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AUTHORIZATION FOR THE INTERNATIONAL

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**INVESTMENT SURVEY ACT
DOCUMENTS**

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HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION**

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 2928


TO AMEND THE INTERNATIONAL INVESTMENT SURVEY ACT
OF 1976, AND FOR OTHER PURPOSES

APRIL 19, 1978

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CHAPTER 1

Introduction to the study of the history of the United States.

THE EARLY PERIOD

The early period of the history of the United States is characterized by the discovery of the continent by Christopher Columbus in 1492.

The first European settlers in North America were the Spanish, who established colonies in Florida and the Southwest.

The English followed, establishing colonies in the Northeast and the Middle West.

The French and Dutch also established colonies, primarily in the Northeast and the Middle West.

The American Revolution broke out in 1775, leading to the independence of the United States from Great Britain.

The early years of the new nation were marked by territorial expansion and the struggle for a stable government.

The Constitution was adopted in 1787, providing a framework for the federal government.

The early period of the history of the United States is a time of great discovery and exploration.

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AUTHORIZATION FOR THE INTERNATIONAL INVESTMENT SURVEY ACT

WEDNESDAY, APRIL 19, 1978

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met at 9:30 a.m. in room 235, Russell Senate Office Building, Hon. Daniel K. Inouye presiding.

OPENING STATEMENT BY SENATOR INOUE

Senator INOUE. This morning the Committee on Commerce will hold hearings on S. 2928, a bill to amend the International Investment Survey Act of 1976.

This bill would do three things. First, it would increase the authorization to the Departments of Commerce and Treasury to conduct their duties and responsibilities under the act. Second, it would extend the reporting deadline by a year by which the Department of Agriculture is to report on its feasibility study of establishing a system to monitor foreign direct investment in real estate. Third, the bill authorizes money to the States to establish their own programs to establish or improve their own monitoring and data collection programs; to assist States in the enforcement of their own laws where such aid might be feasible; to provide legal information to States on the international implications of their activities; and finally, to authorize the President to establish a clearinghouse of information to share with the States and general public.

Public concern about the extent of foreign investment in American real estate, particularly farmland, has reached new heights within recent months. There has been a rash of television and radio programs and press reports about a "new foreign invasion" of the United States through the purchase of American farmland as a result of international instability and the falling dollar.

The publicity and controversy arising from these reports should not obscure several facts. First, in spite of the steps which the Federal Government has taken to monitor foreign investments, land transactions are still very difficult to track. As the "1976 Report on Foreign Direct Investment in the United States" noted,

Informed public discussion has been circumscribed, however, by the lack of adequate data on the volume and character of foreign ownership in U.S. real estate. This largely reflects the inadequacies of the recordation systems and the confidentiality and anonymity aspects of real estate transactions.

Since that statement was made, the situation has not changed and only one State—Iowa—has in place a relatively reliable system for identifying foreign owners. States clearly have the ability and the responsibility to obtain more information than they already have about local transactions.

Moreover, land or property law is primarily State law, and transactions are locally recorded. Thus we should proceed with caution if we wish to alter the balance between State and Federal responsibilities.

The impact of foreign ownership is also in question. No one knows with certainty how foreign ownership affects land use, the community, and the economy. In certain cases, we know that the price of land has vaulted upward, in part because of the demand generated from abroad but also because of other inflationary factors. To the extent that it squeezes out smaller or younger farmers, this price increase may be socially detrimental to the community's welfare. Moreover, absentee ownership poses other questions about the use of land which have yet to be fully answered. Even if these developments do result from foreign purchases, it remains to be seen whether these problems can be solved by means other than controlling land transactions.

As we have discovered in the manufacturing sector, foreign investment can be a positive phenomenon by increasing efficiency, bringing in new capital, and creating jobs. Foreign investment is welcomed in urban areas, and there may be beneficial aspects to foreign ownership which are not apparent.

Foreign investment in land may be a transitory phenomenon which may subside. At the present moment, many believe that the surge is continuing and news stories have documented extensive sales efforts abroad. These hearings will seek to explore this aspect of the rise of investment.

It has been suggested that foreign investment is being fueled by the availability of tax havens, some of which are also available to American investors seeking anonymity, and because favorable tax treatment in their home countries gives some foreigners a bidding edge over prospective American purchasers. To the extent that this may be true, the Treasury Department would be well advised to determine the validity of this hypothesis and to explore means to rectify the inequality.

I am trying, in this opening statement, to suggest that foreign investment in land is a complex phenomenon with wide potential domestic and international ramifications. Precipitous action could cause unanticipated and undesired political and economic complications. This country has a wealth of intellectual, political, and financial resources to cope with this phenomenon, and I look forward to a combination of these skills to enhance the national, State, and private interest.

I would like to hear first from the administration witnesses regarding those sections of the bill to increase authorization to the Commerce and Treasury Departments to carry out the International Investments Survey Act of 1976 and to extend the reporting deadline under 4(d) of the act. The second section of the hearings will be devoted to the general issue of foreign investment in real estate, particularly in the area of farmland.

[The bill follows:]

[S. 2928, 95th Cong., 2d sess.]

A BILL To amend the International Investment Survey Act of 1976, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. Section 4 of the Act (22 U.S.C. 3103) is amended by inserting the following new subsection (e) and redesignating subsections (e) and (f) as (f) and (g) respectively:

"(e) The President is authorized to establish a program to assist officially designated State agencies, including academic institutions, in establishing or improving land data collection or monitoring systems, in improving State enforcement of laws regarding real estate purchases, and in providing legal assistance and advice on international law on the treatment of land purchases by nonresident aliens. The President is further authorized to establish a Federal clearing house of information on significant real estate investments by nonresident aliens whose information may be shared with the States and general public."

SEC. 2. Section 4(d) is amended to read as follows:

"(d) The President shall conduct a 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, and shall submit an interim report as his findings and conclusions to the Congress not later than two years after the enactment of this Act and a final report not later than three years after the enactment of this Act."

SEC. 3. Section 9 is amended to read as follows:

"SEC. 9. To carry out this Act, except for section 4(e), there is authorized to be appropriated \$4,300,000 for the fiscal year ending September 30, 1979; \$5,000,000 for the fiscal year ending September 30, 1980; and \$4,000,000 for the fiscal year ending September 30, 1981. There is authorized to be appropriated to carry out section 4(e) of this Act \$1,250,000 for the fiscal year ending September 30, 1979; \$1,500,000 for the fiscal year ending September 30, 1980; and \$1,750,000 for the fiscal year ending September 30, 1981."

Senator INOUE. Our first witness will be George Kruer of the Department of Commerce. Mr. Kruer is a Chief of the International Investment Division, Bureau of Economic Analysis. He will be accompanied by Milton Berger, Office of Foreign Investment in the United States, Department of Commerce.

STATEMENT OF GEORGE KRUER, CHIEF, INTERNATIONAL INVESTMENT DIVISION, BUREAU OF ECONOMIC ANALYSIS, DEPARTMENT OF COMMERCE; ACCOMPANIED BY MILTON BERGER, DIRECTOR, OFFICE OF FOREIGN INVESTMENT IN THE UNITED STATES

Mr. KRUER. We appreciate your invitation to appear before this committee and to present the views and requirements of the Department of Commerce concerning increasing the authorization of appropriations as contained in the International Investment Survey Act of 1976.

There are two agencies in Commerce which perform duties under the International Investment Survey Act of 1976, the Bureau of Economic Analysis (BEA) and the Industry and Trade Administration (ITA). Amounts presently requested in the fiscal year 1979 budget for carrying out work required under the act total \$2,538,000, \$1,552,000 for BEA and \$986,000 for ITA.

The recent clearance by OMB of our BE-10 forms for the Benchmark Survey of U.S. Direct Investment Abroad—1977 was condi-

tioned on the "constructive implementation by Commerce of applicable recommendations of the Interagency Committee on International Investment Statistics for further study and special surveys of U.S. direct investment abroad." These could include surveys of the exports and imports of foreign affiliates of U.S. companies, data on the transfer of technology between U.S. companies and foreign affiliates or other foreign companies, and the foreign currency denomination of the claims and liabilities of U.S. companies and their affiliates. Similar surveys will probably be proposed concerning foreign direct investment in the United States. We cannot give an exact estimate of their cost until the number of such surveys, their timing, and the number of affiliates to be included in each survey, have been decided.

Mr. Berger, who directs the Office of Foreign Investment in the United States, a part of the Industry and Trade Administration, is here with me and is prepared to respond to questions respecting the application of the authorization to his office.

That completes our prepared statement. We are prepared to answer questions.

Senator INOUE. Under the proposed increased authorization for the Commerce Department, how many additional personnel slots would be provided in the Bureau of Economic Analysis and in the Office of Foreign Investment in the United States?

Mr. KRUEER. Covered by the authorization should be the existing staff which consists of 51 persons in BEA and 22 in the Industry and Trade Administration. We cannot at this time comment as to whether there would be additional personnel requirements once the determination is made as to the special surveys.

Senator INOUE. What would be the annual cost of the program under the 1976 act for the next 3 fiscal years?

Mr. KRUEER. For the next 3 years, fiscal 1979, it would be \$2,538,000. And a similar amount for each of the next 2 succeeding fiscal years, unadjusted for inflation, which would normally be an amount added of about 6 percent.

Senator INOUE. Do you have any idea of the costs of the proposed special studies and surveys authorized to be made under the 1976 act?

Mr. KRUEER. Of the additional ones, no. From some of the proposals that have been made, it could range from very little to very much. Until it is further sorted out as to what should be done and what can be done with the existing resources, we do not know.

Senator INOUE. Can you give us an example of the nature of these studies?

Mr. KRUEER. The primary one, which a subcommittee will be reconvening to consider, is the transfer of technology from U.S. companies to foreign persons—companies or otherwise—and also the inward transfer of technology and the effects of this on the U.S. economy as concerns exports or the job situation.

It has been proposed that we attempt to do more in the area of securing information on product lines, along the lines of the annual census of manufacturers, as to what U.S. companies are actually producing abroad in their foreign affiliates rather than the more aggregate data by industry. It would be actual product class. These are two examples.

Senator INOUE. The BEA has circulated its questionnaire on outward investment. When they will be returned?

Mr. KRUER. On May 31. It is a staggered reporting deadline: May 31 for those less than 20 affiliates; June 30 for 20 to 100; July for those of 100 or more. Those are coming now, although not in substantial number.

Senator INOUE. How long will you take to analyze the responses?

Mr. KRUER. Approximately 36 months from the date of mail out, which was February of this year.

Senator INOUE. When would the benchmark study be released?

Mr. KRUER. We would expect to have the final publication out around the beginning of 1981.

Senator INOUE. What was the cost of the 1974 benchmark study, and how does it compare to this budget request?

Mr. KRUER. For BEA the cost of the 1974 benchmark survey was approximately \$525,000. That was for the survey itself. That did not include the various analytical volumes and studies, some of which were conducted under contract by Mr. Berger's office. That survey was much smaller than the outward survey we are presently conducting. We had 7,000 U.S. affiliates reporting in that survey. We expect 38,000 foreign affiliates to report in the outward survey.

Senator INOUE. One of the provisions of this bill would provide a Federal clearinghouse for information on foreign investment in real estate. Do you think the clearinghouse function as prescribed in S. 2928 can be satisfied with the existing programs? Would we have to add to these institutions?

Mr. KRUER. I would say yes. Mr. Berger may want to comment on this more, since he has been functioning as a clearinghouse related to various industrial transactions, with data available from public sources.

Mr. BERGER. Senator, I am not prepared to comment in specific terms on the proposal for clearinghouse activity. Our office already is carrying out that function insofar as data are available. We are dealing with the State development agencies. We are gathering information through a variety of public sources and disseminating that information both in terms of publications and in terms of communications to whom-ever might be interested, including the States. So that I would have to conclude that if legislation of this type were enacted and that function were given to us, we would be prepared to carry it on as far as we could.

Senator INOUE. Would you need additional funding and personnel?

Mr. BERGER. It is hard to say at this point. I do not know what the flow of information might be. It is conceivable we would.

Senator INOUE. As you know, Mr. Berger, a few years ago there was much talk about the surge of foreign investment in the United States. Has your office been able to determine whether there has actually been a resurgence of foreign investment in the United States since the initial phase in 1972-73?

Mr. BERGER. In quantitative terms, Mr. Krueger is better able to answer that question. In terms of our monitoring of transaction activity, which we have been doing for the last 2 years, comparing 1977 activity with 1976 activity, there was a clear indication of an increase. Part of that may be attributable to our improved procedures for gathering in-

formation. I do believe that there is some increase at least in the number of transactions and in the value of the transactions. However, how this would add up in terms of the balance of payments flows Mr. Krueger would be better prepared to answer.

