluwer group
56	Residential or lifestyle development	Jun 90	3.8 ha. in North Auckland	Tenbless Development Ltd, Hong Kong	For residential subdivision
57	Residential or lifestyle development	Jul 90	Four ha. at Tamahere	Hong Kong couple	To "live on when they settle in New Zealand permanently".
58	Residential or lifestyle development	Dec 91	A 4 ha. rural property at Dalefield Road, Queenstown	Peak Capital Ltd, owned by a Hong Kong citizen whose husband is employed by Morningside Asia of Hong Kong.	Morningside Asia "has substantial New Zealand investments" according to the OIC.
59	Residential or lifestyle development	Jul 93	Asherah Holdings Ltd, which owns a 14 ha. rural property in Littles Rd, Queenstown	Two Hong Kong residents	"They intend to construct a permanent residential dwelling on the property which they will use as their permanent residence."
60	Residential or lifestyle development	Nov 95	Big Impact Ltd, which owns 4 ha. at Motueka, Nelson	Two Hong Kong residents	New owners "will be taking up New Zealand residency in the near future" and propose residing on the property and to establish a marketing and consultancy business from it.
61	Residential or lifestyle development	Aug 96	Quail Point Ltd, which owns 17 ha. at Tuckers Beach Rd, near Queenstown, Otago	Quail Point Syndicate, owned in New Zealand, Hong Kong, and **Indonesia**.	
62	Residential or lifestyle development	Jul 98	20 ha. at Ararimu Road, Ararimu, Franklin District, South Auckland	A resident of Hong Kong	The purchaser "intends to reside permanently in New Zealand" and the property will be his home.
63	Residential or lifestyle	Apr 99	10 ha. at Cupps Road, Whenuakite, RD 1, Whitianga, Coromandel	M. Gabin of Hong Kong	The purchaser was seeking residency status and planned to reside permanently in New

Ref	Sector	Date	Company/asset	Owner	Comments
	development				Zealand, using the property as a lifestyle property.
64	Residential or lifestyle development	Oct 99	42 ha. at 938 Tiwai Rd, Awarua Bay, Invercargill, Southland	A Hong Kong resident.	She is seeking permanent residence and with her New Zealand citizen partner intend to live on the property.
65	Residential or lifestyle development	Mar 00	6 ha. at Orapiu Rd, Waiheke Island	A Hong Kong resident.	2 ha.will be developed in olives and vineyard, a house built on the remainder, initially to be used as a holiday home and as a place of residence once he has been granted and taken up permanent residency.
66	Residential or lifestyle development	Sep 00	0.37 ha. plus a 1/27th share of the 999 ha. Closeburn Station, Glenorchy-Queenstown Rd, Queenstown, Otago.	Members of the Fong family, one of whom is resident in Hong Kong, the others in Singapore and Japan.	The 0.37 ha. is to be developed into a lifestyle property; the remaining 999 ha. will be farmed using proceeds from the subdivision.
67	Residential or lifestyle development, tourist lodge, forestry, viticulture, deer farming	Nov 95	30 ha. in North Canterbury, and the 214 ha. Randolph Downs, Ram Paddock Rd, Amberley, Canterbury.	Lichfield Nominees No. 49 Ltd, owned by Mr H. Barkell-Schmitz, a Hong Kong resident.	Barkell-Schmitz is seeking permanent residency (which he was still intending in 1997). He intended to erect a residence on the North Canterbury property for his own use, to develop a tourist lodge, and to plant forestry on about half the land. He intended to use the Amberley property for a vineyard and deer farming.
68	Residential or lifestyle development; Orchard	Jul 95	45% of Bridgethorne Holdings Ltd, which owns 103 ha. at Kerikeri, Far North	Seven Hong Kong residents	The land will be subdivided into 12 orchards, 12 lifestyle blocks, a main farmhouse and a small strip for a new golf course.
69	Retail	Dec 89	Remaining 49.9% of Miles DFS Ltd, which later became DFS New Zealand Ltd	Initially, Harbinger Investments Ltd, Hong Kong, a subsidiary of Duty Free Shoppers International Ltd; changed in 1991 to DFS Holdings Ltd of **Bermuda**, but owned in Hong Kong.	Various name changes took place. Miles DFS no longer exists, and Harbinger changed its name to DFS New Zealand Ltd.
70	Tourism	Jun 90	Millbrook Country Club – 190 hectares at Lake Hayes near Queenstown. Includes Millbrook International Golf Course. In	Multiply Ltd (Hong Kong) 20% Millbrook Partners Ltd (**Japan**) 10% Financial Partners Syndicate (**Japan**) 50%	By September 1996, 100% Japanese owned.

Ref	Sector	Date	Company/asset	Owner	Comments
			January 1992, bought a further 14 ha. for a second 18 hole gold course.	Unspecified overseas ownership 20%	
71	Unknown	Oct 94	Knocklynn Holdings Ltd	Volt Investments Ltd, a **Guernsey** company wholly owned by the P Elliot Family Trust of Hong Kong	Knocklynn was purchased from P.Elliott for "$0-10". It was struck off the New Zealand Companies Register on 9 August 2000.
72	Viticulture	Aug 99	13 ha. at Kawarau Gorge Rd, Gibbston Valley, Queenstown, Otago	Rawlinson Lloyd Ltd, registered in Hong Kong, owned by a **New Zealander** resident in **France**.	