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The Agricultural Foreign Investment Disclosure Act of 1978. Don't Panic!

The pace of foreign investment in the United States shows no sign of slackening and there can be little doubt that it continues to quicken. Foreign takeovers of large United States business entities and banks have received wide coverage in national news media, legal periodicals, and recent books,[1] as well as in Joseph P. Griffin's article in this very issue of *The International Lawyer.*[2] Despite the many forecasts of a recession in the United States, and prosperous economic conditions abroad, the flow of foreign portfolio investments into securities of major United States corporations continues to grow, and reports of foreign interest involving some of America's most valuable commercial real estate, including New York City's World Trade Center, abound.

Foreign investment in United States agricultural land,[3] an area with a lower profile than the World Trade Center and one traditionally left to individual

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[1]L. LeLievre, J. Rhodes & A. Hedden, Foreign Investment in the United States: A Legal Guide for Executives and Counsel (1977); *Foreign Investors in the U.S. — The Pace Quickens,* Forbes, Apr. 2, 1979, at 73; K. Crowe, America for Sale (1978).

In four years the book value of foreign direct investment in the United States jumped more than 65% — from $20.6 billion at the end of 1973 to $34.1 billion at the end of 1977. In addition to such foreign "direct" investment, during the same period foreign private net purchases of United States corporate securities involving less than 10% ownership (foreign "portfolio" investment) totaled $7 billion. At the end of 1977 private foreign holdings were valued at $53.1 billion. In addition, foreign governments, mainly OPEC nations, held $7.2 billion of United States corporate stocks and bonds at the end of 1977. Morgan Guaranty Trust Company of New York, The Morgan Guaranty Survey, Sept. 1978, at 9.

[2]*See* Griffin, *Antitrust Constraints on Acquisitions by Aliens in the United States,* 13 Int'l Law., 427 (1979).

[3]Of the $34.1 billion total identified as foreign direct investment in the United States at the end of 1977, $779 million was in United States real estate. Of the $779 million total, $196 million came from European countries, $104 million from Canada, $339 million from Latin America, $31 million from Japan, and $109 million from all other countries. The Morgan Guaranty Survey, *supra* note 1, at 10. It seems likely that the available statistics for foreign direct investment in United States real estate fail to record much agricultural investment held through United

investment and state and local regulations, has now brought a specific response from Congress in the form of the Agricultural Foreign Investment Disclosure Act of 1978[4] (hereafter "AFIDA" or "the Act").

States nominees, corporate entities, trusts, and the like. Nevertheless, a properly done survey might well be the most cost effective way of obtaining useful statistics on foreign ownership of United States agricultural land.

[4]Pub. L. No. 95-460, 92 Stat. 1263, §§ 1-10 (to be codified in 7 U.S.C. §§ 3501-08 (1976). [hereinafter cited as AFIDA]. The Act as adopted incorporated the provisions of the House bill, H.R. 13356, following the enacting clause of the Senate bill, S. 3384. The House debate on H.R. 13356, reported in 124 CONG. REC., H10755-10765 (1978), stresses the information gathering purposes of the Act.

Related statutory and governmental materials include the Foreign Investment Study Act of 1974, Pub.L. No. 93-479, 88 Stat. 1450, which authorized studies of foreign direct and portfolio investment in the United States; the International Investment Survey Act of 1976, Pub.L. No. 94-472, 90 Stat. 259, 22 U.S.C.A. §§ 3101-08, in section 4(d) mandated a special study of the feasibility of establishing a system to "monitor foreign direct investment in agricultural, rural and urban real property, including the feasibility of establishing a nationwide multi-purpose land data system." A report was due to Congress under this Act in October, 1979. There was no indication of what information Congress sought under this Act. The Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) contains no exemption from disclosure of foreign investments already required to be disclosed under the International Investment Survey Act or other Acts, so considerable duplication of other submissions is likely. AFIDA is silent as to whether a filing under a related Act obviates a filing under AFIDA, or whether a filing under AFIDA obviates filing under a related Act.

The Securities Act of 1933, 15 U.S.C. §§ 77a-77aa (1976), and Securities and Exchange Act of 1934, 15 U.S.C. §§ 78a-78kk (1976), require public disclosure of purchases by foreigners of United States securities, and penalties are levied for failure to file such information relating to securities, but the Securities Acts are "disclosure" and anti-fraud statutes, while AFIDA purports to be only an "information gathering" statute, like a census law.

A General Accounting Office report, dated June 12, 1978 and titled "Foreign Ownership of U.S. Farm Land — Much Concern, Little Data," contains summaries of state laws that place constraints on foreign ownership of land. Two states, Iowa and Missouri, require registration. Nine states, Connecticut, Indiana, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, and Oklahoma prohibit aliens from owning land. Five, Missouri, Iowa, Wisconsin, Pennsylvania and South Carolina, have ceilings on total acreage. REPORT BY THE COMPTROLLER GENERAL, UNITED STATES GENERAL ACCOUNTING OFFICE, FOREIGN OWNERSHIP OF U.S. FARM LAND — MUCH CONCERN, LITTLE DATA, CED-78-132 (June 1978). Commerce Department officials assert that many if not most foreign purchasers of domestic land operate through "fronts" making it difficult if not impossible for those states who monitor foreign purchasers to trace the real owners. The same might be said of nonforeign purchasers. A number of states are presently considering legislation to require reporting of foreign investment in farm land.

The *GAO Report* revealed that foreign purchasers often establish an American corporation to avoid reporting, and the American corporation or nominee ownership does not reflect the actual foreign ownership, 124 CONG. REC. H10,762 (daily ed. Sept. 26, 1978); that determining the extent of foreign ownership is difficult because efforts are made by foreigners to conceal not only the names, but also the nationalities of the buyers. For example, foreign buyers in Montana have acquired land by four methods: direct purchases, stock trading, trust purchases by large out-of-state banking firms, and limited partnership agreements. 124 CONG. REC. H10,761 (daily ed. Sept. 26, 1978) (Remarks of Rep. Baucus, Montana). The same thing may, of course, be said of nonforeign acquirers.

The GAO investigation of county land records in numerous states indicated that this information source is misleading, difficult to interpret, inaccessible and non-comprehensive, being located in each of the various county court houses.

The GAO report concluded that a federal registration system "may be the simplest and best means for obtaining nationwide data."

At the federal level, the GAO concluded that the agricultural census conducted every five years is not suitable as a timely reporting instrument since results take several years to tabulate and

Some sense of the urgency Congress felt may be gleaned from the fact that Representative Grassley of Iowa in House debate found it necessary to calm fears of Americans: "Don't panic . . . the Agriculture Committee did not uncover any concrete evidence that the Arabs or any other foreign nationals are buying up all of rural America."[5] Nevertheless, Congress quickly enacted AFIDA.

The ostensible purpose of the Act was not to force unwelcome disclosures on foreigners, but merely to provide the basis for a statistical summary on which to base later Congressional findings on the desirability of foreign investment in agricultural land. Nevertheless, AFIDA may have alarmed many small foreign investors to whom American land investment was desirable precisely because it was not subject to disclosure. A careful analysis of AFIDA suggests however, that with proper planning these investors may, in some circumstances, continue to maintain their privacy.