Senator INOUE. Can you identify some of these countries involved in this investment activity?

Mr. BERGER. It is the same countries that have been active over the years. I would say that the principal countries are the United Kingdom, Canada, Germany, and Japan. The Western European countries continue to be major investors. We are seeing little direct investment from the Middle East which some people had anticipated.

Senator INOUE. In other words investment from Saudi Arabia and other Arab countries has not increased.

Mr. BERGER. That investment has been primarily in portfolio investments, Government securities. There has been some investment in real estate which we have been able to identify, because it has been announced, and some investment in banking. No particular investments have been identified with respect to industrial enterprises.

Senator INOUE. With respect to monitoring and improving upon data collection, what are your thoughts on the Iowa law? It looks as though Iowa has the best data available.

Mr. BERGER. With respect to farmland, I'm not sure they are getting behind the corporate veil with respect to corporate purchases. In other words, where corporations make purchases of land in Iowa, there may be foreign ownership within those corporations. It's not clear to me that they are identifying the foreign owners in those situations.

Senator INOUE. What suggestions would you make to get behind this secrecy?

Mr. BERGER. I wish I had a suggestion to make. I do not know.

Senator INOUE. The 1974 benchmark study estimated that 4.9 million acres of land were foreign owned and 63 million acres were leased by foreign-owned U.S. enterprises. Do you have more recent figures than these?

Mr. BERGER. The only figures we have are the sample surveys that Mr. Krueger's office has carried out. We have some data on land purchases by foreigners that have been publicly identified. Most of the real estate activity that has been publicly identified has been in terms of urban purchases—hotels, condominiums, shopping centers, that sort of thing. Very few purchases of agricultural land have been identified.

I would be happy to furnish the committee any of the information we have. We have some listings. I would be happy to pass them along to the committee if you would like to have them.¹

Senator INOUE. We would appreciate that.

It has been alleged that several American real estate brokers are specializing in selling land to foreigners. I do not know if you have been monitoring their activities. If you have, have you noted any special success on their part?

Mr. BERGER. The only information we have on their activity is what we see in the press. We have conducted no separate investigation of their activity.

¹ See p. 49.

Senator INOUE. Do you have any idea of the costs to the Federal Government to implement a nationwide recordation system?

Mr. BERGER. Not at this point.

Senator INOUE. Gentlemen, I thank you very much. You have been most helpful.

Our next witness is Mr. John Karlik, the Deputy Assistant Secretary of the Treasury for International Economic Analysis.

Welcome, sir. Would you introduce your colleagues.

STATEMENT OF JOHN R. KARLIK, DEPUTY ASSISTANT SECRETARY OF THE TREASURY; ACCOMPANIED BY LEO MALEY; AND DIRCK KEYSER, DIRECTOR OF THE TREASURY'S OFFICE OF STATISTICAL REPORTS

Mr. KARLIK. Thank you, Mr. Chairman. The gentleman on my left is Leo Maley, the manager of the survey, and the gentleman on my right is Dirck Keyser, the Director of the Treasury's Office of Statistical Reports. That Office gathers the data on short-term foreign investments in the United States and outflows of liquid capital from this country.

It is a pleasure for me to testify today regarding the prepared amendment of the International Investment Survey Act of 1976.

In order for the Department of the Treasury to carry out the provisions of the act mandating portfolio investment surveys, we agree that section 9 needs amending. We plan to hire approximately the same number of persons to carry out the forthcoming surveys as Treasury was authorized to employ in 1974.

Given a staff of this size, up to 35 persons, the authorization contained in the 1976 act is inadequate. More importantly, Treasury is requesting that beginning with fiscal year 1979, administrative expenses for the purpose of conducting international economic affairs that are presently being financed from the exchange stabilization fund be budgeted, just as other administrative expenses are, and that expenditures for these purposes be authorized and appropriated. My appearance before you today is of course, an essential initial step in that process.

I would like to briefly explain our survey plans. The coverage of the surveys is in part dependent upon the amount of funds authorized. The more elaborate the surveys, the higher the costs. We believe the act provides sufficient flexibility to select the survey coverage which is the most practical, efficient, and least burdensome on the public.

Basically, three approaches to coverage are implied by three variant definitions of "portfolio investment." These definitions are (1) the market definition, essentially stocks and bonds; (2) the balance-of-payments definition, which covers other long-term debt, in addition to stocks and bonds—essentially the coverage of the 1974 survey of foreign portfolio investment; and (3) the definition contained in the act, which added short-term items such as bank loans and deposits, short-term corporate claims and liabilities, and Treasury bills and certificates.

The monthly and quarterly data collected by the Treasury International Capital (TIC) surveys provide information on levels outstand-

ing for all financial instruments except stocks and bonds and certain obscure financial items.

The TIC reports give us relatively good figures on the levels of foreign portfolio investment, except for securities. In the case of securities, we have monthly reports on transaction flows, but not on levels of foreign investment.

We plan to collect in the benchmark survey only information on levels of foreigners securities market holdings—stocks and bonds—and to supplement these reports with data on ownership of other financial instruments collected in the existing monthly and quarterly TIC surveys.

We believe this approach meets the analytic requirements of most potential users of the data, and at the same time results in a minimum burden to the public and in significant cost savings.

We assume the same staff will be able to conduct simultaneously a survey of foreigners' portfolio investment in the United States as of December 31, 1978, and a feasibility study of U.S. residents' portfolio investment abroad. Since an outward survey would confront many unknowns, we plan to undertake a study in 1979 of the cost and feasibility of doing an outward survey. Once that study is complete, we can then present to you our conclusions and recommendations.

In the light of these survey plans, which have been discussed with the staffs of this committee and also of the House Committee on International Relations, and also considering the problem created by the prospective loss of authority to finance these surveys from the Exchange Stabilization Fund, when these international economic activities of the Treasury become subject to normal budgetary procedures, the funding authorized under the International Investment Survey Act of 1976 is inadequate.

We therefore request that to fulfill Treasury's responsibilities in conducting surveys of foreign portfolio investment, authorizations be granted in the amount of \$1.4 million for the fiscal year ending September 30, 1979, and for fiscal years 1980 and 1981 in the amount of such funds as may be necessary.

Senator INOUE. Did you say that you will need 35 positions under the authorization required by this act?

Mr. KARLIK. Yes; that was the number that was authorized for the 1974 survey. And that is the number that we are budgeting for.

Senator INOUE. And do you have any estimated costs in comparison to the 1974 survey?

Mr. KARLIK. The 1974 survey was funded out of the Exchange Stabilization Fund. That circumstance has made it difficult to break out the costs.

We estimate that on an annual basis, we spent \$700,000 in fiscal year 1976 to conduct the survey, and that the total cost of the 1974 survey was \$1.3 million.

Senator INOUE. This cost that you are suggesting would be \$1.3 million for 1 year.

Mr. KARLIK. That's right; fiscal year 1979.

Senator INOUE. Do you have any idea as to what the cost would be for 1980 and 1981?

Mr. KARLIK. That to some extent depends on the outcome of our feasibility study regarding outward portfolio investment. Therefore, we are not prepared at this time to offer an estimate of those costs. Particularly fiscal year 1981 would be affected by these considerations.

Senator INOUE. Do you have any estimate on the timing of your surveys?

Mr. KARLIK. Yes. As I indicated in my statement, we are planning to set December 31, 1978, as the reporting date for the inward survey. We plan to mail out the questionnaire in October of this year, and request responses by the end of March 1979.

On the basis of our previous experience, we expect it will take about a year, or until March 1980, to verify the data, to conduct the feasibility study of an outward survey, and to initiate our analysis of inward portfolio investment.

We expect to present a report to the Congress on foreign residents' portfolio investment in the United States as of the end of December 1980. If we were to conduct an outward survey we expect that the reporting date for that survey would be December 31, 1979.

Senator INOUE. Do you see a significant reduction in fiscal year 1981?

Mr. KARLIK. Yes, we would, I expect, be spending less in fiscal 1981 than 1980.

Senator INOUE. What is the reason for this?

Mr. KARLIK. Primarily the reason would be some cutback in staff.

Senator INOUE. You have indicated that the Exchange Stabilization Fund will no longer be available for these activities.

Mr. KARLIK. That's right. The Senate has already passed the legislation to make this change. This morning, Under Secretary Solomon is testifying before the Subcommittee on International Trade, Investment and Monetary Policy, the Gonzalez subcommittee of House Banking, on this matter also.

If the House completes action by September as well, then in fiscal year 1979, we will be going on budget.

Senator INOUE. Do your estimates provide for any special studies that might be undertaken pursuant to the 1976 Survey Act?

Mr. KARLIK. No, sir.

Senator INOUE. As you know, the 1976 act authorized the executive agencies to undertake special studies from time to time. Is the Treasury Department capable and willing, pursuant to its congressional mandate, to conduct such studies as may fall under your jurisdiction, such as tax or financial issues?

Mr. KARLIK. Yes; we certainly are capable and willing. Again, the question of financing, particularly in light of Exchange Stabilization Fund resources no longer being available, arises in this case. And should either your committee, other Members or committees in the Congress, or we on our own initiative decide it is desirable to undertake special studies, we would build in estimates for those costs into our fiscal 1980 and 1981 budgets.

Senator INOUE. I thank you very much, Mr. Karlik.

Mr. KARLIK. Thank you, Mr. Chairman.

Senator INOUE. You have been most helpful.

Our next witness is the Administrator of Economics, Statistics, and Cooperative Services, Department of Agriculture, Dr. Kenneth Farrell.

STATEMENT OF KENNETH R. FARRELL, ADMINISTRATOR, ECONOMICS, STATISTICS, AND COOPERATIVE SERVICES, DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY GENE WUNDERLICH; AND PETER DEBRAAL

Dr. FARRELL. I would like to introduce two of my colleagues.

On my left is Gene Wunderlich, and on my right is Peter Debraal, of the economics and statistics service. Both are engaged in work in the agency related to foreign investments and real estate.

I have a prepared statement. I apologize for not being able to get it to you in advance of this hearing. I would like to follow that rather closely, if I may.

Senator INOUE. Fine, sir.

Dr. FARRELL. Foreign ownership of U.S. real estate has recently received a great deal of public attention. Concern has been particularly evident with respect to farmland.

Newspapers and magazines have focused on individual transactions—2,000-plus acres in Iowa, 15,000 acres of farmland in Missouri, a 315-acre citrus grove in Florida, a \$3 million shopping center in Louisiana, historic estates in Virginia. However, the drama of such separate transactions is unsupported by reliable national estimates either of transactions or ownership status.

The only national estimate of foreign investment in real estate available in a public document is the 4.9 million acres reported from the U.S. Department of Commerce Benchmark Survey of 1975. That estimate, however, is subject to a number of qualifications.

The difficulty of obtaining reliable information on land ownership has been recognized for some time—and the difficulty is not limited to foreign ownership but to domestic ownership as well. These difficulties do not arise simply because owners wish to keep their land holdings a secret, although there is some of that. The principal reason for the difficulty is the system by which land records were developed and are maintained.

Current knowledge is insufficient to assess the implications of, or to develop appropriate public policies and programs related to, the amount or form of ownership by any group or classes of owners. However, studies are underway nationally to increase the quantity, and improve the quality, of land data. The USDA in cooperation with several other Federal agencies has taken steps to fill some of the information and knowledge voids so that useful actions can be undertaken by public and private decisionmakers.

We have reviewed the draft amendment to the International Investment Survey Act of 1976. We are generally sympathetic with the intent of the bill, but we have reservations about some of the language.

Section 4(e): This section provides authority to assist State agencies in establishing or improving land data systems. Authority under this section seems to anticipate possible recommendations from the authorized but as yet not completed 4(d) study. It seems premature to assume

that State agencies are necessarily the preferred conduit of information on foreign ownership of real estate. Under the current plan of research under section 4(d), a system of local public records on land, integrated through the States, is being evaluated as one of the four or five record improvement schemes.

We recommend that implementation of a program of monitoring be postponed until the 4(d) study has been completed. If legislation implementing such a program cannot be postponed, then we recommend that at least it be neutral as to method.

Senator INOUE. I would like to ask a question at this point.

How much longer will you take to complete the 4(d) study?

Dr. FARRELL. We have received no appropriation for implementation of section 4(d). We have initiated without appropriations very preliminary work. We are prepared, immediately upon receiving the appropriations which we have asked for in the form of a supplement for fiscal year 1978, to proceed with the study and we would ideally like to have about 2 years from the time of initiation.

