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Subject: **Overseas Investment Amendment Bill 1997**

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Thank you for the extension of time for this submission, as discussed on the phone. We were not aware of the Bill until the official deadline had passed.

We will not be able to make an oral submission.

The Overseas Investment Amendment Bill 1997

Submission from the
Campaign Against Foreign Control of Aotearoa,
P.O. Box 2258, Christchurch.

1 Introduction

1.1 The Campaign Against Foreign Control of Aotearoa (CAFCA) has been in existence for over twenty years. Its aims are obvious from its name, and it concerns itself with all aspects of New Zealand's sovereignty, whether political, economic, military or cultural. It opposes foreign control of New Zealand by other States or by corporations, but welcomes interaction with people of other countries on the basis of equality. It has wide networks with other groups and individuals in New Zealand and overseas.

1.2 Its members include a number of institutions and libraries, journalists, politicians from most political parties, public figures, trade unionists, environmentalists, and other researchers in the area. Members receive a magazine, *Foreign Control Watchdog*, on an approximately quarterly basis. It is acknowledged as a unique and well-researched source in this area, where hard information is difficult to come by. CAFCA also researches, publishes, organises public meetings and other events.

1.3 Since December 1989, CAFCA has been receiving monthly information from the Overseas Investment Commission (OIC) on its decisions. We analyse this information, and supply our analysis on subscription and on request to mainstream news media and other interested parties, and it is published regularly in *Watchdog*. We are therefore familiar with the effects of the criteria dealt with in this Bill.

2 Interpretation (Clause 2)

2.1 The proposed definition of "farm land" excludes land for forestry, a major and rapidly growing use of rural and farm land. Farm land is frequently purchased by overseas companies such as Carter Holt (U.S.A.), Rayonier (U.S.A.) and Ernslaw One (Malaysia) for conversion to forestry. The definition would have the bizarre effect of covering such land on first sale, but not as soon as trees were planted.

2.1.1 Forestry is by far the single largest reason for purchase of rural land: 80.7% of the area sold (69,395 hectares) in 1996 and 62.7% (205,126 hectares) in the six years 1991-96. Farming of various kinds took 7.6% in 1996 (dairy farming took 6.0% alone) and 24.5% over the six years (source: OIC annual statistics).

2.1.2 Overseas control of land is much higher than these figures show, due to forestry. The OIC notes a further 198,058 hectares of forestry rights sold, and a further nine thousand hectares of leases. As the appended table on forestry ownership in 1996 shows, much more than the 327,160 hectares the OIC has recorded since 1991 were under overseas control for forestry purposes alone: almost one million hectares.

2.2 The proposed definition also excludes land used for life style blocks, which can be quite substantial areas of land, if they are only "hobby farms" or principally

residential or have some conservation aspect. Two examples from August 1997 exemplify the point.

2.2.1 The OIC approved a sale to two residents of the U.K., Mr Antony Hugh Pike and Mrs Eldora Brown Pike, to acquire **110 hectares of land in Nydia Bay in Pelorus Sound, Marlborough,** for $260,000. The property was part of a larger farm. In 1978 the Crown requested the vendor, J. H. Mead, to subdivide his farm to enable the Crown to take part of the land for a recreational reserve. According to the OIC: "This resulted in the land that is to be acquired by the Pikes' being effectively isolated from the rest of the farm. Since its isolation the land has not been farmed and has been allowed to revert to scrub. The Pikes, with the support of the Department of Conservation, propose to utilise the land for lifestyle purposes and in addition, develop regenerating native bush species on the property. Furthermore, it is stated that the Pikes' have expressed a commitment to New Zealand and intend to take up permanent residence on the property following Mr Pikes retirement."

2.2.2 It also approved two residents of Switzerland, Mr Hansjorg Binzer and Ms Gabrielle Barth, both German citizens, acquiring approximately **31 hectares of land at Mockingbird Hill, Kerikeri, Northland** for $620,000. The land is adjacent to land held "for conservation purposes". The OIC reported that "… the property is described as 'uneconomic farmland' of which approximately ten hectares has been allowed to revert to scrub land. The applicants propose to acquire the property as a lifestyle block and intend to construct a dwelling house on the property, in addition to improving the quality of the soil and pasture on the property. … the applicants propose to utilise the property primarily as a base to oversee their possible future commercial investments in New Zealand."

2.3 Similarly, farm stay properties are arguably not "exclusively or principally for agriculture etc" although the property may be a fully functioning farm. They may be large in area.

2.4 It is not clear what the intention is in singling out "farm land" as opposed to rural land. If it is to specially protect *productive* land in some sense, then forestry, farm stay and lifestyle blocks should be included because they are all either productive or are converted from productive land. They could revert to "farm land" at some stage. Indeed, singling out farm land for stricter criteria may encourage overseas owners to cease using it for "farming" as defined in order to make sale easier. We therefore submit that the stricter criteria should apply to all rural land.