I. Application of the Act

The Act became effective October 14, 1978.[6] It requires "any foreign person" who "holds" any interest, "other than a security interest," "in United States agricultural land" on the day before the effective date of the Act to

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many farmers simply refuse to supply the requested information. Several foreign investment surveys are being conducted by both the Agriculture and the Commerce Departments, but United States Department of Agriculture samplings are quite limited, and the Commerce Department has not been willing to isolate agricultural land for special study or to specifically analyze the impact of foreign investment on farm land. Desultory Congressional debate on AFIDA failed to give attention to whether the desired information concerning foreign investment in agricultural land could not have been obtained by proper review of filings under the above mentioned laws.

[5]124 CONG. REC. H10,755, at H10,757 (daily ed. Sept. 26, 1978).

[6]AFIDA § 10(a), Pub. L. No. 95-460, 92 Stat. 1266, but the actual dates on which reports of foreign ownership must be filed are not uniform or clear. Section 10(b) of the Act provides that section 2 of the Act (the reporting requirements) became effective "on the date on which Regulations prescribed by the Secretary under Section 8" became effective. So far the Agricultural Stabilization and Conservation Service (ASCS) has issued two sets of "Final" Rules (and two filing forms) . The first "Final Rule" has an effective date of February 2, 1979 and requires reports of "holders" to be submitted on or before August 6, 1979. This first Final Rule was not published until February 6, 1979. F.R. Doc. 79-4135, 44 Fed. Reg. 7,115-7,118 (1979), *see* Department of Agriculture, Rules and Regulations, [3410-5-M]. Subchapter C — Special Programs, Part 781, Supplementary Information, and sections 781.1-781.4. These are hereafter sometimes referred to as the "first" Regulations. As the ASCS later acknowledged, such "first" Regulations went beyond the intent of Congress. Their broad reach and technical flaws called for a number of substantive and technical corrections.

A second "Final Rule" or set of regulations intended to "revise" (not supersede) the "first" Final Rule was issued by the ASCS on May 18, 1979. By ASCS count the second Regulations made six substantive changes in the first Regulations. 7 C.F.R. § 781 (1979), Fed. Reg. 29,029-29,033 (1979). This second "Final Rule" is referred to herein as the "second" Regulations, or simply as the Regulations.

The "second" Regulations, purporting to limit, or narrow, the reach of the reporting requirements set forth in the "first" Regulations, provides that some "entities which might have otherwise been required to file a report with the Department will be relieved of the obligation to do so." The significance of this history is that the "second" Final Rule should be read in light of the "first" Final Rule to determine the scope of the later narrowing of earlier ASCS overreach.

submit a report of such ownership to the Secretary of Agriculture within 180 days after the effective date of the Regulations prescribed by the Secretary. For a "holder" this first meant on or before August 6, 1979, but later August 1, 1979. The Act also requires any foreign person who "acquires or transfers" any interest, other than a security interest, in United States agricultural land to submit a report of such acquisition or transfer to the Secretary of Agriculture within ninety days after such acquisition or transfer.[7]

To cover a United States owner who becomes a "foreign person" without a change occurring in the ownership of the property itself, the Act requires any person who held or acquired any interest, other than a security interest in such land at a time when such person was *not* a "foreign person" who subsequently becomes a "foreign person," submit a report within ninety days after becoming such "foreign person."[8] And a foreign person who holds or acquires an interest in land at a time when it is not agricultural land and such land subsequently becomes agricultural land must submit a report within ninety days after the land becomes agricultural land.[9]

If a person required to submit a report fails to do so or submits a misleading or false report, he is subject to a civil penalty of such amount as the Secretary of Agriculture may determine, not to exceed twenty-five percent of the fair market value of his interest in such agricultural land on the date of the assessment of such penalty.[10]

II. Purpose of AFIDA

There is not unanimity on the purpose of AFIDA. Congressional sponsors of AFIDA asserted in House debate that it was not an attempt to regulate or restrict foreign agricultural investment in the United States, but merely an attempt to collect information on which to base possible future legislation.[11]

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[7]AFIDA § 2(a). For example, for a foreign "acquirer," or non-foreign person becoming a foreign person, a "change to foreign owned agricultural use" as of February 2, 1979, the ASCS Form 153 would have had to be filed within 90 days, or by May 2, 1979, first Regulations 781.3(c), while a "holder" on February 2, 1979 would not have had to file until August 6, 1979. First Regulations 781.3(b). The "second" final Regulations left the May 2 filing date the same, but moved up the August 6 date to August 1.

[8]AFIDA § 2(c); Regulations 781.3(d).

[9]AFIDA § 2(d); Regulations 781.3(c).

[10]AFIDA § 3, Regulations 781.4. Determination of violations is to be made by a Board periodically appointed by the Secretary of Agriculture, which will also make a "preliminary determination of the fair market value of the interest with respect to which the violation occurred." Regulations 781.4(b).

[11]Congressman Foley of Washington sought to allay fears of adverse consequences to the United States balance of payments and farmers by a non-sequitur: "Our bill is not an attempt to cut off foreign investment in farm land as we do not yet know the true impact of this type of investment. It is simply an attempt to gather the necessary information to make this determination and provides us with the necessary enforcement powers to insure that all relevant information is reported." 124 CONG. REC. H10,761 (daily ed. Sept. 26, 1978) (Remarks of Rep. Foley, Wash.).

Congressman Krebs of California pointed out in debate that in many cases "foreign investment in the United States is beneficial. Investment from overseas often provides new capital

On the other hand, the Department of Agriculture maintains that "[i]t is the intent of the legislation to determine the extent and type of social effects which may be the result of foreign investment in U.S. agricultural land."[12]

The Act itself directs the Secretary of Agriculture to "monitor compliance"[13] and provide to the President and both Houses of Congress,[14] and to each state Department of Agriculture or other appropriate state agency, annual reports of foreign agricultural investment involving land in each state.[15] However, the law provides that all reports of foreign agricultural investment filed with the secretary are to be made available for public inspection at the Department of Agriculture in the District of Columbia within ten days after filing.[16]

III. Report Form ASCS-153

The AFIDA reporting form, ASCS-153 of January 12, 1979 (hereafter the "Form"), as described by the Department of Agriculture is deceptively simple, "limited to a single page of line items with space provided on the reverse for additional comment by the reporting investor."[17] It calls for twelve categories of information on the front including: type of activity or nonactivity (for example, whether landholding, acquisition, disposition, change to agriculture, or nonagriculture); tract location and description (Item 2); name and address of the foreign person (Item 3); type of owner (whether the foreign person is an individual, a government, or an "organization," that is, a corporation, partnership, estate, trust, "institution," association, or "other") and if an "organization," its "principal place of business" (Item 3E)[18]; the name, address and telephone number of the United States representative of the foreign "investor" (Item 4)[19]; a description of the type of interest held,

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which helps to expand our productive resources, creates new jobs, and improves our balance of payments." 124 CONG. REC. H10,762 (daily edition Sept. 26, 1978) (Remarks of Rep. Krebs, Cal.).

[12]U.S. DEPT. OF AGRICULTURE, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE DRAFT IMPACT STATEMENT FOR PROPOSED RULE-MAKING 6 (Dec. 5, 1978).

