

05WELLINGTON891

Date: 2005-11-16

The United States is always among the first to step up to help in these situations and your country's efforts in this relief effort are truly commendable." McCormick date:2005-11-16T00:51:00 source:Embassy Wellington origin:05WELLINGTON891 destination:This record is a partial extract of the original cable

The full text of the original cable is not available

160051Z Nov 05 classification:CONFIDENTIAL reference:04WELLINGTON686 C O N F I D E N T I A L SECTION 01 OF 02 WELLINGTON 000891 SIPDIS STATE FOR EAP/ANP-DRICCI AND EB/TPP-ESAEGE R STATE PASS USTR-LCOEN CO..

C O N F I D E N T I A L SECTION 01 OF 02 WELLINGTON 000891 SIPDIS STATE FOR EAP/ANP-DRICCI AND EB/TPP-ESAEGE R STATE PASS USTR-LCOEN COMMERCE FOR ABENAISSA/4530/ITA/MAC/AP/OSAO E.O

12958: DECL: 11/15/2015 TAGS: EINV, ECIN, ECON, NZ, ETRC

SUBJECT: UNINTENTIONALLY, NEW ZEALAND LAW IMPEDES SOME INVESTMENTS REF: A

04 WELLINGTON 686 B

03 WELLINGTON 1247 (U) Classified by: Political-Economic Counselor Katherine B

Hadda

Reasons: 1.4 (b) and (d)

1

(SBU) Summary: New Zealand legislation intended to tighten the rules on foreign ownership of land is having the unintended effect of restricting sales of businesses and properties

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sellers of two large investments in New Zealand -- a poultry-farm company and a stake in a forestry business -- recently have had to contend with a new rule requiring that the government be offered a right of first refusal to purchase riverbeds on properties offered for sale to foreign interests

The requirement discriminates against foreign investment by favoring a less complicated sale involving a domestic investor

New Zealand government officials want to change the law but believe the newly formed weak coalition government, coupled with the public's sensitivity over land ownership by foreigners, will not allow them to do so

End summary.

2

(C) A last-minute addition to the Overseas Investment Act 2005 requires that sellers of land to foreigners offer any riverbed or lakes on their property t

o the government first

The act provides for a process for assigning value to the riverbed or lake, and the Minister of Conservation then recommends whether the government should buy it

The act sets no deadline for the minister's decision

That, coupled with the required land survey and evaluation of the value, leaves a seller facing lengthy delays, according to Annelies McClure (protect), manager of the Overseas Investment Office (OIO)

Her agency makes decisions on foreigners' applications for substantial investments in New Zealand

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(C) The riverbed provision applies to waterways more than three meters wide

It already has affected two large investments since the act took effect in August

International Paper of Stamford, Conn., in August sold its 50.5 percent stake in a New Zealand forest products company, Carter Holt Harvey (CHH), to a New Zealand firm, Rank Group Investments Limited

The price was NZ \$2.50 per share, or a total of NZ \$1.6 billion (US \$1.1 billion)

After meeting with OIO officials, International Paper's lawyers concluded that surveying the rivers on the company's New Zealand properties represented a formidable and time-consuming task

Absent the riverbed provision, McClure believes the company would have sought a foreign buyer and might have secured a higher price

4

(C) Meanwhile, HJ Heinz Co

of Pittsburgh, Penn., has been trying to sell its New Zealand poultry subsidiary, Tegel Foods, since May 2005

Tegel, which has suffered from lower poultry prices, owns about 300 farms, including at least two with riverbeds

In October, Heinz offered to sell the riverbeds to the government

McClure said that the company now fears a lengthy delay as it awaits the government's decision, but that it may have little choice except to sell to a foreign buyer

There are only two other large poultry producers in the country, and if either one purchased Tegel, it would run afoul of anti-monopoly laws

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(C) McClure said government officials fear the riverbed provision will dampen foreign investment if potential investors expect difficulties in the future selling their property

She added that the provision, by making it tougher to sell to foreigners, al

so might prevent New Zealanders from getting the best price for sales of businesses involving land

The consequences have been contrary to the new law's intent, which was to arrest a slide in foreign investment as well as to keep iconic sites and shoreline out of foreign ownership

6

(C) The government would like to fix the problem, McClure said. But Minister for Land Information Pete Hodgson, who has responsibility for the OIO, said the government probably would not touch this issue for at least another year, according to McClure.

With a Labour-led government relying on support from three minor parties, Hodgson said the government would have to carefully pick its legislative battles.

Amending the Overseas Investment Act is unlikely to be among them, especially since foreign ownership of land is a highly contentious issue in New Zealand.

7

(U) For more than 30 years, the government has screened certain types of foreign investment.

The legislation enacted in August 2005 reduced the scope of business deals requiring government review but tightened the screening of land purchases by foreigners (ref A).

The OIO must give consent to foreign investments that would control 25 percent or more of businesses or property worth more than NZ \$100 million. Restrictions and approval requirements also apply to land, whose sale must meet a national interest test.

Under the new rules, foreign purchasers of land may be required to provide management proposals and to report regularly on their compliance with the terms of the consent.

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(C) The new law was a response to public concern about foreigners buying so-called iconic sites and coastal properties.

The draft legislation initially required that sellers offer any coastal land (or "foreshore") to the government first.

Lakes and riverbeds were added to that provision after controversy arose over advertisements for an American-owned fishing and hunting ranch that billed its rivers as "private," McClure said.

9

(C) Comment: Neither Heinz nor International Paper has approached the Embassy on this issue.

The Embassy will continue to monitor the law's effect on foreign investment and, particularly, on U.S.

investors  
McCormick