3 Regulations (Clause 3 (1))

3.1 The repeal of 14(a)(ii), which removes the power of the OIC and Minister to regulate the raising and borrowing of money in New Zealand by overseas persons, is a backward step.

3.2 This power could readily be used as part of a range of controls over the flow of "hot money" into and out of New Zealand. Borrowing can be used by currency speculators to take a position on the New Zealand dollar in order to profit from its

later rise in value. It was such flows of money that were the immediate cause of the current Asian financial crises.

3.3 It is also a useful way to improve the likelihood that overseas takeovers will involve the introduction of new capital, rather than financing the takeover by borrowing on the domestic market, crowding out local investment and forcing up interest rates. As far as we are aware there is no data on this method of takeover in New Zealand, but from 1985 to 1996, some 65% of foreign takeovers of Canadian companies were financed in Canada ("How much of Canada do we want to sell?", by Mel Hurtig, *Toronto Globe and Mail*, 5/2/98).

4 Criteria for consent by Minister(s) (Clause 4, s.14A and 14B)

4.1 The wording makes a major change in the onus placed on the Minister when considering criteria for approving an application. The status quo states that the Minister "shall grant that approval, consent or permission *only if satisfied that…*". Thus the Minister not only has to respect the criteria, but has some room to exercise discretion if there other matters of concern about a transaction, even if the criteria are satisfied,.

4.2 In the proposed amendment, the Minister "*must grant*" the application "if satisfied that" the criteria are fulfilled. Not only does this remove any discretion from the Minister, but it has a, presumably unintended, side effect. Nothing is said about what the Minister may or should do if not satisfied the criteria hold. Thus it is left open to the Minister to grant an application even if the criteria do not hold. This leaves the issue open to considerable pressures and even malfeasance.

4.3 We therefore oppose these changes in wording which weaken the legislation and thus contradict the spirit of the Coalition Agreement.

5 Criteria for transactions not involving land (Clause 4, s.14A)

5.1 While the Bill does not alter the criteria for approval of applications *not* involving land, we submit that these criteria are dangerously weak and ineffectual. For example

5.1.1 They have failed to prevent the disastrous financing by Goldman Sachs of the leveraged buyout of the previously successful firm of Skellerups.

5.1.2 They failed to protect Trust Bank clients and staff in its take-over by WestPac, which according to a recent Consumer Institute survey (*Consumer*, October 1997), has lead to a spectacular fall in approval of the new bank by former Trust Bank clients, and large-scale job losses.

5.1.3 They failed to prevent overwhelming overseas ownership of our newspapers (81.2% of daily press circulation of the provincial newspapers, and 92.3% of the metropolitan readership), satellite TV (100% overseas controlled), and a large slice of private radio (almost 60% of radio advertising goes to New Zealand Radio Network owned by a Tony O'Reilly-led consortium). This has long-term consequences for New Zealand's cultural health and sources of independent information of interest to New Zealanders.

5.2 These criteria should include appropriate national interest criteria, analogous to those for land, and be properly enforced.

6 Farm land must be offered for sale on an open market (Clause 4, s. 14C)

6.1 The effect of this section depends entirely on the effectiveness of the regulations alluded to in 14D(2). The vagueness with which the regulations are defined in the Bill, and the wide possibilities for exemptions under 14D(3), provide no guarantee to New Zealanders that farm land will be any better protected as a result of this provision than it is now.

7 Criteria for judging the national interest in regard to farm land (Clause 4, s. 14D)

7.1 The Coalition Agreement states the national interest criteria would be strengthened for farm land by amending the criteria as to "Whether the overseas investment as a primary consideration will or is likely to result in substantial and identifiable benefits to New Zealand....".

7.2 However the proposed criteria for judging these benefits are unchanged from the current legislation. There is no indication as to how these criteria are to be quantified so as to improve the protection given farm land.

7.3 The changes therefore do nothing to strengthen protection of farm land.

7.4 The key element under the existing legislation or these proposals remains the ability of the Ministers to instruct the Overseas Investment Commission on how to enforce the criteria. At present their instructions are that "proposals from overseas investors should be approved unless good reason exists … to decline the application". The Overseas Investment Commission is instructed to take an approach that "facilitates rather than hinders investment" (Letter to the Overseas Investment Commission from Messrs Birch and Marshall, Ministers of Finance and Lands, 21 December 1995, which we understand still stands). Nothing will change under either old or new criteria until these instructions are changed.

7.5 Taking into account the changed onus placed on the Ministers to approve applications (see our section 4 above), the effect is a weakening of protection.