[13]AFIDA § 4, Pub. L. No. 95-460.

[14]AFIDA § 5, Pub. L. No. 95-460.

[15]AFIDA § 6, Pub. L. No. 95-460.

[16]AFIDA § 7, Pub. L. No. 95-460.

[17]U.S. DEPT. OF AGRICULTURE, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE DRAFT IMPACT ANALYSIS FOR PROPOSED RULE-MAKING 6 (Dec.5, 1978), [hereinafter cited as DRAFT IMPACT ANALYSIS]. The DRAFT IMPACT ANALYSIS adds that "ASCS county offices will assist the investor in completing the required information, as necessary." However, AFIDA provides no additional funding for such additional service to be provided by the existing bureaucracy.

See Reporting Requirements, Regulations § 781.3, The letters and numbers appearing in the text are references to the corresponding subsections of Regulations 781.3.

AFIDA Draft Report Form ASCS 153 is annexed as Exhibits A and B to the *ASCS Draft Impact Analysis* (Dec. 5, 1978). The Final ASCS Report Form (1/12/79) (Form approved OMB No. 40 R4065) as annexed to this article.

[18]Regulations 781.3(b).

[19]Regulations 781.2(b)(8).

(whether a fee interest, in whole or in part, leasehold, life estate, interest as a trust beneficiary, option, purchase contract, or other interest) (Item 5)[20]; and the manner in which the interest was acquired (whether by a cash purchase, credit or installment purchase, trade, gift or inheritance or foreclosure) (Item 6).[21]

Item 7 calls for "land value, including improvements," the purchase price (Item 7A) or if a nonpurchase, the estimated value at the time of acquisition, and "the estimated current value." If there is a disposition "the selling price of the tract of land" (Item 7B) and the value of the equity ("how much of purchase price remains to be paid") (Item 7) are required.[22]

Also called for are details concerning date of acquisition or transfer (Item 8); current land use including whether crop, pasture, forest or timber or other agricultural or nonagricultural use (Item 9); intended use (Item 10); type of tenure ("relationship of foreign owner to producer"), whether operated by the foreign person, by a manager, tenant or sharecropper, and if by a tenant the arrangement with the tenant (Item 11); and whether the "Producer" on the tract is the same as when the tract was acquired, or a new person (Item 12).

The reverse side of the Form sets forth the definition of "foreign person" which triggers the reporting and filing requirement. Question 4b makes the filer a "foreign person" if he (or it) is other than an individual or government "created or organized under the laws of any state of the United States and in which any interest is held directly or indirectly," in the tract of land by any "foreign person." This question should not be answered without a careful analysis of AFIDA and the Regulations. The back of the Form also calls attention to the penalty for noncompliance, and notes that an original and two copies must be filed with the county office of the Agricultural Stabilization and Conservation Service where the tract of land "is located or administered."[23]

The first draft of the Form called for disclosure of "[o]ther counties and states in which this foreign person holds an interest in Agricultural Land"[24] but the final version of the Form eliminated this obviously onerous item, which neither the Act itself nor the Regulations required to be disclosed. Land in different counties or parishes must be reported as separate tracts, so for a single large ranch stretching across several counties there will have to be several separate filings.

IV. "Estimated Value" Item

Items 7A and 7B of the Form call for "Estimated value at time of acquisition" in the case of a nonpurchase, and, in all cases, the "estimated current

[20]Regulations 781.3(b)(4).
[21]Regulations 781.3(b)(9).
[22]Regulations 781.3(b)(6), 781.3(c)(6).
[23]Apparently the Form for a foreign owned farm in Hawaii administered by a United States lawyer in Brooklyn could be filed in Kings County, New York if there were an ASCS office there.
[24]Item 3C, Draft ASCS Form 153. *See* note 17 *supra*.

value" of the land. This is an onerous demand for information not readily determinable, unlike the objective fact of a purchase or sale price. Here the Form might be regarded as calling for a declaration against interest, an invasion of privacy, or an improperly discriminatory burden on a "foreign person" as defined in the Act. The Act itself, and the Regulations, call for only "the purchase price paid for, or any other consideration given for, such interest."[25] Thus, the Form, in calling for the estimated nonpurchase acquisition value and the estimated current value, calls for disclosure that reaches well beyond the Act and Regulations. Until this is clarified a foreign person who finds it a burden to report such information could cite this discrepancy in the Form as a reason for not reporting it — assuming he is willing to risk being made a test case.

Representative Gibbons of Florida foresaw that legislation as broad as AFIDA was likely to lead to regulations broader than the statute on which they were based. He was asked, he said, "What crazy reports are you requiring us to file now as you do every time we do anything in this country?"[26]

On its face, the AFIDA Form calls upon a wide range of foreign persons for a wide range of disclosures that foreign persons would prefer not to make. It is important for attorneys advising clients on AFIDA compliance not to take the Form at face value, but to analyze carefully the Act, Regulations, and Supplementary Information thereunder. In many such cases proper grounds for nonfiling or nondisclosure can be found, or new arrangements for holding agricultural land can be made to obviate the need to file. Such grounds for nonfiling and arrangements to obviate filing are discussed below.

V. Definitions

(a) *Agricultural land.* Reports are required only for an interest in "agricultural land," so the Act's definition of such an interest is fundamental. "Agricultural land" is defined to mean "any land located in one or more States and used for agricultural, forestry or timber production purposes as determined by the Secretary under Regulations. . . ."[27] The Regulations further define agricultural land as land "currently used for . . . agricultural, forestry or timber production." It is also "Agricultural land" "if idle and its last use within the past five years was for agricultural, forestry or timber production . . . ."[28]

Examples of land which would be beyond the reach of this "use" definition include land which was "agricultural" until shortly before a "current" date, became "idle," and thereafter, but before the "current" date, was

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[25] AFIDA §§ 2(a)(6)-2(b)(6), Regulations §§ 781.3(b)(6)-781.3(c)(6). The Act authorized the Secretary to obtain "such other information as the Secretary may require by Regulation." AFIDA §§ 2(a)(9) - 2(b)(9).

[26] 124 CONG. REC. H10,765 (daily ed. Sept. 26, 1978).

[27] AFIDA § 9(1).

[28] Regulations 781.2(b).

"used" for a private game preserve, or for commercial real estate development. A woodlot, or a tract of wooded land whose trees had never been logged or harvested commercially would not be land "used" for "forestry or timber production."[29]

In House debate Representative Gibbons of Florida asked "[h]ow about a family garden or a pea patch . . . I have a lot of Cuban-born people that have no thoughts of going back to Cuba . . . foreigners, I guess."[30] The Secretary of Agriculture soothed the Congressman by indicating that such use of land for "personal horticulture" was probably not required to be reported,[31] but technically the Regulations would require a report from Congressman Gibbons' Cuban refugee with the pea patch if a single pea grown on it were to be sold from a roadside stand by his child to a passing motorist.