However, within the confines of the time limits prescribed by the Act of 1976 and these amendments, we believe that we could provide an interim report as called for and a final report in 1979, although ideally we would like to have more time.

Mr. Chairman, it hinges primarily on when and how soon we can receive appropriations for implementation of the study.

Senator INOUE. If you do get your supplemental request granted, would a 1-year extension of this act be sufficient?

Dr. FARRELL. We could manage with that.

Senator INOUE. Would you prefer 2?

Dr. FARRELL. Yes, sir. We would be able to provide a more rigorous analysis, set of feasibility studies.

Senator INOUE. Would your feasibility study be conducted in-house or would you contract out?

Dr. FARRELL. We will use a combination. We are prepared to assign four of our own service staff persons to this effort. However, we feel that of the total request of \$450,000, that about three-fourths of it would need to be utilized in the form of contracts and agreements with outside experts, consultants, universities, to carry out the intent of the bill within that time frame.

Senator INOUE. Please proceed, sir.

Dr. FARRELL. State laws regulating foreign acquisitions of real estate presume an understanding of the effect of foreign acquisitions regarded by the International Investment Survey Act of 1976 as the object of analysis. It would seem to be premature for the Federal Government to uniformly support, on the basis of available information, the wide variety of regulations currently in effect in the several States. We recommend that, rather than improving the enforcement of existing laws, the 4(d) study be charged with suggesting State laws and provisions that encourage interstate unity and cooperation supporting national objectives.

We recommend further that procedures for coordinating treaty provisions with State law be suggested by the 4(d) study. We have noted, for example, that some provisions of the tax treaty with United Kingdom currently being considered might cause great difficulty in the administration of tax laws in the States.

There is a need for developing national data on foreign real estate ownership. We assume that need extends to ownership status as well as transactions. It is not enough to know the acquisitions of U.S. real estate by foreigners; we should have an accurate picture of the total stock of real estate in the hands of foreigners at any particular time.

We feel, however, that establishing a Federal clearinghouse is only one possible means to acquire and distribute information of foreign ownership of U.S. real estate. Existing agencies with improved techniques or additional authority and resources, for example, may fulfill the intent of the bill.

Section 4(d) is amended to extend the performance by 1 year from the date of original signing of the act.

As we all know, no special funds were appropriated for this provision so work has awaited funding. Unfortunately, the reporting date is fixed while the initiating date depends upon approval of needed funding. Despite the explanation of responsible researchers that they need 2 years to complete the study, the time remaining today is only 17 months and declining. Every effort to initiate preliminary work is now being undertaken in anticipation of funding.

Section 9 increases the authorization for appropriation for fiscal years 1979, 1980, and 1981. Inasmuch as the Department of Agriculture supplemental for 1978 was intended to cover work under 4(d), no request was made for additional funding. If the scope of the 4(d) is enlarged or extended, however, then appropriate adjustment in the authorization may be needed.

If our recommendations above concerning 4(e) are accepted, then the 4(e) appropriations may be reduced for fiscal year 1979 and a portion of the funds may be assigned to 4(d) project for the express purpose of recommending from current experience at the Federal, State, and local level new model procedures "to establish or improve data collection or monitoring systems."

We will summarize briefly the status of the project 4(d).

During the past year while solutions to the funding problem were being sought, a work plan was drafted, reviewed by an interagency group, and approved by the interagency group.

The feasibility study, as called for by 4(d), suggests two distinct but related types of systems—(1) systems designed exclusively for monitoring foreign ownership of real estate, (2) systems in which information on foreign ownership is but a part of the data generated from a multipurpose scheme. The feasibility study will make comparisons among systems of both types.

Feasibility will be judged in terms not only of technical/economic criteria, but of legal and administrative standards. Four or five sharply defined models will represent locations on a spectrum of systems ranging from a Federal registration of foreign landowners to collection of data in one of the regular censuses.

In addition to the two principal parts of the study comparing data systems as such, there will be a third part consisting of analyses of important issues. This third part includes studies of (1) secrecy and disclosure of wealth in land; (2) economic impacts of foreign investment in real estate; and (3) information management in the centralized versus polycentric organization.

We should add that a fortunate confluence of activities relating to land data will add substantially to the value of the 4(d) research; (1) GAO was called upon late in January to supply information on the purchase of farmland by foreigners and is to report in May of 1978; (2) HUD has under contract a study of public land records pertaining to title records; (3) ESCS of USDA has undertaken a sample survey of landownership suitable for State estimates of the essential characteristics of landowners, including residence and citizenship.

USDA is linked with all Federal agencies, national organizations, and professional societies concerned with the improvement of land data systems through the North American Institute for the Modernization of Land Data Systems (MOLDS). Although itself not involved in the research under 4(d), MOLDS represents a useful form for the exchange of information on technical and institutional issues about land records.

The foreign ownership of U.S. real estate is but one aspect of the general issue "Who owns America's land?" Little is known, too, about the domestic owners of America's land and steps are being taken to improve our information. For the first time since 1945, a national survey of non-Federal land being conducted by the USDA will provide State-level estimates of the general features of landownership.

Landownership is complex. The identification of the nominal owner of surface rights goes only part way in describing beneficial and conditional interests, sub and supra surface rights, the multiplicity of lesser interests, and reservations, and the rights of government to tax, regulate, and condemn. Initially we are concerned with better information on the nominal ownership. In the long run, meaningful data must include substantial refinements in the whole array of concepts of ownership and control of land.

Mr. Chairman, if you would so desire, I would be pleased to introduce into the record a recent paper authored by Gene Wunderlich, my colleague on my left, which treats landownership in some useful perspective and provides essential facts to draw these issues into perspective.

Senator INOUE. That would be most helpful. Without objection, that will be made part of the record.¹

Do you have thoughts to share with us as to the reliability of the so-called Iowa reporting system?

Dr. FARRELL. We have underway a study at the University of Iowa which is intended to examine some of the experiences under the Iowa laws. At this stage, Mr. Chairman, I think that we would have no conclusions with respect to the reliability of the data. We do know that it's perhaps the most comprehensive system now in place in one of the States.

But we do need to have evaluation of the experience before we can draw any conclusions.

Senator INOUE. Do you think that the drastic increase in the price of land can be limited by controlling foreign investment?

Dr. FARRELL. No, sir, not in and of itself. The causes for the increase in the price of land are numerous.

¹ See p. 89.

The foreign investment may be one contributor but there are many others. And controlled foreign investment by itself would not limit or preclude further increases in the price of land.

Senator INOUE. You have indicated that reliable information on ownership and sales would have an economic value apart from purely academic interests. That is your position, isn't it?

Dr. FARRELL. Yes, sir, very definitely.

We feel that the question of foreign investment is a major public policy issue, that the public and public bodies require information as a basis for making informed decisions, preparing realistic, effective policies.

So it would have a real economic value.

Senator INOUE. Other than the potential increase in prices, what are the potential disadvantages of foreign investment in real estate?

Dr. FARRELL. That's in and of itself an area which needs further study. Of course, there could be several implications of this which we really need to research further. I suppose, Mr. Chairman, the question of control of a limited scarce resource such as land is fundamental to these kinds of questions.

We think there may also be some provisions in our tax laws which may provide the relative advantages to the foreign investments as opposed to the American investment. Generally, sir, I think the question boils down to what sort of public policies we want to regulate the ownership, control, and management of a limited natural resource in our national interest.

Senator INOUE. Following press accounts, one would get the impression there is far greater concern about foreign investment in farmland than in urban real estate. Is there any reason for this?

Dr. FARRELL. I think that's the general impression that I would gain also from following press accounts and media coverage.

I believe that the greater concern on farmland probably turns on the fact that again we are dealing or talking about a limited, relatively scarce resource.

Houses can be reproduced. Land is limited in supply and therefore there is more public concern about control of this limited scarce resource than, say, for housing that is reproducible.

Senator INOUE. Recent press stories have suggested that foreign investors may have a tax advantage which would enable them to outbid prospective American purchasers. Is there any basis to sustain this suggestion?

Dr. FARRELL. One of my colleagues in my agency has just recently prepared a paper which I find to be an interesting one examining just this thesis or hypothesis. I think on the basis of that report there is some evidence for concern. We feel this is an area which requires further study and further examination. The research which is available is not very definitive at this time.

Senator INOUE. Thank you very much. You have been extremely helpful.

Our next witness is the senior vice president of the Oppenheimer Industries, Brig. Gen. William Stiles.

Welcome, sir.

STATEMENT OF WILLIAM A. STILES, DIRECTOR AND SENIOR VICE
PRESIDENT, OPPENHEIMER INDUSTRIES

General STILES. I am William A. Stiles, and I am director and senior vice president of Oppenheimer Industries which is a Missouri-based agricultural management company.

During the last few years we have been engaged in the brokerage of farm real estate to foreign buyers. We have been invited to give testimony today on the subject of foreign land acquisition.

I have submitted a written statement containing points which we feel are pertinent to the hearing. I will not read through it, but will recap points which are significant to the discussion.

Senator INOUE. Without objection, your full statement will be made part of the record.

General STILES. Foreign investment in U.S. agriculture has been rising. Foreign buyers come for different reasons, but their rationale is much the same—U.S. food production obviously is a sound factor to world economics, and they like the long-time security of agricultural investments.

Foreign buyers are looking for security of their investment—and there are not many countries in the world other than the United States and Canada where the long-term risks are acceptable.

These buyers generally put down a large percentage of cash in an agricultural real estate purchase—from 25 percent to 100 percent. They are not looking for leverage or even tax shelter; they are seeking solid economic returns on their investments.

Foreign buyers almost always—at least initially—will rely on local management or at least U.S. management to keep the newly bought farm or ranch going. They rarely walk in with built-in foreign talent ready to take over operations.

Prior to the sale of an agricultural parcel to a foreign buyer, Oppenheimer almost invariably is required to do an economic analysis of past operating performance on the farm or ranch, and then make a commitment in writing to that purchaser that such levels of productivity will continue on a year-to-year basis. Our company does, then, get involved in continued management supervision of that farm operation, directly or indirectly.

Much less than 5 percent of all U.S. farmland changes hands each year, with the large majority of transactions involving U.S. farmers only. However, no reliable statistics exist on the extent of this foreign investment.

Various State laws now in existence restrict somewhat the foreign acquisition of land—and these laws vary from State to State. In many cases, restrictions can be circumvented by purchase of the lands in the name of a corporation or partnership, which may be allowed by that same State.

State laws which restrict foreign buying of real estate may well be in conflict with provisions of the U.S. Constitution and of various U.S. treaties—in which cases those Federal provisions should govern.

It is our opinion that some effort is going to have to be spent at the Federal level in order to accommodate this discrepancy in laws and statutes.

I am prepared to answer any questions which you have.

Senator INOUE. Thank you, sir.

Do you have any information which would indicate whether foreign investment in American farmland has increased?

General STILES. It has increased on the whole. It is our view it definitely has. Our business has picked up appreciably in the foreign versus U.S. national purchase of ranches and farms.

Historically, we have been in the cattle management business for 25 years. We got into the brokerage of large ranch acreages 20 years ago and have more recently become involved in farms, row crops, which our foreign buyers have increased the demand for.

We saw the upsurge in foreign buying 4 or 5 years ago. People started coming to us since we were at that time one of the largest brokerages of large agricultural real estate parcels in the country.

As I mentioned here, the foreign buyer is a very astute and demanding individual. He is sharp and he wants economic returns. He is not just after the tax advantage that the local wealthy individual might be.

We, as I mentioned, are required to give him a study, an analysis of how this ranch or farm has been doing in the past before he will even put his money down. Then, after he has bought it, we are held accountable to those statistics we have drawn up for him.

But it has been on the rise. There is no question about that.

Senator INOUE. Do you have any figures?

General STILES. I have a recap of our company's business over the last 2 or 3 years. Each year we do several million dollars worth of gross land value business in real estate. In the last 3 years we would be close to \$60 million in aggregate land value transactions to foreigners.

I have here—which I will be glad to furnish your staff—a transaction-by-transaction recap over the last 18 months showing the number of acres, location, and the price.

Senator INOUE. That would be most helpful, sir.

General STILES. I would be willing to leave with you a shopping list that we currently have from foreign buyers; some 50 individuals, corporations, or entities have orders for over \$100 million worth of property. Those range from row crop farms to cattle ranches, to wineries, to estates within 2 hours of Washington, a whole variety of things.

Senator INOUE. Without objection, those documents will be made part of the record.²

Senator INOUE. In a recent article in *Business Week*, a representative of the European Investment Research Center estimated that foreign investment in U.S. real estate was about \$800 million 1977. Do you think this is a reliable figure?