8 Other Coalition Agreement requirements

8.1 We note the undertakings in the Coalition Agreement

8.1.1 "Require an individual purchaser to hold and continue to hold permanent residence status; or the purchase, by an individual or otherwise, will make a material contribution to the local or New Zealand economy"; and

8.1.2 "Greater monitoring of compliance of conditions imposed by requiring the purchaser to file a declaration after two years or end of project that all conditions complied with."

8.2 The first only appears as one *optional* criterion, which in any case exists in the current legislation. It is therefore not satisfied.

8.3 The second does not appear in the Bill at all.

8.4 The Coalition Agreement requirement to "Reduce foreshores requiring approval from 0.4 ha to 0.2 ha." has been included (Clause 6). However the weakness in enforcement of the criteria detailed above mean this has only minor practical significance.

8.5 The Coalition Agreement requirement regarding "strategic assets" we understand is still under consideration.

9 Land value (Clause 6(3))

9.1 The "clarification" of the definition of the land value that triggers the application of the Act, to the *unimproved* value of the land is of considerable significance.

9.2 This issue was central to the Overseas Investment Commission's consideration of the Trust Bank take over by Westpac. It was interpreted by the Commission as "unimproved" and as a result only one piece of land owned by the Bank (a retirement village in Tauranga) was found worth more than $10,000,000.

9.3 The argument was then made that the land part of the transaction was trivial and so the stronger "national interest" criteria for land sales held little weight in their consideration of the case.

9.4 If land value was defined as *improved* value (which we argued is the correct interpretation of the current legislation), the large commercial property holdings of Trust Bank would have been covered and land sales criteria should have been a significant part of their deliberations.

9.5 The effect of the change of definition in the Bill is that most commercial property sales, even highly valuable ones, will not be scrutinised by the Commission.

9.6 We therefore oppose the change.

10 Conclusions

10.1 The Coalition Agreement was a highly diluted version of New Zealand First's strong policy on overseas investment.

10.2 The proposed implementation of it in this Bill further dilutes it to be of negligible effect, and in practice is a further weakening of overseas investment scrutiny and oversight.

10.3 The opportunity should instead be taken to strengthen criteria for overseas investment in New Zealand, and its monitoring, to

10.3.1 ensure New Zealand does not become dependent on overseas investment and investors;

10.3.2 avoid the serious current account deficit problems currently being experienced largely as a result of payments to overseas investors; and

10.3.3 extract maximum benefit from any investment accepted.

10.4 If the government persists in its intention to sign the OECD's Multilateral Agreement on Investment, because of the agreement's "standstill" and "rollback" provisions, this will be the last opportunity the country has to retain and strengthen its powers to control overseas investment. Provisions such as that giving the government the ability to regulate overseas investors borrowing in New Zealand should not be given away. Especially given the increasing volatility and danger inherent in international capital markets, the opportunity to strengthen the criteria for overseas investment in New Zealand should not be missed.

10.5 The existing legislation and this Bill as it stands unequivocally fail to protect New Zealand's social and economic interests.

Appendix: Forest ownership in New Zealand as at 1 October 1996[1]

Company	Overseas company?	Hectares	% of total
Fletcher Challenge Forests[2]	□	380,000	25.7
Carter Holt Harvey	□	325,000	22.0
Rayonier New Zealand	□	97,000	6.6
Juken Nissho	□	52,000	3.5
Crown leases[3]		51,000	3.5
Hawkes Bay Forests[4]	□	33,000	2.2
Wenita Forest Products	□	25,000	1.7
Ernslaw One	□	25,000	1.7
Timberlands West Coast		25,000	1.7
Crown Forestry Management[5]		24,000	1.6
Private Sector[6]		441,000	29.8
Total		1,478,000	100.0
Total overseas (at least)	□	937,000	63.4

[1] "Quick Forestry Facts", October 1996, Ministry of Forestry. The areas are as at 1 April 1995, reallocated by ownership as at 1 October 1996.

[2] This includes the forests from the privatised Forestry Corporation (170,000 hectares). This is owned by Fletcher Challenge Forests (37.5%), China International Trust and Investment Corporation (China, 37.5%), and Brierley Investments (25%). Fletcher Forests was 54.2% overseas owned according to Fletcher's 1996 Financial and Operating Report (p.61).

[3] Administered by Ministry of Forestry.

[4] This is the "PanPac" joint venture also known as Oji Kokusaku Pan Pacific Ltd, owned by Oji Paper Company Ltd and Sanyo Kokusaku Pan Pacific Ltd, both of Japan.

[5] This consists of the residual management from Timberlands and Forestry Corporation which could not be sold for various reasons, including Treaty of Waitangi claims. It includes forests such as Waimate and Geraldine and is administered by Treasury.

[6] Other owners, including other corporates (including some overseas companies), syndicates, partnerships, farm forestry, etc.