Once "agricultural land" is found, the only exception to reporting under the first Regulations was

> land not exceeding one acre in the aggregate from which the agricultural, forestry or timber products are less than $1,000 in annual gross sales *value* and such products are produced for the personal or household use of the person or persons holding an interest in such land.[32]

Thus, even if the pea patch covers less than one acre, and even if the "gross sales value" of all peas produced was under $1,000, if any were produced for sale to purchasers and not for the "personal or household use" of the Cuban refugee owner, he became a "foreign person" required to file the Form with the Dade County ASCS office. Even if none of the produce was sold, but some was given away to friends, a Form would have had to be filed if "annual gross sales value" of the produce was over $1,000.[33]

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[29]The inclusion of land "used" for "forestry" [production] or timber production" is the result of the House Subcommittee of Family Farms, Rural Development and Special Studies adopting Congressman Weaver's Amendment. H.R. REP. No. 95-1570 95th Cong., 2d. Sess. 21(1978).

[30]124 CONG. REC. H10759 (daily ed. Sept. 26, 1978).

[31]"Personal horticulture" is USDA bureaucratese for something like a pea patch. DRAFT IMPACT ANALYSIS, *supra* note 17, at 5.

[32]Regulations 781.2(b).

[33]The Secretary of Agriculture provides the following explanation for such a result. 44 Fed. Reg. 7,116 (1979) ("First" Regulations 781, Supplementary Information).

The definition "categorizes small parcels used for commercial production as agricultural land, thereby covering highly profitable small acreage undertakings."

The Secretary imposed this hardship on small holders because such information "provides a data base for analytical purposes which, following the initial collection, might well be appraised as too inclusive. The later judgment, quite possibly, could never be made in the absence of such inclusive initial collection." But requiring over-inclusive reports by the Secretary may obscure the most relevant information.

The Secretary's first explanation was incomprehensible: "The definition provides for the inclusion of land not exceeding one acre used for the production of items not distributed commercially since such has little if any affect [sic] upon family farms and rural communities."

The Secretary's second explanation did not clear up the confusion:

> the word "value" has been deleted [from the first final rule] in order to make it clear [sic] that the mere production of agricultural items exceeding $1,000 in value during a one-year period, for personal or household use, does not trigger a reporting obligation but that there must be disposition of the items producing $1,000 in annual gross sales.

The second set of Regulations deleted the word "value" from the above quoted language, making the meaning even more obscure. If "such products" are sold for under $1,000, how can they be produced for the personal or household use of the owners, unless sold to the owners themselves?

(b) *Any interest.* The Act requires "any interest, other than a security interest," in agricultural land to be reported[34] but does not define the term "any interest." The second Regulations except "(1) leaseholds of less than 10 years; (2) contingent future interests; (3) noncontingent future interests which do not become possessory upon the termination of the present possessory estate and (4) surface or subsurface easements and rights of way used for a purpose unrelated to agricultural production."[35] Excluded from this definition of "any interest" is the interest of lessor and lessee under a leasehold of less than ten years, even if such leasehold is automatically renewable for further terms.[36] The Secretary's "interpretation" which follows these exceptions in the second set of Regulations is significant: "An interest solely in mineral rights is not considered an interest in agricultural land and therefore is not required to be reported."

The express exception of "contingent future interests" and of "noncontingent future interests which do not become possessory upon the termination of the present possessory estate" seems to except holders of (a) any interest in principal or income that is contingent on the holder surviving another person, or a period of years in gross, or (b) upon the exercise of discretion by a fiduciary who holds title. Within this exception would fall the interests of holders of a contingent remainder interest, a contingent income interest (as under a "sprinkling" trust), a secondary income interest, a power of revocation or invasion or amendment of a trust conditioned upon consent of a trustee or other person with a nonadverse, or adverse interest, an interest as a possible appointee under a power of appointment, or under a covenant running with the land, or a management contract. Even an interest described under property law as "vested subject to divestiture," or to a "condition subsequent" appear to be within this exception.

On the other hand, the interest of an indefeasibly vested remainderman, a current income beneficiary with a fixed interest, or an executor or a trustee would seem to be within the above definition of "any interest." But as between a trustee, for example, a current income beneficiary and an inde-

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[34]AFIDA §§ 2(a), 2(b), 2(c), 2(d), 2(e)A, 2(f)A.

[35]Regulations 781.2(c).

[36]The Secretary earlier stated that "[t]he decision to *include leaseholds of ten years* or more and *noncontingent future interests* which will become possessory upon the termination of the present possessory estate, will serve to eliminate the likelihood that such would otherwise be utilized as methods of significant investment." First Regulations 781, Supplementary Information, at 7115. This pointed up the availability as exempt vehicles for foreign agricultural investment of shorter leaseholds, and trusts with a United States trustee in which foreign persons held only contingent future and present interests. The second Regulations "make clear the intent to exclude leases" of less than 10 years duration.

The exceptions for "surface easements, and rights of way used for a purpose unrelated to agricultural production" and "mineral rights" are obviously also quite important.

feasibly vested remainderman of the same trust entity, it appears that the remainderman, the current income beneficiary, and the trustee are all required to file.

In the case of a trust holding United States "agricultural land," if a United States trustee is given power to "sprinkle" income among a group of beneficiaries who may be "foreign persons" and to pay the principal on termination to contingent remaindermen who may be "foreign persons," only the United States trustee, not the foreign holders of the "contingent" and "nonpossessory" interests would be deemed to hold "any interest" under the definition in the Act and Regulations. In such case it appears that no filing with respect to the trust's agricultural land would be called for.

(c) *Security interest.* "Security interests" are consistently excepted from "any interest" in a foreign person,[37] but the term is not defined in the Act. The first Regulations defined a "security interest" as "a mortgage or other debt-securing instrument which shall be exempt from reporting,"[38] but the second Regulations deleted the words "which shall be exempt from reporting." Such exemption, embedded as it is in the statute, appears to be as broad as any generally acceptable definition of the phrase "security interest."[39] Thus, a foreign mortgagee, or a foreign person who sells under a land contract to a domestic purchaser, is exempt from the Act's reporting requirements.

Under many such secured land sales, the purchaser's initial payment to the seller may be quite small, the payment period extends many years, and there is often a large balloon payment at the end, leaving the seller as holder of a significant economic interest, and the purchaser in effect merely the holder of an option to continue payments. The use of debt allows the debtor to deduct interest payments, while the foreign payee will often receive interest payments which are exempt from withholding tax pursuant to provisions in some tax treaties. In many cases it would not be difficult to structure a foreign person's United States agricultural investment as a "security interest" so as to avoid the necessity of reporting it under AFIDA.

(d) *A person.* Under the Act the term "person" includes

> any individual, corporation, company, association, firm, partnership, society, joint stock company, trust estate, or any other legal entity.[40]

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[37]AFIDA §§ 2(a), 2(b), 2(c).

[38]Regulations 781.2(j). The first Regulations, Supplementary Information, at 7115-6 added that "Foreign persons who hold a mortgage or other debt-securing device in agricultural land will not be required to report such interest."

[39]Under the *Uniform Commercial Code* (which deals with "personal property," not land), "security interest" means "an interest in personal property or fixtures which secures payment or performance of an obligation . . . whether a lease is intended as security is to be determined by the facts of each case. . . ." U.C.C. § 1-201(37)a.

See also Zagaris, *Investment by Nonresident Aliens in U.S. Real Estate*, 31 U. MIAMI L. REV. 566 (1977); Zumbach & N. Harl *Anonymity and Disclosure in Ownership Reporting Systems*, in FOREIGN INVESTMENT IN U.S. REAL ESTATE (1976) (Economic Research Service U.S. Dept. of Agriculture).