General STILES. I have no reason to dispute it, but it sounds very high to me.

Senator INOUE. It has been alleged that the extent of foreign real estate investment in the United States has been exaggerated. However, the Departments of Commerce and Agriculture have noted that this data is fragmentary and unreliable.

In view of these inadequacies, can you suggest as to how we can determine with any precision the extent of this foreign investment in real estate?

² See p. 49.

General STILES. I feel that may be slightly outside my capabilities to answer that. But in some cases your corporate ownership of land has to be recorded somewhere. A possibly more tightly controlled monitoring system, including a Federal-level adjunct, could serve that end.

But, other than that, sir, I don't think I can offer too much in that technical field.

Senator INOUE. I think it might be well to point out at this juncture the intention of the committee. When the first study was proposed, it was in response to several measures that were then being introduced and considered in the House and the Senate which were designed to control foreign investments.

As you recall, a few years ago, there were many stories about foreigners, especially Arabs and the Japanese, coming in and buying up vast amounts of lands and businesses.

To raise this debate to a more rational level, we decided a reliable study had to be made. If policy were to be developed, it has to be based on facts.

Now, we have this rash of stories about agricultural land being purchased by foreigners. This is the reason for our concern here. It is not necessarily to stop or to impede foreign investment, but to find out what the actual situation is.

General STILES. I would like to insert here, Mr. Chairman—we don't seek foreign buyers at all. We will sell to anybody that cares to buy. But we have found that proportionately the sales to foreign buyers have increased and, accordingly, the total volume of our business in that respect also has increased.

Senator INOUE. I realize there are many reasons for foreign investment. However, as you indicated, most of the buyers are astute, and they want a return on their investment. Do you think that some are investing here because of political instability abroad?

General STILES. I think one of the main factors of the influx of foreign capital is—I think I alluded to it in my opening remarks—is the security of their holdings.

The rising threat of communism and kidnaping and all of the other attendant goings-on in Western Europe, like Mr. Moro, is bringing a lot of the wealthy foreigners' capital into this country. They can look at farmland which is to them cheap because the dollar has gone down a little bit, because of the energy problems and otherwise. They know this is as secure a country as they will ever have. They can take their family holdings and put a good portion of it in farmland and be secure.

If that is political, then, yes, that is a factor.

Senator INOUE. Do you have any objection to the Iowa system of recording?

General STILES. I must confess I am not aware of the details of that. I talked to Dr. Harl a few minutes ago, but I am not aware of that system.

Senator INOUE. As I indicated in my opening remarks, land and property law traditionally have been State law. Do you have any thoughts on section 1 of this measure, which leaves the initiative for the collection of information and enforcement in the hands of the States?

General STILES. I think I would be of the opinion that the Federal Government should have some part to play in this because of the overlap in the provisions of the laws, State versus Federal.

Again—and I think the USDA will agree on this—the provisions of the Constitution of the U.S. impact 180 degrees with the State laws. If for no other reason than that, the Federal Government should have an interest in whatever the States are doing in monitoring this business of foreign purchase of farmland.

Senator INOUE. One of the most serious objections to foreign investment in farmland has been the increase in the price of land. Would you attribute the increase in the price of land to foreign investment?

General STILES. I think I would concur with the previous witness who said there are a lot of human factors involved here besides that.

It is a factor, no question about it. But I think that other economic factors have entered the picture to drive it up. There is no more of it. It is a limited commodity. As more people and more people want it, the price naturally goes up. It is a matter of just what you have to pay to get what you want.

Senator INOUE. Do some of the foreign buyers invest in U.S. farmland or ranchland because of tax advantages?

General STILES. The only instance that I can recall of a foreign buyer in the many purchases we have been involved in was an entity that was going to syndicate the purchase after it had been made. This, of course, would have provided a tax relief, tax benefit to the foreign participants back in the foreign country. That is the only instance that I can recall where a tax benefit would accrue to a purchaser.

Senator INOUE. Do you have any reason to believe that some of the American brokers operating abroad are not completely honest in describing true investment returns on land investment here?

General STILES. I think you are going to find those people anywhere. As I say, we have to prove it in writing and then be committed in writing to its continuance.

As far as the brokers abroad, I can't speak too much for them because we work largely on a cobroker basis for the majority of our foreign purchasers.

A broker from West Germany, France, other places, will contact us with a potential buyer, see what we have available for him, fit his needs, and we will take it from there. He will be telling his potential purchaser only what we tell him about that piece of property. If he gilds the lily to entice the foreign buyer to purchase, that is not our doing.

Generally they don't do it more than once.

Again, those buyers are sharp people. It is a closed circuit over there. If they get a seamy deal, they don't go back to that same broker.

Senator INOUE. Do you think that foreign investments in agricultural lands will be permanent, transitory or cyclical?

General STILES. I think personally it will flatten out a bit because of land matter of the State laws. There is at present very little case law on the conflict of State and Federal statutes on the ownership; no foreign buyer is going to want to be mixed up in a legal case or litigation on a clouded title of some sort. He just won't touch it.

And there is the question of this increased State restriction on purchases facing us which, in my opinion, will flatten out this recent upsurge in purchase.

I might be wrong. But I know that there is distinct apprehension on the part of many foreign buyers to get into any situation where their identity may have to be reviewed or their purposes or any other thing pertinent to themselves.

Senator INOUE. From your experience and your background, do you believe that foreign investment in agricultural or ranch land should be a matter of concern to us?

General STILES. Not really. I think percentagewise it is very, very modest. I think Dr. Harl will bear me out on this.

Again, a very small amount of farmland changes hands each year. Generally it is bought up by the farmer or rancher next door. If you had a ranch and I was going out of business, I would rather sell it to you than put it on the market and pay somebody a commission to sell it. I could deal with you on a direct basis. Well over 90 percent of all of the transactions are—I won't say 90 percent. Well over half of them are done on a local basis.

Senator INOUE. I see. You have been most helpful, General, and I appreciate your assistance this morning.

Thank you very much.

[The statement follows:]

STATEMENT OF BRIG. GEN. WILLIAM A. STILES, USMC (RET.), REPRESENTING
OPPENHEIMER INDUSTRIES, INC.

Our Company has been requested to testify before the Senate Commerce Committee on the general subject of the Acquisition of U.S. Farmlands by Foreign Investors. The testimony herein presented is designed to provide background information for the benefit of the Committee in its deliberation on the current Senate Bill providing for Amendment of the International Investment Survey Act of 1976. This statement reflects our Company's experiences during recent years in arranging for the sale of United States farm and ranch acreages to foreign personnel or interests.

By way of identity, I am Senior Vice President and a Director of Oppenheimer Industries, Inc., as well as Regional Office Manager here in the metropolitan D.C. area. I have served with the Company for 10 years.

Oppenheimer Industries, Inc., is a Delaware corporation located in Kansas City, Missouri, and has been engaged in Agricultural Management and the brokerage of Agricultural Real Estate over a good portion of the 50-odd years that we have been in business. In addition to managing large cattle breeding herds for our clients throughout the country, we have acted in a brokerage capacity for the sales of as large a volume of farm and ranch lands as almost any other company in the country.

About four or five years ago our Company recognized the rather sudden increase in interest of foreign buyers toward the purchase of rural U.S. lands. Initially, this interest was displayed primarily on the part of Western European parties, but since then it has spread to buyers from essentially all countries. The scope of these sales by our Company has become quite sizeable, amounting to many millions of dollars of gross land value per year. By the end of calendar 1977, Oppenheimer Industries, Inc., had been involved in the sale of some \$60 million of agricultural lands to foreign buyers during the 3 years prior to that date.

In the course of our business of rural land brokerage and agricultural management, our Company does *not* emphasize land sales to foreigners at the expense of U.S. citizen purchasers. It simply has happened that greater numbers of foreign buyers have come to us for our services. At the present time we have a list of various properties being sought by foreign interests—a "shopping list"

of sorts—which totals over 50 separate real estate assemblages or items, with a money value of some \$100 million. These properties range from irrigated land to ranches to farms to even vineyards with wineries.

We have found that foreign buyers are at least as astute and demanding as U.S. nationals in their acquisition of agricultural lands. Our Company has been required, almost as a matter of course, to not only develop economic performance figures for a given farm or ranch prior to its purchase (pre-qualification) but we are held accountable for the reasonable accuracy of those figures in future years subsequent to the purchase. These foreign purchasers are not merely looking for tax shelters, such as might well be the case with a wealthy U.S. investor; they are looking for a sound piece of agricultural land which economically will carry itself after the purchase, such purchase generally involving a large down payment.

With respect to the subject at hand, our Company has noted several aspects of the procedure of sales to foreign buyers which have either become poorly understood by the average individual or which really deserve open clarification . . . these are discussed in some detail in this statement.

It is our Company's opinion that :

A. The alleged magnitude of foreign investment in agricultural lands here in the United States is based more on rumor than on fact.

B. Because of the lessened value of the dollar—due to recent drifts and trends in the field of energy, and others—U.S. farmland becomes a very attractive purchase item for foreigners having money which they desire to place in a secure, long-term position.

C. The net result of foreign purchases of U.S. agricultural land is that they are bringing capital into this country rather than taking it out.

D. Most of the state laws pertaining to restrictions on foreign ownership of real property may well be in violation of the U.S. Constitution and possibly of various U.S. international treaties.

In the following paragraphs will be found detailed elaboration on these four principal points of contention or misunderstanding . . .

A. *Magnitude of foreign investment.*—Foreign acquisition of land or, for that matter, other investments in the United States, receive far greater publicity than would those same purchases if made by our own citizens. Accordingly, it probably is the case that most U.S. citizens believe that foreigners are buying up farms and ranches in much greater volume than actually is the case. Because the laws of the various states do not require disclosure of the nationality of the purchasers of land, nobody knows for certain the amount of farmland actually being purchased by foreigners. Our guess is that it is substantially less than one percent.

During the past several months, the issue of ownership of farmland by non-resident aliens has attracted considerable attention, both by the media as well as the legislative bodies of several states. Reports of actual transactions in which foreigners have bought agricultural land rarely hit the newspapers, because such sales generally are handled discretely and with a minimum of publicity. (When they do hit the papers, though, they generally are given full coverage.) Accordingly, the so-called magnitude of foreign investment in the United States obviously has to be based more on rumor than on fact. For example, in the state where our Company is headquartered, the newspapers continually use the figure of 800,000 acres of Missouri farmland as that which is owned by non-resident aliens. In actuality, experts in the field liberally estimate Missouri land held by foreigners at 50,000 to 60,000 acres.

The substance of foreign ownership of land carries less impact than the rumor or talk of such acquisitions. Several years ago we heard of the great incursion of Japanese into U.S. agriculture. Every time that Japanese businessmen came to a small town in central Kansas, rumors would spread that they were buying up half of the farmlands available—and even some of that which was not available. Again, thinking back to the period right after the first energy crunch several years ago, talk spread that the Arabs were in the process of buying up half of the U.S. real estate. Fears were raised of driving out West and seeing herds of camels coming up over the rise where cattle once grazed. Japanese have invested in U.S. agriculture, and so have Arabs, but these purchases are very limited and have had little actual effect on the market. Nationalities which in the past few years have been predominant in the purchases of U.S. farms and ranches are: French, German, Argentine, and Italian. To a lesser degree, Belgian, Dutch, Swiss, Hong

Kong Chinese, Iranian, South African and Rhodesian buyers also have come into the market. By the end of calendar year 1977, our Company had been involved in transactions with foreigners totalling some \$60 million in gross land prices over the preceding 3 years. These transactions have been spread throughout several states.

Although millions of dollars are flowing into the United States from abroad in various forms of investment, the impact of this investment probably is not as large as we would be led to believe, based on the volume of discussion and publicity given this phenomenon.

B. Appeal of U.S. farmland to foreign investors.—The foreigner who invests in U.S. agricultural properties is looking for one basic thing: preservation of his capital. As is true with most foreign investors, Western Europeans, which as a class make up the largest investment group, are interested in farmland capable of producing small grain crops. They have not been as interested in cattle operations, although some now are looking in that direction. They most definitely are not interested in intensive agriculture, such as dairies, orchards, groves, or laying hen operations. They generally are not interested in putting themselves into a highly leveraged position on the purchase of such lands. Many wish to put a high down payment on the property, such that the income from the crops would, over the term of the mortgage, in most years handle debt service, taxes, and expenses. They are generally not looking for the so-called "good deal," but instead will pay premium dollar for premium land. They like the Corn Belt and the southern Midwest, and often shy away from Western irrigated properties—although this latter is not true in all cases. Five years ago, Europeans, particularly Western Europeans, could feel relatively secure. Now they are concerned about that security and are worried about increasing socialism, kidnappers, communists and terrorists. There is a lot of old wealth in Europe and those people know from experience that after wars and conflicts have ended, it is retention of farmland that has enable their families to retain a net worth and get back on their feet. They are looking now to U.S. farm properties because they feel that this is the last place in the world where land could be confiscated.