[40]AFIDA § 9(4); but Regulations 781.2(h) do not conform to the Act in that the Regulations

(e) *A foreign person.* A "foreign person" is elaborately defined in the Act as a "foreign government," or any individual who is not a citizen or national of the United States. A resident alien would not be a "foreign person" if lawfully admitted to the United States for permanent residence,[41] but a "Treaty Trader" would be a "foreign person." A "foreign person" also includes a "foreign legal entity" created under the laws of a foreign government, or which has its principal place of business outside the United States.[42] It also includes a United States domestic corporation in which "a significant interest or substantial control is directly or indirectly held" by a foreign individual, a foreign government, or by any "combination" of foreign individuals, persons, or governments.[43] Any legal entity created under the laws of a foreign government, "or which has its principal place of business located outside of all of the States" is deemed to be a foreign legal entity, even if no interest or control in such legal entity is held by a foreign person.[44]

(f) *Significant interest or substantial control.* "Significant interest *and* substantial control" was the definitional heading of the first Regulations Reg. 781.2(1), though in the text to this section the words "substantial" and "significant" were reversed. As to the meaning of these terms, the following definition was offered:

> A foreign person shall be deemed to hold substantial [*sic*] interest and significant [*sic*] control in a legal entity for the purposes of reporting if such foreign person holds 5 percent or more interest in any legal entity which holds, directly or indirectly any interest in United States agricultural land.[45]

In the second set of Regulations the caption and text were changed to read: "Significant interest *or* substantial control means five per cent or more interest in a legal entity for the purpose of obligating such legal entity to report."[46] This is not limited to "first tier" reporting.

In the second set of Regulations 781, Supplementary Information, the Secretary's explanation for this rewriting is that "the definition of 'significant interest, or substantial control' in 781.2(1) has been restated in order to make clear that the reporting entity referred to in the definition is the entity in which the five per cent foreign interest is held, rather than the foreign persons holding such interest."

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leave out the word "firm," and substitute "*foreign* partnership" for "partnership." In the case of a typical United States limited partnership with some foreign partners, this distinction could be of considerable significance.

[41]AFIDA §§ 9(3)(A)(i)(ii), (iii).

[42]AFIDA § 9(3)(B).

[43]AFIDA § 9(3)(C)(i), 9(3)(C)(ii)(I)(II)(III)(IV).

The statutory definition is repeated and expanded in the Regulations 781.2(g)(4)(ii)(A)(D).

Loose drafting of the first Regulations made necessary an "Interpretation" in the second Regulations, following 781.2(g)(3)(D): "The word 'combination' refers to an aggregate figure and does not require a coalition which intends to accomplish a common objective." (The "interpretation" contains an erroneous cross reference to 781.4(f)(4); which should be to 781.*2*(g)).

[44]Regulations 781.2(g)(2).

[45]44 Fed. Reg. 7,116 (1979).

[46]44 Fed. Reg. 29,032 (1979).

He further explains that the words "directly or indirectly" as used in section 9(c)(ii) of the Act itself and in section 781.2(g)(4)(ii) of the second set of Regulations, do not mean that if foreign persons hold 5 percent of United States corporation A, which holds an interest in United States corporation B, which in turn holds United States agricultural land, that A is obligated to report in any event. According to the Secretary, "Such obligation could result in a duplication of reporting concerning the same tract of land if both corporation A and corporation B were defined to be 'foreign persons.' " Therefore, section 781.2(1) was amended by the second set of Regulations "to provide that indirect land holdings need not be reported."

(g) *Is there a single test, or more than one test of "significant interest and substantial control"?* The "five per cent interest" test contained in the second set of Regulations Section 781.2(1) is precise, specific, provides a single test, and leaves little room for other tests. It closes the door on other tests of "significant interest" or "substantial control." Under traditional canons of construction, *inclusio unius est exclusio alterius:* inclusion of one is the exclusion of others. Furthermore, the 5 percent test measures an interest in equity "ownership," not control exercised by debtholders, creditors, or personnel in key management offices, as by presence on the board of directors, or the holding of executive offices.[47] Thus, a foreign person who has de facto control of a domestic corporation but not 5 percent or more stock ownership would not appear to have an obligation to report.

The discussion of "significant interest or substantial control" contained in the first set of Regulations, Supplementary Information, is consistent with the foregoing. The Secretary notes that nearly all the suggestions for definition of this term presented were on a "percentage of ownership basis." In the discussion which follows he concerns himself exclusively with the percentage of ownership test, not other possible tests. He makes reference only to provisions of the Securities and Exchange Act of 1934[48] which requires any person who is directly or indirectly the beneficial owner of more than 5 percent of a particular class of security to file certain reports, a mechanical percentage of ownership requirement test, even though elsewhere under the Securities Act law there are less mechanical and more far-reaching tests of "control" that the Secretary might have seized upon.

It is also significant that the Secretary discussed the 5 percent figure as one that would "assure that as many legal entities as *reasonably possible* would be required to report their agricultural land holdings." It would have been possible for the Secretary to compel reporting of a larger number of foreign holdings if he had chosen to broaden the "significant interest" or "substantial control" tests to include tests other than the 5 percent test, for example management control, control of debt obligations, potential conversion of

[47]In first Regulations 781, Supplementary Information, it seems significant that the Secretary's discussion of second and third tier reporting requirements is headed "Tracing *Ownership.*" Farther-reaching words such as "interest" or "control" are not discussed.

[48]15 U.S.C. §§ 78a-77kk (1976).

convertible securities, and the like, but the Secretary apparently concluded that imposing such other or more far-reaching tests would not be "reasonable."

Many corporate entities, foreign and domestic, issue bearer shares. In some cases neither the managers of such entities nor anyone else knows whether or not 5 percent of the shareholders are foreign. Thus an entity with bearer shares not known to be 5 percent foreign owned may not be obliged to report.

The Secretary's comments in the Supplementary Information under the heading of "Tracing Ownership" also seem consistent with the conclusion that the 5 percent test is the only test.[49]

(h) *Name, or only "nature" of foreign owner.* Both section 2(c) of the statute and section 781.3(f) of the first set of Regulations provided that if a United States business entity holding agricultural land is defined to be a "foreign person" by virtue of 5 percent or more foreign ownership, then such entity must reveal the legal name and address of certain foreign individuals or governments holding a certain interest in it. But if the 5 percent interest in such United States business entity is held by a foreign business entity rather than foreign individuals or governments, then such United States entity need only reveal the *nature* (not the name and address) of the foreign business entity, the country in which it is organized, and its principal place of business. A similar provision also exists with respect to reports submitted pursuant to section 781.3(g) of the first set of Regulations. Furthermore, if the ASCS Form 153 is submitted pursuant to section 781.3(b) or (c) by an entity other than an individual, it also appears that the name of such entity need not be stated.

The second set of Regulations revised section 781.3(b),(c),(f) and section 781.3(g) to require the *name* as well as the nature of the foreign business entity to be disclosed.

This additional requirement of the second set of Regulations conflicts not only with the statute, but with the introductory summary of the second set of Regulations itself which states that "entities which might have otherwise been required to file a report will be relieved of the obligation to do so."