C. Influx of capital rather than outflow.—The acquisition of U.S. farmland by foreigners may sound somewhat onerous on its face, but the situation must be closely scrutinized. Unlike when the Shah of Iran buys TWA jet aircraft and hauls them back home with him, the foreign investor is removing nothing from our country. His land stays here. Either through a manager or sharecropper, he uses U.S. services almost exclusively. He buys or pays for his share of U.S. seed, fertilizer, fuel, pesticides, herbicides and other supplies. He gets production loans from U.S. banks, long term financing from U.S. insurance companies, liability insurance from U.S. agents and pays U.S. property taxes. If he makes a whopping profit from farm operations, in most years, he will put the money back into property improvements to minimize his U.S. income taxes. Whatever profit is left is taxable by the U.S.

Because today's capital requirements for getting started in agriculture are out of the reach of most individuals, it is impossible for many young men and women to do it. Foreign buyers, though, can supply the capital necessary to purchase land, buy equipment, and finance production costs. Thus, they can give local farmers an opportunity to participate with them by sharecropping or cash leasing of the land. In some instances they actually have provided equipment and the guarantees necessary for a young and undercapitalized farmer to obtain production financing.

D. Impact of restrictive state laws on alien ownership.—The authority for control of land ownership by and large is vested in the several states. But still there are positive limitations on state regulations of alien ownership which are prone to be overlooked:

The laws of the states may violate the U.S. Constitution . . . this would serve to void the state statute.

The laws of the states may conflict with a Treaty between the U.S. and a foreign nation . . . and this also would void the state law.

The question of constitutionality or legality of state laws, as the result of the two possible conflicts just mentioned, possibly could take years to decide in the federal courts. Little arguments can be made against the position that both the U.S. Constitution and U.S. Treaties supersede all state laws. However, outside investors in farms and ranches—particularly foreign investors—do not want to take part in legal battles, nor do they want to acquire a property in a state where the status of their holding is dubious. Very little case law exists on this

state/federal conflict because very few suits have been filed in this area, and it is more or less generally accepted that the federal government will take a back seat to the states unless actions of the states involve gross inequities. If foreign investment in the United States continues to grow, however, it would seem that federal lawmakers and statutes will have to be brought into the picture.

Senator INOUE. Our next witness is from the Iowa State University. Dr. Neil Harl.

Welcome, sir.

**STATEMENT OF NEIL E. HARL, PROFESSOR OF ECONOMICS,
IOWA STATE UNIVERSITY**

Dr. HARL. Thank you, sir.

Mr. Chairman, my name is Neil Harl. I am a professor of economics at Iowa State University. I have a paper of which you have copies.

Senator INOUE. Without objection, this statement will be made part of the record.

Dr. HARL. As indicated in the prepared statement, this presentation is a summary of the major considerations that we think would be involved in maintaining a working knowledge of the level of investment with particular emphasis on farmland.

We know there are concerns from State legislatures, Congress, farm organizations, and citizens generally about the level of investment. These come with some periodicity. And those of us who try to respond are interested in knowing what kind of data we have, so we can deal most accurately and completely with those questions.

Some States have acted in recent years; a number of States have enacted limitations. And some States are considering more restrictive limitations this year. In my own State of Iowa, there is a proposal to limit nonresident alien investment to one-tenth of 1 percent of the total agricultural land in the State. Other States are also considering or have enacted restrictive limitations this year.

The Congress, as has been noted, enacted legislation in 1974 and again in 1976 to advance the level of understanding in this area. In this presentation, I propose we consider carefully adopting a joint Federal-State effort to create an improved data base to assist policy-makers in reviewing the adequacy of our present legislation and in considering new proposals relative to land acquisition.

The first major part of the paper deals with land and its uniqueness as a resource. Land is unique. It is the essence of nationhood itself. It is the territoriality dimension. It is immobile. It is reasonable that we become sensitive about the ownership of land. We have a high degree of interest in land as a resource. Congress and the State legislatures have focused on soil conservation, pollution control and land use. We have ongoing work at the Federal and State levels on land tenure, land ownership and structure of land ownership. Traditionally, land has been a private matter, left to local law, left to the States. Our land title system is a nonmandatory system. It is a system that exists largely for the protection of the buyer and the seller, and their creditors, and does not produce a set of data we could rely upon nationally or within the State.

There has been no systematic monitoring of land ownership or land transfer. We know relatively little, therefore, about the phenomenon of land ownership. We might raise the question: How much do we know at the present time? The census of agriculture gives us one view of this. It is a view through the aperture of the operator of a farm. The questions are raised in that context.

We cannot, in essence, construct the profile of an investor in land through census information.

There have been State studies of land ownership. In Iowa, there have been studies every 10 or 15 years providing benchmark surveys of land ownership generally as to the breakdown of types of owners, concentration, distribution, and so on. There have been a few regional studies as cited in the paper. So far, no national data base has emerged.

The third part of the paper deals with efforts to ascertain activities by nonresident aliens. We mention the 1975 study in Iowa. Questionnaires were sent to 700-plus realtors, the ones who provide us with information on land values annually, and we asked them a series of questions.

We followed up those questions to ascertain, over an 18-month period, how much nonresident alien investments had been carried on. We have summarized some of the findings of that study in the paper, indicating that the amount of land relative to total farmland that was sold during that period to nonresident aliens was relatively small.

We found the investment had not altered the land use pattern. We found the motivation of investors was generally to secure personal wealth, with the largest single population of investors from West Germany. They were looking for a dependable store of value and were finding it in the United States. We found local reaction to alien investment activity, in general, unfavorable, particularly where local residents feared an increase in land prices as a result or some change in local control. I am not making a judgment as to whether adverse local reaction had occurred, only that it was a reported phenomenon. We found that the number of inquiries exceeded the number of transactions. Those data appear in the paper.

The second part of the effort to ascertain nonresident alien investment activity regards the Iowa reporting law. In 1975, the Iowa legislature enacted a reporting requirement that is broader than the requirement for nonresident alien investment in land. The general context of the Iowa law was that reporting would be required of corporations and limited partnerships, as well as nonresident aliens regardless of how they were organized. There was also a moratorium on acquiring additional land imposed on corporations other than "family farm" corporations and "authorized" farm corporations. There was a prohibition on vertical integration dealing with owning, controlling, or operating feedlots by processors of beef or pork with wholesale sales of \$10 million or more.

The annual report requires of nonresident aliens certain items of information. It requires the alien's name, address, and citizenship. It requires a declaration of the type of agricultural activity, the acreage, and location of land, it requires the approximate number and kind of livestock that are involved, and also requires the number of acres owned and operated, the number of acres leased to others, and acreage

leased by the nonresident aliens from others. It requires a showing of the crop and livestock share under any lease, for example, if it is a crop share lease or livestock share lease, and whether the alien is represented by an agent or other representative. It requires certain reports of fiduciaries—trustees, for example—and also requires reports of beneficiaries of trusts. Before the enactment of the 1975 legislation, there had been no listing or counting at the State level of nonresident alien investment activity.

It was believed that the most dependable way to implement such a reporting system was to ask county assessors (who were believed to be the most knowledgeable individuals in each county about the status of land ownership) to report annually to the Secretary of State those tracts which were believed to be held by nonresident aliens or for nonresident aliens.

County assessors have been reporting and the secretary of state sends out a questionnaire and that questionnaire is returned. We are showing in the prepared paper a summary of data for the reporting as of the end of 1975, reported in 1976, and at the end of 1976 with the report in 1977. There's a breakdown there for individuals, and then a showing of corporations where nonresident aliens own 5 percent or more of the stock.

There is a category for limited partnerships that include a nonresident alien as a partner. There is nothing reported there. Neither of the reports to date has in fact identified any limited partnerships of that type.

The Iowa data probably involved some underreporting. The question, of course, is how much. We think there are problems with the Iowa approach. One is there could be errors in terms of the nonresident alien ownership not being a matter of record, for example it might be a beneficial interest to the point that the county assessor may not be aware of it. There could be a problem with respect to perception of the county assessors in not picking up all of the information.

We see problems with the Iowa approach, being rather close to it since its enactment. It is a way to get an indication with a relatively short lag time of what is happening.

We receive the report information summaries in November for the prior December 31 as the reporting date. We might review, as we do in the prepared report in part 4, what we consider to be features to be improved. If the Iowa act leaves something to be desired, what would be the features of an improved data base?

It should function with a minimum of lag time. We must deal, we think, with questions raised about level of ownership with reasonable alacrity.

Second, it should have a high degree of accuracy and reliability in identifying tracts of land. It should insure comparable reporting among the States, although we recognize that the States have different reporting schemes. It should operate at reasonable costs in terms of budgetary outlays. If it includes sensitive data, we think it should have safeguards to assure compliance with the Privacy Act. We think the requirements that would have to be met by the monitoring system would include mandatory recordation of all documents of title, deeds, contracts, and other instruments. It would have to involve disclosure of

beneficial interests as well as the legal interests in land. It should reveal ownership of partnerships—general or limited—trusts and corporations, at least to the level of “control persons.”

We think there should be routine reporting of the land transfer information to a depository, and, finally, there should be implementation of a system of this nature at a level high enough to insure there would not be avoidance.

The requirements for recordation of instruments of conveyance should extend on a mandatory basis to all transfers of interests in land. This would include leases, testate and intestate death and dissolution of entities, for example.

A transfer can occur in numerous ways. If there is economic benefit from acquiring land, then the imaginative mind can dream up some way in which that can be accomplished. We think there is a reason to consider including debt investments as well as equity, particularly where there is the right to convert debt capital to equity. That could be covered in reports to the State agency as it is done now with the annual corporation reports.

We believe, as we indicated, that the beneficial interest question is an important one. For example, to indicate what could be done, two nonresident aliens might be limited partners in a Florida limited partnership which organizes as a corporation in Iowa and acquires farmland in Iowa.

If it is economically feasible to do so and yet there are restrictions, we would expect more of that type of linkage to appear in the future.

In terms of the control person question, our tentative thought is we might think in terms of requiring disclosure of, say, a 5 percent or greater level by nonresident aliens in an entity in which others are involved. However, to get around the obvious sidestepping of that requirement, by having 21 nonresident aliens each owning slightly less than 5 percent, if an entity had more than 25 percent of ownership interest it would require disclosure.

The reason for the control person question is we think the burden would be substantial for publicly held corporations to disclose the complete shareholder list. In order for it not to be necessary to provide a complete shareholder printout, the control person or comparable concept is needed.

We think that the “5 percent” level could be set to give us the information we need. Our specific proposal is that there be attention given to the establishment of a joint Federal-State approach to this question.

We know that there could be a State effort alone and many of the States are moving in this direction at the present time. Each approach, State or Federal, has unique advantages, and unique disadvantages. A State approach obviously has merit. It has been traditionally the level for handling land matters.

This has been a State law question traditionally. However, there are problems with total reliance on the State approach. One is that a State cannot deal with entities domiciled in another State. Moreover, there would not be uniformity in the collection of data. Also, if the States are not moving at somewhat the same pace, there is a tendency for investors to move to the States where restrictions are less.

A Federal approach would provide uniform data. However, it would be inconsistent with the traditional view that landownership is local and should be governed by State rather than Federal law. Second, it would require a visible, new organizational structure to implement it.

This brings us to a joint Federal-State system, hopefully to draw the best from both. We suggest the Federal presence for two reasons.

One reason is to provide funding to encourage the States to undertake establishment of land transfer systems with a monitoring capability hopefully that would assure comparability as among the States.

Second, the Federal presence would provide additional means to deal with the problem or problems of disclosure of beneficial interests involving multistate entities or contracts.

The States should continue to be responsible for monitoring under State law, but doing so pursuant to Federal guidelines. We have a long history of Federal-State cooperation particularly in the areas of land and in agriculture. We have had joint Federal-State research efforts, extension service efforts. We have had animal disease control on a joint basis.

We suggest also that a multiuse data system has some merit. There could be a single use system for nonresident alien investment. We think there is merit in considering the system as serving more ends, however.

We could consider a system to generate land use data needed by the States; information for property tax value and assessment; the new valuation of land under the Internal Revenue Code enacted in 1976; the new "use" evaluation; and participation in Government price and income support programs of the U.S. Department of Agriculture. This multiuse concept would require more thought with respect to funding and accessibility to the data and the right to privacy would be a greater problem, particularly in dealing with, say, cash-rents. A great deal of work has been done in that area and we could build upon it.

In conclusion, I suggest that a crisis atmosphere is difficult to deal with without adequate data. We have tried to meet these questions as they have been raised in recent years. We feel the system for monitoring land ownership would be helpful in assisting us to understand the level of investment, whether it does pose a serious problem, and to shape the kind of remedies we think would be most appropriate at the State level or at the Federal.

We can make an argument that the United States can ill afford to continue developing policy without an adequate information base in this area. We do not offer for comment or take the position on the advisability of limiting or barring capital coming from nonresident aliens.

Senator, I would be pleased to respond to questions.

Senator INOUE. How extensive is foreign investment in American agricultural land?

Dr. HARL. In terms of the quantitative dimension of how much is there, how extensive, we have reviewed the data from Iowa. You have indicated earlier today the latest national figure. I'm not privy to any better information than you have, Senator, as to the quantitative incursion of nonresident alien investment capital.

We are aware, certainly of a new interest that has come about in the last several months. We point out that the Iowa report, the latest Iowa report, is based on the situation as of the end of 1976 and reported in November 1977. We are about 18 months away from a perception, where the data really begin to be generated in Iowa. A great deal can happen in an 18-month period. I indicate that factor as an additional caveat to the Iowa figures provided to you along with the question of whether that constitutes underreporting as well.

Senator INOUE. Do you consider the interest by foreign investors to be permanent, transitory, or cyclical?

Dr. HARL. We could approach that by looking backward, and we have seen in the past a cyclic pattern. We can identify a period about 4 years ago, 1973, 1974, as a period of great interest, particularly after the oil embargo and the growth of liquidity from oil purchases.

Prior to that time, there were waves of interest, such as back in the early 1960's, but not to the same degree. There was a major wave of concern in the late 19th century. In fact, many of the State laws had their genesis back then.

In my State, we have a maximum acreage limitation, which is 640 acres for a nonresident alien. That was enacted as a 320-acre limitation and was originally passed before the turn of the century.

The first wave we have examined was a wave of interest limiting nonresident investment back in the 1880's. So there has been a certain cyclic or periodic quality to it. One, of course, cannot always extrapolate the past into the future.

I guess we would be inclined to look at the relative profitability of land as an investment. Certainly if there is an inherent tax advantage—here we suggest that the tax question be not only a matter of the tax advantage vis-a-vis the U.S. purchaser but tax advantage vis-a-vis the investment alternatives available to the nonresident alien.

To understand the anatomy of the nonresident alien investment process, we should examine what is causing that person to invest in the United States rather than in the person's own country.

I think probably we could make some general suggestions along those lines as well as with respect to the position of the dollar in the world economy, and suggest we probably will have these cycles coming perhaps closer together. Maybe it will be more of a continuing problem in the future than it has been in the past.

We do not have a license to say that with authority. All we can say is we have had periodic concerns in the past.

Senator INOUE. You have recommended a comprehensive, extensive system of recording and data collection. I presume it would involve substantial sums of money and personnel.

Do you think that the level of existing foreign investment justifies this type of system?

Dr. HARL. It is difficult to give a benefit-cost answer to that question because some of the costs are difficult to quantify. I would hope that any system implemented that involves a major change would also produce useful and usable data relative to ownership of land generally. I think there is a need for that as well.

We have not had a complete data base for a variety of reasons. We could collect data needed for pollution control, other land use prob-

lems, property taxes, or whatever. Part of the justification, Senator, may rest with the breadth of the task that is involved here. In terms of total dollars needed, I'm not prepared to suggest what that might be. Hopefully, with the States maintaining their position, perhaps the cost would not be as great as we might think at first blush.

However, I am not, as I said, prepared to indicate what that cost might be. Obviously, there would be some expense. We see the Federal role being that of providing funding, encouraging the States to move to a mandatory system of recordation of documentation, and also, to stand ready to provide additional means to deal with the problem of multistate contacts.

The States are already devoting a fair amount of resources in that area. Every State has some system of land title recordation. Hopefully, this could be built upon or in conjunction with that system, and so it would not involve a totally new system.

I might add the Iowa legislature is presently considering an amendment that would require the mandatory recordation of deeds, contracts, and other instruments of conveyance. That is the next step. It is the step of assuring that the record reflects the actual ownership.

Once that is assured, the matter of transmitting the data to a central depository of some type is a factor that would have to be dealt with from a budgetary point of view. It is possible, if the system were set up to deal just with the nonresident alien question, there could be use made of Federal agencies mentioned—or State agencies.

The question is more fundamental. What purposes should be served by this type of system?

Senator INOUE. What other purposes would be served?

Dr. HARL. In addition to the nonresident alien investment problem, the purposes of providing land use information could include perhaps better information for property tax calculation; it could serve State purposes as well as local. We have a sizable investment in most States for handling adjustments in property tax valuation and assessment, and if a system were to be implemented, it is quite possible there would be enough economies associated with bringing all those uses together, that the net additional cost might not be as great as it might seem.

Senator INOUE. Is there any validity to the suggestion that land prices have gone up because of foreign investment?

Dr. HARL. I have not been involved personally, Senator, in that research. I have reviewed it and try to keep current. I think it is a fair conclusion to say that the reasons for increased land values are multifaceted and that nonresident alien investment is not one of the leading reasons, at least identified at this point.

Most of the studies indicate that the leading reasons are related more to the expectation of corn and soybean prices as those are viewed by farmers as potential investors.

The largest single purchaser of farmland by a large margin is the farmer, at least in our part of the country, largely as an add-on to their present operations.

Senator INOUE. Professor, I thank you very much.

You have been extremely helpful, sir.

[The statement follows:]

STATEMENT OF NEIL E. HARL*

This statement is intended to serve as a summary paper of considerations relating to the task of maintaining a working knowledge of the level of non-resident alien investment in land in the United States with particular emphasis on farmland. From time to time, state legislatures, committees of the United States Congress, farm organizations and citizens generally have raised questions about the level of direct nonresident alien investment in farmland. With relatively little data gathered on such investment activity, little empirical evidence has been available to policy makers on the nature and extent of investment by nonresident aliens.

Notwithstanding the notable lack of information, a number of states have enacted some form of control over acquisition of land by nonresident aliens.¹ With increased interest in the concern about the level of investment activity by nonresident aliens in this decade, several states have considered imposing more restrictive limits on acquisition of land.²

The United States Congress enacted legislation in 1974³ and 1976⁴ designed to advance the level of understanding of nonresident alien investment activity. In this statement, it is proposed that consideration be given to planning and implementing a joint federal-state effort to create an improved data base to assist policy makers in reviewing the adequacy of present legislation and considering new legislative proposals relative to land acquisition by nonresident aliens. The process of informed government is aided by the production of new knowledge about policy issues and program performance through the development of information and through appropriate disciplinary and inter-disciplinary analysis.⁵

I. UNIQUENESS OF LAND AS A RESOURCE

That land is a unique resource is as old as the common law itself. Land is the most durable and perhaps the only asset with perpetual life that is capable of private ownership. With immobility of land among nations, it is the essence of nationhood itself and constitutes the territoriality dimension of the national being. Thus, unusual sensitivity attaches to acquisition of interests in land by citizens of another country who are domiciled elsewhere.

Farmland is also unique in that, traditionally, public interest has been shown in its use and productivity. Programs in soil conservation,⁶ pollution control,⁷ and land use⁸ have been supported by a public interested in maintaining a productive and environmentally sound land base. National interest has also been shown in land tenure arrangements,⁹ and their economic and social effects upon agriculture and the country generally. More recently, general concerns about land ownership and the structure of agriculture have been raised¹⁰ along with expressions of concern about acquisition of land by nonresident aliens.¹¹

Historically, the acquisition of land has been viewed as a private matter, subject to local law. The systems of land titles involving, in most states, non-mandatory recordation of deeds and other documents of legal and equitable title

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¹ See Morrison and Krause, "State and Federal Legal Regulation of Alien and Corporate Land Ownership and Farm Operation", Economic Research Service, U.S. Dept. of Agriculture, Agricultural Economic Report No. 284, p. 59, 1974. See Morrison, "Legal Regulation of Alien Land Ownership in the United States," in *Foreign Direct Investment in the United States. Report to the Congress*, U.S. Dept. of Commerce, April 1976. See e.g., Iowa Code § 567.1 (1977) (limit of 640 acres per nonresident alien, individual or corporation).

² E.g., H.F. 2111, Iowa General Assembly, 1978 (proposed statute would impose a moratorium on ownership or leasing of agricultural land by nonresident aliens when such ownership or leasing exceeded one-tenth of one percent of the total agricultural land in the state).

³ Foreign Investment Study Act of 1974, 88 Stat. 1450 (1974).

⁴ International Investment Survey Act of 1976, 90 Stat. 2059 (1976).

⁵ See Hulett, "Confidentiality of Statistical and Research Data and the Privacy Act of 1974," *Statistical Reporter*, No. 75-12, June, 1975, 197 at 206.

⁶ 16 U.S.C. ch. 3B (1976).

⁷ See, e.g., Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816 (1972).

⁸ See Bosselman and Callies, *The Quiet Revolution in Land Use Control*, U.S. Gov't Printing Office, 1971.

⁹ See Harris, *Origin of the Land Tenure System in the United States*, Iowa State University Press, 1953.

¹⁰ See generally "Who Will Control U.S. Agriculture?" N.C. Regional Ext. Pub. 32, Aug. 1972. Harl, "Influencing the Structure of Agriculture" paper presented at Distinguished Visitor Lecture Series, College of Agriculture, University of Arizona, Feb. 27, 1978.

¹¹ See *Foreign Direct Investment in the United States, Report to the Congress*, U.S. Dept. of Commerce, 1976.

have existed largely for the protection and benefit of the parties to land transactions and those extending credit on the basis of land as collateral. Land ownership has not been monitored on a systemic basis except as needed for property tax purposes and compliance with land use restrictions.

Thus, despite demonstrated public interest in land acquisition and use, relatively little has been known about the nature and characteristics of landowners and the concentration of land ownership.

II. DATA ON LAND OWNERSHIP

A substantial amount of land data is collected and published in the Census of Agriculture conducted at five year intervals. However, census data pertaining to land are obtained from the farm operator as respondent with the result that profiles of land ownership cannot be constructed from the data. Changes in patterns of land ownership and concentration are not observable from regular census information. Relatively little information can be derived from Census of Agriculture figures about investors in farmland as to their characteristics, motivations, organizational structure, stability of investment positions and the correlation of such investor features with the resulting lease arrangement.

In a few states, land ownership studies have been conducted with a specific focus and nature and characteristics of landowners, trends in land ownership and tenure arrangements associated with the land. In Iowa, such studies were completed in 1960,¹² and 1971.¹³ A 1976 study is nearing completion. Earlier studies examined farmland ownership in the midwest.¹⁴ Some work on land ownership has also been carried on by the United States Department of Agriculture on a regional scale.¹⁵

Such studies have been helpful and have provided important and useful insights into patterns of land ownership. Yet, not surprisingly, the research conducted to date has not yielded a uniform data base for the country on land ownership. That has not been the objective of research efforts conducted to date.

III. EFFORTS TO ASCERTAIN INVESTMENT ACTIVITY IN FARMLAND

In the absence of an adequate data base, the latest wave of concern about non-resident alien investment in land (particularly since 1973) has led to efforts to ascertain the extent of such investment activity. An Iowa study of transactions with and inquiries by nonresident alien investors conducted in 1975 as a part of the research effort under the Foreign Investment Study Act of 1974, concluded that—(1) the amount of land included in nonresident alien acquisitions (1974–75), relative to the total farmland in the state was small (5133 acres) with the capital inflow at a low level compared to the total capital in the agricultural sector; (2) investment by nonresident aliens had not altered the land use of the tracts acquired; (3) the motivation of investors to make investment in U.S. farmland appeared to vary with national background with investors from West Germany, the most numerous group, motivated mainly by a desire to secure personal wealth by purchasing high quality land with less concern about short term production potential; (4) local reaction to alien investment activity was often unfavorable, particularly where local residents feared that an increase in land prices or loss of local control in the community would result from nonresident alien investment activity; and (5) the number of inquiries documented (13) exceeded the number of transactions identified (10).¹⁶

In 1975, the Iowa General Assembly enacted legislation requiring annual reporting by nonresident aliens "owning or leasing agricultural land, or engaged in

¹² Strohbehn and Timmons, "Ownership of Iowa's Farmland", Research Bulletin 489, Iowa Agricultural and Home Economics Experiment Station, Iowa State University, December, 1960.