(i) *How many "tiers" of foreign ownership must be reported?* In the first set of Regulations the Secretary noted[50] that three persons recommended that all levels of ownership by foreign persons be identified and reported, three others suggested that the Secretary not exercise his discretion to require second and third tier ownership to be reported, and two others suggested that all interests be traced to second or third tier ownership. His first resolution of the question straddled these three viewpoints:

"The search for foreign persons holding any interest in legal entities holding agricultural land has no definitive limit unless an arbitrary cutoff is es-

[49]Regulations 781, Supplementary Information, 44 Fed. Reg. 7116 (1979).
[50]Supplementary Information — Tracing Ownership, 44 Fed. Reg. 7,116 (1979).

tablished."[51] The first set of Regulations[52] defined only "a significant interest or substantial control" in a foreign person at the first tier level. They therefore required initial reporting only at this level. However, the Secretary reserved the right at a later date to request a filer to provide second and third tier information:

> Information obtained from the initial phase of reporting would provide information about the foreign individuals, governmental or legal entities holding an interest in United States legal entities which invest in agricultural land. Pursuant to the Regulations, the Secretary at a later time also may require disclosure of the same information concerning individuals, governments and legal entities not listed on the initial report filed by the United States legal entity.[53]

In issuing the second set of Regulations, the Secretary found that a close reading of the statute reveals that Congress apparently did not intend to permit the Secretary to trace ownership beyond the third tier. Had this not been the case, Section 2(f) of the Act would have included, after referring to reports submitted under paragraph (e), the expression, "or this subsection." The absence of such language appears to limit tracing to the third tier.[54]

The Secretary goes on to say that "it was felt essential that the Regulations grant the latitude to require such reports since it would have otherwise been possible for foreign entities to conceal their ownership of United States agricultural land by establishing several layers of ostensible owners."[55]

Is a United States corporation with thousands of shareholders required to determine whether each interest holder is a "foreign" or nonforeign person

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[51]Id. 44 Fed. Reg. 7,116 (1979).

[52]*Id.* 781.2(f)(2).

[53]44 Fed. Reg. 7,116 (1979).

[54]44 Fed. Reg. 29,301 (1979).

The following passage from the second Regulations "Reporting of the second Tier," intended to provide clarification, adds to the confusion, particularly in claiming the right to require reporting from nonforeign persons:

> Pursuant to § 781.3(f) of the final rule, a U.S. business entity, defined to be a "foreign person" as a result of five percent or more foreign ownership must reveal automatically certain information about each 'foreign person' holding a certain interest in it and, upon request, must reveal certain information concerning all others holding any interest in it. Once the identity of a person has been disclosed pursuant to § 781.3(f), § 781.3(g) provides that such persons may be requested to submit a report containing certain information about "any person" holding any interest in such person. Since the use of the words "any person" signifies "foreign" persons as well as non-foreign persons, the Secretary may request information about a nonforeign person pursuant to § 781.3(g), despite the fact that at the first tier the Secretary never requested information about nonforeign persons in connection with the § 781.3(f) report. In order to make § 781.3(f) and (g) more harmonious, § 781.3(g) has been revised to provide that any 'foreign person' whose name is listed on a report submitted in satisfaction of § 781.3(f), may be required, if requested, to reveal certain information about "foreign persons" holding five percent or more interest in the "foreign person" whose name is so listed. In addition, a "foreign person" whose name is listed on the report submitted in satisfaction of § 781.3(f), may also be required, if requested, to reveal certain information about 'foreign persons' holding less than five percent interest in it. Under § 781.3(g)(2), however, a "foreign person" whose name is listed on a report submitted in satisfaction of § 781.3(f), may not be required to reveal information about nonforeigners holding any interest in it, unless a report containing the same type of information was previously required to be filed pursuant to § 781.3(f)(2).

[55]Fed. Reg. 7,116 (1979).

in order to determine whether they add up to 5 percent combined? The Secretary's answer is no, under the second set of Regulations:

> In an effort to alleviate the burden imposed upon business entities with numerous interest holders to obtain information which would permit such entities to determine whether or not each such interest holder is a "foreign" or non-foreign person, both § 781.3(f)(1) and § 781.3(g)(1) have been revised to provide that only information concerning "foreign persons" holding five percent or more interest must be revealed under § 781.3(f)(1) automatically; under § 781.3(g)(1), upon request. However, the Secretary retains the authority to request information concerning all interest holders not revealed pursuant to § 781.3(f)(1) and § 781.3(g)(1).[56]

The Secretary also notes the two different senses in which the 5 percent figure of Regulations 781.2(1) is used:

> At this point it should be noted that the five percent figure used in § 781.2(1) of the final rule to define significant interest or substantial control, relates to the cumulative interest which triggers the reporting responsibility under § 781.3(b),(c),(d) or (e) of any "foreign person" holding agricultural land. The five percent figure used in § 781.3(f) and (g) refers to the entities which a "foreign person" required to file a report under § 781.3(b),(c),(d) or (e) must reveal or, the entities which a person whose identity has been disclosed pursuant to § 781.3(f) must reveal. The two senses in which the five percent figure has been used should be kept conceptually distinct.[57]

Under the heading, "Tracing Ownership" in the first set of Regulations the Secretary gives the following example:

> This [avoidance of second and third tier, etc. reporting] could have been accomplished by the foreign entity investing in, for instance, corporation B, which itself holds no agricultural land, but does hold an interest in corporation A, which holds agricultural land. Since corporation A need not file a report listing indigenous entities, the identity of those holding interest in corporation B would not be revealed even though it has an interest in A.[58]

Thus, it appears that where the foreign entity F invests in corporation B, a domestic corporation which holds no agricultural land but holds an interest in corporation A, which holds agricultural land, A need file no report since it is owned by B, a domestic corporation. B need file no report though it is owned by a foreign entity because it owns no agricultural land. So it appears from the discussion under "Tracing Ownership" that in initial reporting at least no report is required from a domestic corporation owning agricultural land, if it is owned by another domestic corporation, even though such other domestic corporation is 5 percent or more owned by a "foreign person."

A single United States domestic corporation, International Paper Company, owns 8.5 million acres of timberland (some in Canada and other foreign countries but mostly in the United States); AFIDA defines land used for timber production as agricultural land. A combination of foreign banks, trust funds, individuals and foreign addressees may well hold more than 5 percent of International Paper's outstanding stock, a "significant interest or

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[56]Fed. Reg. 29,030 (1979).
[57]*Id.*
[58]Fed. Reg. 7,116 (1979).

substantial control" under the Act. If they do, such a company is faced with a formidable task in filling out an AFIDA report Form. A statistical tabulation by the Secretary of Agriculture which combined such a company's timber holdings as "foreign held" United States agricultural land in the same report with the Cuban refugee's pea patch would not be particularly meaningful.

VI. Treaty Violations

Reports of foreign agricultural investment on Form ASCS 153 filed with the Secretary of Agriculture are to be made available for public inspection at the Department of Agriculture in the District of Columbia within ten days after filing. Section 7, Pub. L. 95-460. Important information not available in County Recorder's offices is called for by the form, including "estimated value" of the holding, "first tier," and possibly second and third tier, foreign ownership, etc. Yet AFIDA, according to legislative history reflected in Congressional debate, is only an "information gathering" statute, like a census statute, not a "disclosure" or "fraud" statute, like the securities laws. Public disclosure of names and addresses of foreign holders of United States agricultural land, and purchase prices and current land values, is not necessary to carry out the "information gathering" and reporting purposes of the Act. Such disclosure will inhibit foreign investment in the United States, cause withdrawal of foreign investment, and have an adverse effect on the United States balance of payments.

Typical "treaties of friendship, commerce and navigation" between the United States and other countries, intended to encourage foreign investment by allowing foreigners to conduct a wide variety of commercial activities in the United States, usually contain a "most favorable nation" clause and/or a "national treatment" clause. Such clauses grant citizens of other countries the same rights under the laws of the United States as citizens of any other country, and the same rights as citizens of the United States, respectively. Under such a treaty, a foreign national of a treaty country that domestically does not require AFIDA-type public disclosure of foreign ownership, including "estimated value," might refuse to file ASCS 153 on the ground that Congress did not intend by AFIDA to repeal the treaty, or discriminate against foreigners, or require a foreigner to disclose publicly information that United States citizens are not required to disclose. If this argument has merit, the further question is raised as to whether the United States is under an obligation to notify the other countries with which it has such treaties of the pro tanto repeal thereof by the AFIDA legislation.[59]

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[59] *See* Morrison, *Limitations on Alien Investment in American Real Estate*, 60 MINN. L. REV. 621 (1976); Morse, *Legal Structures Affecting International Real Estate Transactions*, in FOREIGN INVESTMENT IN U.S. REAL ESTATE 272 (1976) (Economic Research Service, U.S. Dept. of Agriculture).

The general rule is that a treaty is not superior to the law but on parity with the law so that a subsequently passed law which is inconsistent with a treaty repeals the latter to the extent of the

A second type of treaty violation arguably caused by AFIDA involves the multinational agreement called the Code of Liberalization of Capital Movements of the Organization for Economic Cooperation and Development. The purpose of the OECD Code is to promote capital movement. It may be argued that Congress did not intend AFIDA disclosure requirements to violate this treaty by requiring disclosure that would inhibit, rather than promote, capital movement.[60]

VII. Other Questions

AFIDA raises many other questions with constitutional and other legal implications that go beyond the scope of this survey. These include: To what extent does the federal government preempt by the Act the area of state regulation of land, and investment in land, which has traditionally been an area of state action?[61] Does AFIDA preempt state regulation as to all state

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inconsistency. The rule was set forth by the U.S. Supreme Court in Reid v. Covert, 354 U.S. 1 (1956) as follows:

> "This court has also repeatedly taken position that an Act of Congress . . . is on a full parity with a treaty, and that when a statute which is subsequent in time is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null." (citing many other Supreme Court cases).

The ramifications of the "Treaty" theory, or the distinctions involved as between ownership by foreign individuals, corporate entities, trusts, etc. are beyond the scope of this survey.

[60]An indication that the "treaty violation" aspect of AFIDA 1978 has been recognized in responsible quarters is that Congressman Ashbrook on January 22, 1979 placed before Congress H.R. 1166, the "Agricultural Foreign Investment Disclosure Act of 1979" which is quite similar to AFIDA 1978, but with the following significant differences: (1) it does not contain the mandatory publicity provisions contained in AFIDA 1978 (including disclosure of values, foreign stockholders, first, second, third tier foreign owners, and the like); and (2) it does not require reporting where the laws of a foreign person's country specifically forbid the disclosure.

On January 23, 1979, Senator McGovern placed before Congress S.194, the Agricultural Foreign Investment Control Act of 1979. The thrust of this Act is that no foreign person may acquire agricultural land without a permit from the Secretary of Agriculture. In order to qualify for a permit, the foreign person must fulfill onerous conditions, including holding no other interest in agricultural land, limiting the unit being acquired to a size no larger than a "family farm unit," and the like.

[61]*See* Brodkey, *Foreign Investment in U.S. Real Estate: The Role of the State Restrictions in Structuring the Transaction,* LAWYERS SUPPLEMENT TO THE GUARANTOR, Chicago Title Insurance Company, September, October 1978. Federal statutes restricting foreign ownership of land include the Trading with the Enemy Act and regulations thereunder, 50 U.S.C. App. § 1 (1976), an Act restricting enemy or hostile alien assets; The Alien Property Custodian Regulations, 8 C.F.R. § 501-510 (1975), allowing the Department of Justice to seize aliens' property during war times; and The Foreign Assets' Control Regulations, 31 C.F.R. § 500 (1975), giving the Treasury Department authority to block commercial transactions with citizens from hostile countries during non-war periods.

Regulation of activities relating to public domain land encompasses 2,600 separate statutes affecting public land which basically regulate foreigners who obtain or exploit public lands or federally owned resources. *See* U.S. PUBLIC LAND LAW REVISION COMMISSION, DIGEST OF PUBLIC LAND USES (1968). In addition the Alien Land Act of 1887 prohibits foreigners from owning land in the territories and District of Columbia: 48 U.S.C. §§ 1501, 1508 (1976).

Treaties between the United States and other countries have an impact on federal and state restrictions on foreign ownership. Although a treaty or international agreement supersedes state laws, Hauenstein v. Lynham, 100 U.S. 483, (1880), subsequent federal legislation will override a treaty. Reid v. Covert, 354 U.S. 1, 18(1957); Moser v. United States, 341 U.S. 41, 45 (1951).

land, or only "agricultural" land? Does the costly reporting burden imposed on persons and entities, both domestic and foreign, to provide information that may be available from other regulatory agencies and public offices or could be determined more reliably, efficiently and accurately from an intelligently conducted and properly funded survey, justify AFIDA's cost to United States citizens and foreigners, the discouraging effect it will have on foreign investment in the United States, and the adverse effect it will have on the United States balance of payments? How much harm does AFIDA do farmers and their families and estates by greatly limiting their potential opportunities for advantageous disposition of their property? Is it a justifiable invasion of individual privacy and a proper federal imposition on foreign commerce? Is the extraordinarily heavy penalty for a noncompliance that may cause no measurable harm to anyone (an infinitesimal skewing of an unreliable statistic) justifiable or constitutional?

VIII. Enforcement and Prosecutorial Discretions

Since the Act provides no funding to carry out its provisions, the Department of Agriculture is expected to comply through a redirection of existing resources and staff members. Prosecution of foreign investors who are found by the Office of the Inspector General and the Office of the General Counsel of the Department of Agriculture to have knowingly submitted incomplete, false, or misleading reports will be the responsibility of the Attorney General of the United States, with the costs of prosecutions to be borne by the Justice Department.

In view of the apparently broad scope of the Act, and the many areas of uncertainty left open by the Regulations, it may be anticipated that much will be left to "prosecutorial discretion."

Form Approved - OMB No. 40 R 4065

ASCS-153 (3-28-79)

U. S. DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service

AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT REPORT

NOTE: Read Instructions on Reverse Before Filling In Any Data Below. If Additional Space is Needed, Use Reverse.