¹³ Berk, "Changing Structure of Iowa Farmland Ownership", Unpublished Ph. D. Dissertation, 1971.

¹⁴ See Timmons and Barlowe, "Farm Ownership in the Midwest", Research Bulletin 361, Iowa Agricultural Experiment Station, and North Central Region Publication No. 13, June, 1949. See also Barlowe and Timmons, "What Has Happened to the Agricultural Ladder?" Journal of Farm Economics, vol. 32, no. 1, Feb., 1950.

¹⁵ See Strohbehn and Wunderlich, "Land Ownership in the Great Plains States, 1958: A Statistical Summary," Stat. Bull. No. 261, Agricultural Research Service, U.S. Dept. of Agriculture, April, 1960; Strohbehn, "Ownership of Rural Land in the Southeast", Agric. Econ. Rept. 46, Economic Research Service, U.S. Dept. of Agriculture, Dec. 1963.

¹⁶ See Currie, Boehlje, Harl and Harris, "Foreign Investment in Iowa Farmland" in vol. 8, p. L-29, *Foreign Direct Investment in the United States, Report to the Congress*, U.S. Dept. of Commerce, April, 1976.

farming outside the corporate limits of any city."¹⁷ The legislation also included reporting requirements for corporations¹⁸ and limited partnerships,¹⁹ imposed a moratorium on acquisition of "additional agricultural land" by corporations other than "family farm corporations" and "authorized farm corporations"²⁰ and prohibited any processor of beef or pork with wholesale sales of \$10,000,000 or more from owning, controlling or operating a feedlot in the state.²¹

The annual report required of nonresident aliens includes the nonresident alien's name, address, residence and citizenship; a declaration of the type of agricultural activity engaged in by the nonresident alien; the acreage and location of agricultural land owned outside the corporate limits of any city in the state as of the end of the preceding calendar or fiscal year, listed by township and county; the approximate number and kind of livestock or poultry owned, contracted for, fed, or kept and the approximate number of acres used for each agricultural crop, fruit, or other horticultural product grown or contracted for during the preceding calendar or fiscal year; the number of acres owned and operated; the number of acres leased to and the acreage leased by the nonresident alien; the crop or livestock shares to which the nonresident alien is entitled under any lease; and whether the nonresident alien is represented in the state by an agent or other representative.²² The legislation also requires that similar reports be filed by those acting in a fiduciary capacity (such as a trustee).²³ And reports are required of nonresident aliens who are beneficiaries under a fiduciary relationship in which agricultural land is held.²⁴

Before enactment of the legislation in 1975, there had been no registration or listing at either state or county levels of nonresident aliens owning or leasing agricultural land or engaging in farming activity. Likewise, there had been no registration or listing of fiduciaries involved in such operations on behalf of nonresident aliens. To make the reporting requirement operational, the Iowa legislature imposed a requirement on county assessors to report annually to the Iowa Secretary of State information on land ownership by nonresident aliens.²⁵ County assessors, as a group, were assumed to be the most knowledgeable individuals in the state regarding ownership of agricultural land. The legislation requires that the county assessors provide to the Secretary of State, by October 1 of each year, the name and address of every nonresident alien as well as the name and address of every corporation, trust, or other business entity "owning agricultural land in the county as shown by the assessment rolls of the county."²⁶ Upon receipt of the lists, the Secretary of State sends to each individual and firm so identified the forms for the required report. Willful failure to file the required report or the willful filing of false information is a public offense punishable by a fine not to exceed \$1,000.²⁷

The results of the first two years of reports are summarized in Table 1.

TABLE 1.—REPORTED FARM LAND OWNERSHIP AND OTHER AGRICULTURAL ACTIVITY BY NONRESIDENT ALIENS IN IOWA

| | 1976 | 1977 |
|--|-------|-------|
| Individuals: | | |
| Total number..... | 18 | 23 |
| Acres owned and operated..... | 1,845 | 2,159 |
| Acres leased to others..... | 4,122 | 4,620 |
| Acres leased from others..... | 0 | 103 |
| Corporations (nonresident aliens owning 5 percent or more of stock)..... | 11 | 13 |
| Limited partnerships (nonresident alien partners)..... | 0 | 0 |

Source: Reports by Iowa Secretary of State to Legislative Subcommittee on Corporate Farming dated Nov. 8, 1976, and Nov. 9 1977.

¹⁷ Iowa Code § 567.9 (1977); H.F. 215, ch. 133, Acts of 66th Iowa General Assembly (1975).

¹⁸ Iowa Code §§ 172C.5 (1977).

¹⁹ Iowa Code §§ 172C.6 (1977).

²⁰ Iowa Code §§ 172C.4 (1977).

²¹ Iowa Code §§ 172C.2 (1977).

²² Iowa Code §§ 567.9 (1977).

²³ Iowa Code §§ 172C.7(3) (1977).

²⁴ Iowa Code §§ 172C.8(3) (1977).

²⁵ Iowa Code §§ 172C.12 (1977).

²⁶ *Ibid.*

²⁷ Iowa Code §§ 172C.11 (1977).

Although the amount of under-enumeration under the present Iowa reporting system is not known, it is likely that some tracts owned by nonresident aliens or by entities involving nonresident aliens are not included in the reported totals.

IV. FEATURES OF AN IMPROVED DATA BASE

A system for monitoring investment in land by nonresident aliens (or all investments in land) should possess certain qualities. The system should—(1) function with a minimum of lag time between investment and registration of the fact of investment; (2) possess a high degree of reliability and accuracy in terms of identifying tracts of land transferred involving nonresident aliens; (3) assure comparable reporting in all states; (4) operate at a reasonable cost in terms of budgetary outlays to support the reporting system; and (5) contain appropriate safeguards to assure compliance with legislation dealing with privacy.

A workable system for monitoring changes in land ownership would require (1) mandatory recordation of deeds, contracts and other instruments of conveyance; (2) disclosure of beneficial as well as legal interests in land through general and limited partnerships, trusts and corporations, at least at the level of "control persons"; and (3) routine reporting of land transfer information, including information on the terms of transfer as well as the nature and identity of the grantee or grantees, to a designated office; and (4) implementation of the system at a level to assure uniformity in data collection and adequate authority to deal with attempts to circumvent the reporting requirement by the use of entities organized or domiciled in other states.

The requirement for recordation of instruments of conveyance should extend to all means by which land transfer can occur. In addition to deeds and land contracts, the requirement should extend to long-term leases, passage of property by testate and intestate succession, transfers to surviving joint tenants or tenants by the entirety, transfers by operation of law, transfers through forfeiture of land contracts and transfers through dissolution and liquidation of entities. Transfers of documents of title to escrow could be excluded provided the underlying equitable interest was made a matter of record, typically by recordation of a land contract. A cautionary note is added relative to focusing attention solely on equity investments or equity interests in land. Because a strong debt capital or creditor position may take on many of the characteristics of an equity investment, and because debt interests may be convertible into equity interests, attention should be given to including debt capital within the reporting system in instances of heavy use of debt capital, perhaps in situations where debt exceeds equity capital in amount.

The suggestion that beneficial as well as legal interests in land be reported is essential to a workable system. Unless trust beneficiaries, partners, corporate shareholders and other beneficial interests are revealed, disclosure of nonresident alien status would be easily avoided.²⁸ For example, two nonresident aliens might be limited partners in a Florida limited partnership that organizes a corporation in Iowa to acquire farmland in Iowa. Similar, and longer, chains of beneficial ownership could be hypothesized using the general partnership, trust and, where available, the land trust as well.

To avoid potentially heavy costs for disclosing small beneficial interests, especially in publicly held firms, disclosure of equitable or legal interests could be set to require disclosure only of "control persons" owning a specified fraction of total capital in the firm.²⁹ For example, the disclosure requirement could be established at the five percent or greater level except that ownership aggregating 25 percent or greater by nonresident aliens would be required to disclose all legal and equitable interests. This type of rule would be necessary to preclude a corporation with more than 20 alien shareholders or partnership with more than 20 alien partners from acquiring land without disclosure.

For a monitoring system to be operationally successful, it would appear to be necessary for state rules for recordation of instruments of conveyance to require that all natural persons must report alien status at the time of transfer of legal or equitable title or both and that all partnerships, corporations, trusts

²⁸ See generally Zumbach and Harl, "Anonymity and Disclosure in Ownership Recording Systems," in *Foreign Direct Investment in the United States, Report to the Congress*, U.S. Dept. of Commerce, April, 1978, pp. L-141—L-163.

²⁹ *Id.* at L-144.

and other entities acquiring real property must trace beneficial ownership to natural persons as a condition precedent to recording.³⁰ As noted below, a federal presence in the monitoring system would seem to be necessary to assure disclosure for entities beyond the jurisdictional boundaries of the state of land transfer.³¹

V. A PROPOSED FEDERAL-STATE SYSTEM

A system for monitoring land acquisition by nonresident aliens could be established either at the state or federal levels. Each possesses unique advantages and disadvantages.

A state system would be consistent with traditional reliance on state law for handling matters relating to property and could build on the land title systems in use. However, state systems could face problems in assuring compliance with disclosure rules particularly in instances involving artificial entities in other states with beneficial interests held by nonresident aliens or by other entities owned by nonresident aliens. Moreover, a state by state approach would not likely produce uniformity in data collection.

A federal system would provide uniform data for all states and would provide additional means for assuring disclosure of beneficial interests. However, a federal system would be inconsistent with the historic view that land ownership and transfer should be governed by state rather than federal law and would probably require the creation of a sizable new bureaucracy to implement the monitoring scheme.

A joint federal-state system could be designed to draw the best from both types of systems. The federal presence would be limited to providing—(1) funding to encourage states to undertake establishment of land transfer monitoring systems designed with sufficient uniformity to assure comparability of data, and (2) the means to deal with problems of disclosure of beneficial interests involving multi-state entities. The states would continue to bear responsibility for developing and maintaining the monitoring function under state law.

Instances of federal-state cooperation to solve a common problem are legion. Federal-state funding and management of agricultural research and extension education, as well as federal-state efforts in animal disease control, are examples of cooperation needed for successful functioning of a federal-state land transfer monitoring system.

VI. A MULTI-USE SYSTEM

Attention should be given to the advantages of designing a monitoring system to meet other data needs involving land. Significant economies might be possible with systems developed to generate land use data; information for property tax valuation and assessment; figures for federal estate tax and state inheritance tax valuation including the new "use" valuation of land;³² data storage, retrieval and screening for land title examination purposes; and participation in government price/income support and disaster relief programs of the U.S. Department of Agriculture. Such multi-use systems would involve additional considerations relative to cost, right to privacy and coordination of data use. A substantial amount of work has been done in recent years in laying the foundation for such a system.³³

VII. CONCLUSION

Policy makers cannot be expected to function effectively and wisely without reliable information on the extant situation and emerging trends. This is true in any policy area including the problem of nonresident alien investment. A crisis atmosphere is easily generated when emotional appeals are met with absence of factual information. A system for monitoring changes in land ownership should bring a greater measure of objectivity to public decision making involving land. A convincing argument can be made that the United States can ill-afford to continue developing policies in this area, some of which could have substantial economic consequences, without an adequate information base.

³⁰ See *id.* at L-148.

³¹ *Id.* at L-152 to L-155.

³² I.R.C. § 2032A.

³³ See "Proceedings of North American Conference on Modernization of Land Data Systems: The Multi-Purpose Approach," North American Institute for Modernization of Land Data Systems, April 17, 1975. See also Wunderlich, "Computer-Assisted Land Information System for a Rural County—RAPLI-II", *Agricultural Information Bulletin No. 406, Economic Research Service, U.S. Department of Agriculture, July, 1977.*

This statement does not offer comment or take a position on the advisability of limiting or barring investment capital from nonresident aliens. That is a highly complex question and should involve consideration of the effects of such limitations on the world economic order as well as on United States economic policy.

Senator INOUE. Our next witness is the director of legislative services of the National Farmers Union, Mr. Ruben Johnson.

Welcome to the committee, sir.

STATEMENT OF RUBEN L. JOHNSON, DIRECTOR OF LEGISLATIVE SERVICES, NATIONAL FARMERS UNION

Mr. JOHNSON. This has been an interesting hearing. I want to commend you for the array of talent in terms of the knowledge of the witnesses who appeared here this morning.

Having heard the testimony that has been presented here, I don't know that we have a lot to offer you except to bring you the perspective of a farm organization as it views the situation in regard to investment in farmland by foreign corporations or nonresidents.

We appreciate the opportunity to review your bill S. 2928, and to comment as well briefly on our organization's position with regard to the general situation that is dealt with in that legislation.