1. TYPE ACTIVITY *(See reverse) (Check one)*
A LAND HOLDING ☐ B LAND ACQUISITION ☐ C LAND DISPOSITION ☐
D LAND USE CHANGE TO AGRICULTURE ☐ E LAND USE CHANGE TO NON-AGRICULTURE ☐

ITEM	OFFICE USE ONLY
2. Tract Location and Description	
A. LEGAL DESCRIPTION OR ASCS TRACT NUMBER	
B. COUNTY OR PARISH / C. NO. ACRES	
D. STATE	
E. F.P. TRACT ID *(Office Use Only)*	
3. Foreign Person - Owner of Tract *(in item 2A) (See Reverse)*	
A. NAME	
B. ID NO. *(Nine digits)* / CHECK IF NO. NOT KNOWN ☐	
C. ADDRESS *(Street, City, State/Province, Country)*	
D. Person Receiving This Tract. Complete **ONLY** if item 1C - Land Disposition - is checked.	
1. NAME	
2. ADDRESS *(Street, City, State/Province, Country)*	
3. CITIZENSHIP USA ☐ FOREIGN ☐ UNKNOWN ☐	
E. Type of Owner *(Check one)*	CHECK
1. Individual *(including husband/wife)*	
a. Citizenship of Individual	
2. Government *(name of country)*	
3. Organization *(list on the reverse the Name, Address and Country of all other foreign persons holding an interest in this tract).*	
a. Type 1) Corporation	
2) Partnership	
3) Estate	
4) Trust	
5) Institution	
6) Association	
7) Other	
b. Gov't. or country under whose law the organization is created	
c. Principal place of business *(for organizations only) (see reverse)*	
4. Representative of Foreign Investor *(completing form, if applicable)*	
A. NAME	
B. ADDRESS *(Street, State and Country)*	
C. TELEPHONE NO. *(Area Code)*	
D. Relationship of Representative to Foreign Person	CHECK
1. Attorney	
2. Manager	
3. Agent	
4. Other *(explain on reverse)*	

ITEM	CHECK
5. Type of Interest Held by Foreign Person *(Check one)*	
A. Fee Interest *(ownership)* Whole	
B. Fee Interest *(ownership)* Partial / WHAT %	
C. Life Estate	
D. Trust Beneficiary	
E. Option	
F. Purchase Contract	
G. Other *(explain)*	
6. How was this Tract Acquired or Transferred?	
A. Cash Transaction	
B. Credit or Installment Transaction	
C. Trade	
D. Gift or Inheritance	
E. Foreclosure	
F. Other *(explain)*	
7. Land Value, Including Improvements	
A. Purchase Price of Land $	
Non-Purchase, Estimated Value at the Time of Acquisition	
B. What is the estimated current value or if a land disposition, the selling price of the tract of land.	
C. How much of purchase price in Item 7A remains to be paid	
8. Date of Acquisition or Transfer *(see reverse)* / MONTH / YEAR	
9. Current Land Use *(usual use; for Idle, check "Other".)* **Report in Whole Numbers.** / ACRES	
A. Crop *(specify by acreage on reverse)*	
B. Pasture	
C. Forest or Timber	
D. Other Agriculture	
E. Other Non-Agriculture	
F. Total *(should equal 2C)*	
10. Intended Use as of This Date *(Check one)*	CHECK
A. No Change	
B. Other Agriculture	
C. Other Non-Agriculture	
11. Relationship of Foreign Owner to Producer	
A. Producer is (check one):	
1. Foreign owner	
2. Manager	
3. Tenant or sharecropper	
B. Rental agreement is (check one):	
1. A crop share	
2. Cash or fixed rent	
12. Is the Producer on This Tract:	
A. Same person as when the tract was acquired	
B. A new person	

13. CERTIFICATION - I certify that the information entered above is complete and correct. I understand that falsification of reporting is subject to a civil penalty not to exceed 25% of the fair market value of the interest held in the tract of land.

SIGNATURE *(Owner or legally authorized representative)* / DATE

TITLE

ASCS-FOIA COPY

EXHIBIT A

NOTE *P.L. 95-460 authorizes collection of the data on this form. The data will be used to determine the effects of foreign persons acquiring, transferring and holding agricultural land, and the effects of such activity on family farms and rural communities. Furnishing the data is mandatory. Failure to comply or falsification of reporting is subject to civil penalty, not to exceed 25 percent of the fair market value of the interest held in the tract on the date of the assessment of such penalty. The data may be furnished to any Agency responsible for enforcing the provision of the Act and to the public.*

IMPORTANT

DEFINITION: "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, trust, estate, or any other legal entity.

You are a "foreign person" under the provisions of P.L. 95-460 and must complete the front side of this form *(ASCS-153)* if your answer to each of these three questions is "No".

	YES	NO
1. I AM a citizen of the United States		
2. I AM a citizen of the Northern Mariana Islands or the Trust Territories of the Pacific Islands.		
3. I AM lawfully admitted to the United States for permanent residence, or paroled into the United States, under the Immigration and Nationality Act.		
OR if your answer to any of these three questions is "Yes".		
4. I AM a "person" other than an individual or government, which is created or organized under the laws of:		
a. A foreign government or which has its principal place of business located outside the United States.		
b. Any State of the United States, and in which 5% or more interest is held directly or indirectly by any foreign individual, government, or legal entity.		
5. I AM a foreign government.		

INSTRUCTIONS

Complete this form in an original and three copies for each tract of land. Report as a tract all acreages under the same ownership in each county or parish. Land in different counties or parishes must be reported as separate tracts. Insertion of carbons is necessary.

Return the original and two copies to the Agricultural Stabilization and Conservation Service (ASCS) county office where the tract of land is located or administered. Retain the last copy *(Foreign Person Copy)* for your records. *DO NOT SEND THIS FORM DIRECT TO WASHINGTON, D.C.*

After the original disclosure on ASCS-153 on the tract(s) of land owned by the same person within a county or parish, each subsequent change of ownership or use must be reported by filing another ASCS-153.

Item 1. **ONLY ONE BOX MAY BE CHECKED.** If the tract of land to be listed under item 2 was:

1. Owned on February 1, 1979, check A LAND HOLDING [X] and return the completed form by August 1, 1979.

If the tract of land to be listed under item 2 was, on or after February 2, 1979:

2. Acquired, check B LAND ACQUISITION [X] ; or
3. Disposed of, check C LAND DISPOSITION [X] ; or
4. Changed from non-agricultural to agricultural use, check D LAND USE CHANGE TO AGRICULTURE [X] ; or
5. Changed from agricultural to non-agricultural use, check E LAND USE CHANGE TO NON-AGRICULTURE [X]

and return the completed form within ninety (90) days after the transaction.

Item 3E3c. If incorporated or formed in the United States as an independent, affiliate, or subsidiary company, show the State of incorporation or formation.

If the answers to 3E3 b and c are "United States" or any "state", list the name of all foreign persons who hold any interest in your organization and their address, citizenship of individual, country of government, and country of incorporation or principal place of business of organizations.

Item 8. This date would be as follows for activity checked in Item 1:
Box A and B - When acquired.
Box C - When disposed of.
Box D and E - When land use changed.

ADDITIONAL INFORMATION *(Use additional sheets if more space is needed)*

EXHIBIT B