Farmers Union has traditionally been dedicated to the preservation and enhancement of the family farm system of agriculture, and references to undesirable alien or corporate investment in farmland and farming have appeared in our national policy statement for more than 60 years.

As a result of Farmers Union initiative, a number of major agricultural States have enacted State restrictions on alien and corporate farmownership and operation. A number of these State restrictions date back several decades.

As the previous witness indicated, back before the turn of the century, there was action taken by States to restrict foreign investment in our land.

However, the wave of corporate investment which took place in and after 1967 and again in the past 4 years, have stimulated renewed activity in several State legislatures.

I would like to call your attention to exhibit 1, which indicates the States that have placed restrictions on alien ownership of land. Significant legislation has been adopted in the past 10 years in Minnesota, South Dakota, Wisconsin, Iowa, Kansas, Nebraska, and Oklahoma.

In 1977 and 1978, corporate or alien farming restrictions or amendments have been considered in Missouri, Georgia, Oregon, Washington, Pennsylvania, Indiana, and Illinois. We expect that this interest in restrictive legislation will accelerate in the future as a result of widespread reports of acquisition of farmland by foreign investors.

This is a highly inflammatory issue among people who live on the farms, the land of the Nation.

One of the hindrances to the development of constructive legislation has been the lack of conclusive evidence of the extent of corporate and alien intrusion into American agriculture.

The initial problem is one of identifying the alien or corporate owner, and this is made difficult by the tendency of these investors to

acquire the land through brokers, trustees, or through corporate entities or partnerships which do not reveal the ultimate ownership.

There have been numerous instances in which efforts to discover the real owners of a purchased farm have been blocked by the refusal of real estate brokers to divulge the identity of the buyers.

This has resulted in several States adopting or considering adoption of reporting or disclosure laws. We expect that this trend will continue.

Because of the difficulties we have enumerated, we look with considerable interest to the adequate funding of a Federal monitoring program on foreign investment in agricultural land such as is contemplated in S. 2928.

The implementation of this program, we believe, would provide important Federal help to the States in establishing their own monitoring and data collection programs; in legislating knowledgeable in this area; and in enforcing properly the statutes which deal with these matters.

We are aware, of course, that some studies are already in progress in the USDA, and in the GAO. Unfortunately, these studies are likely to falter on the same hurdles which have impeded State agencies—the difficulty of assembling provable data on the nature and extent of alien farmland investment.

It is unfortunate that Members of the Congress and of the State legislatures, as well as members of the agricultural community, can seem to get no more solid data than what they read in the newspapers.

I have accompanied my testimony here—which I will not ask to be put in the record, but I will leave it with Mr. Lee—a collection of these newspaper articles.

We think it is intolerable to continue the situation in which neither the government agencies nor the general public have access to the truth about alien and corporate ownership and operation of farms.

Perhaps not all the alien acquisitions which have been rumored will prove to be true, but at the same time, undoubtedly many purchases have escaped attention altogether.

One source has indicated that the foreign investment in U.S. farmland in 1977 alone may have been on the order of \$800 million. An estimate for 1978, attributed to the International Real Estate Institute in Brussels, Belgium, to an entity engaged in the business of overseas investments, puts the total at \$1 billion.

This, of course, may only be the tip of the iceberg.

But even if the total were no more than \$1 billion, the impact on the farm real estate market could be considerable in the several States in which the investment was concentrated.

If it should continue on the basis of that level that would further complicate what we view as a growing serious problem.

It may be more than a coincidence that farm real estate values have been advanced sharply in some of the States in which there has been notable foreign investment in farmland.

I have no basis to take issue to answers given by previous witnesses in this regard, to questions you have put to them. I would like to call your attention at this time to exhibit 2 where there is indicated the percent change in the average value of farm real estate on an acre basis from February 1977 to February 1978.

There are some areas where you could draw a correlation between the foreign investment and some where you would have to make a conclusion contrary to that. Nevertheless, any competition for farmland that comes onto the market that would be coming from a source out of the United States certainly would be a factor in increasing farmland prices.

Farmers Union is interested, of course, in more than just dependable information on the nature and extent of alien farmland investment in this country. I would like to compliment Dr. Harl for bringing out the point that for other reasons, we would like to see a monitoring and a gathering of information in regard to just who owns the land in this country.

It would be instructive for policymakers and particularly those who believe as we do that we ought to try to preserve a family farm system in this country to have that kind of profile.

In a nation as progressive as ours, it is somewhat misunderstood as to why we haven't been able to acquire more information of that kind. We see this influx of foreign capital as disruptive rather than helpful. We have recently been through a depressed farm economic situation in terms of prices and income.

We are starved for income. We are not starved for capital. We have more capital input into agriculture than current levels of farm earning power can justify.

We certainly do not need the competition of foreign capital bidding up the price of farmland in selected areas.

Our Farmers Union policy statement for 1978 therefore goes beyond mere information about conditions, and calls for specific State and Federal actions. Our recommendations follow.

I would like to have this excerpt, adopted in March of this year in Salt Lake City, appear in the record at this point.

[The attachments referred to follow:]

NATIONAL FARMERS UNION 76TH ANNUAL CONVENTION

CORPORATION, REAL ESTATE TRUSTS AND FOREIGN OWNERSHIP OF AGRICULTURAL LANDS

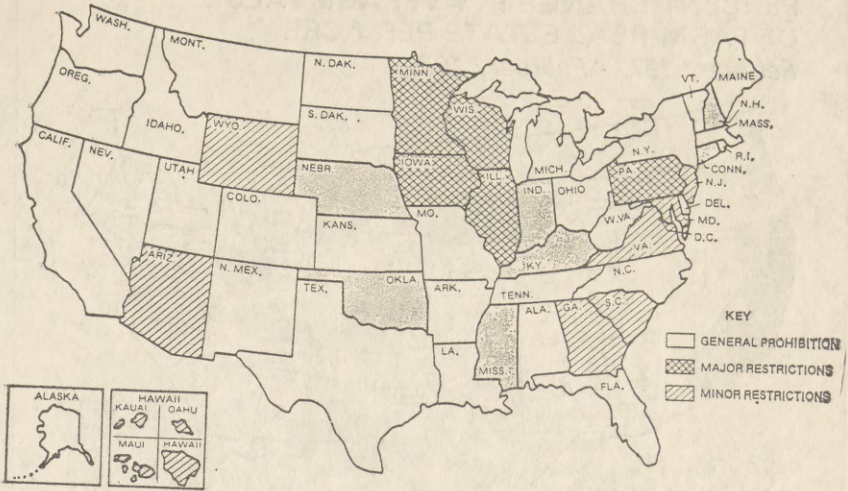
The Farmers Union urges passage of state and federal laws to prohibit entry into the business of farming and ranching or the ownership of agricultural lands to be used in farming or ranching, except:

1. Natural persons and estates of such persons.
2. Trustees of trusts for the benefit of natural persons.
3. Owner-operator family farm corporations.
4. Family-owned-and-operated cooperative farm corporations.
5. Partnerships, provided that each partner shall be a person or entity enumerated in items 1, 2, 3, or 4 above.

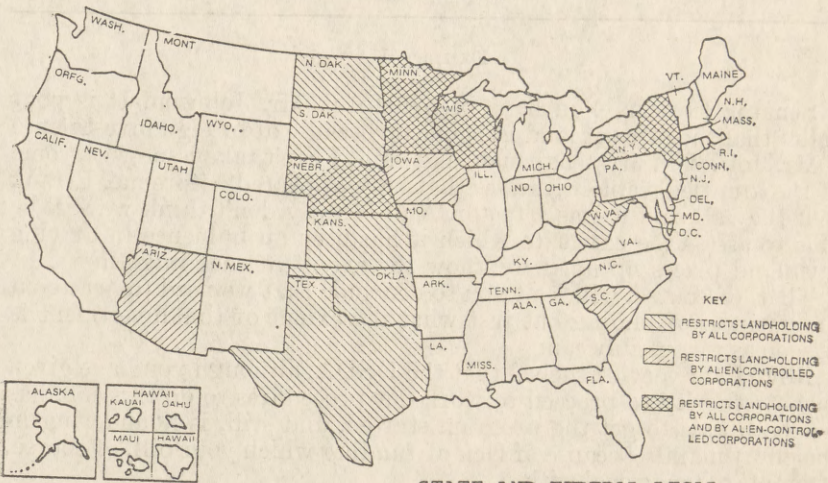
Foreign interests (except families or individuals seeking United States citizenship) shall be prohibited from acquiring agricultural lands.

We respect the right of other nations to put similar limitations on American and other foreign interests owning agricultural land in their nations.

STATE RESTRICTIONS ON
ALIEN OWNERSHIP OF LAND



STATES WITH RESTRICTIONS
ON CORPORATE LANDHOLDING



May, 1975

STATE AND FEDERAL LEGAL
REGULATION OF
ALIEN AND CORPORATE LAND
OWNERSHIP AND FARM OPERATION
USDA Economic Research Service

EXHIBIT I

PERCENT CHANGE IN AVERAGE VALUE OF FARM REAL ESTATE PER ACRE

February 1977 - February 1978

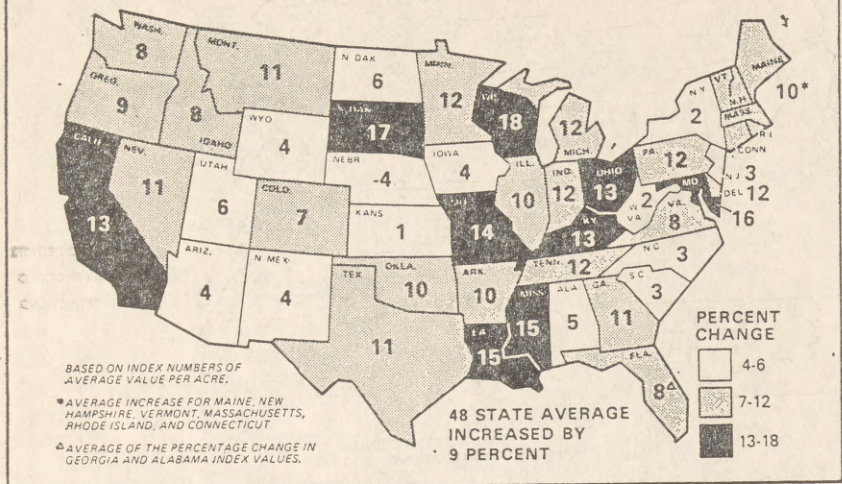


EXHIBIT II

Senator INOUE. You have been helpful, Mr. Johnson. It is your belief that the price of land has gone up because of foreign investment?

Mr. JOHNSON. Mr. Chairman, as I said, I can't take issue with some of the knowledgeable witnesses that have appeared before me. I think that they all said it was a factor. And I really don't think we will be able to assess the extent to which it has been an influence in driving farmland prices up until we know the extent of that investment.

That, of course, will lead you to conclude that we need to get about the business of finding out just what the extent of this investment is as soon as we possibly can.

Now, I am very disturbed that the USDA, although you have given them authority to proceed to work out procedures to do this job, has not been able to get the program started, and still, is floundering in the effort mainly because of lack of funding which your bill, of course, attempts to try to deal with.

Senator INOUE. Dr. Harl, as you indicated, has suggested a comprehensive and extensive system of recordation and data collecting. Do you believe that the degree of foreign investment justifies this type of extensive system?

Mr. JOHNSON. Certainly it is one of the chief contributing factors that Congress could certainly justify the expenditure of funds in order to get a full-scale investigation. But there is some other important information that we might uncover in the course of such investigation which when the allocation of the funds were divided between those information areas that we need to look at, would not be certainly objectionable budgetary problems if you—that would be assuming

you didn't have to charge all of that budgetary cost up to finding out how much alien investment there is.

We would hope to find out other things about who owns farm land in America that would be useful to the Congress and State legislatures in coming to grips with the problem.

I would like to make one thing clear. We need very badly some kind of a Federal directed effort to provide the leadership to get the uniformity and to get some kind of a common basis within the States to gather this information.

If you look at the action of the States, it is a fragmented action. Each State has gone about this a little differently. Some have passed laws, and some are still studying the problem. There has to be some means of Federal involvement. I know it is not popular today to talk about the Federal Government's heavy hand being put on State government to do certain things, but there is certain information that cannot be done in a fragmented fashion by the individual States.

Senator INOUE. Thank you very much, Mr. Johnson.

Mr. JOHNSON. We appreciate this opportunity, Mr. Chairman, to appear here.

Senator INOUE. Our final witness this morning is the assistant director for national affairs of the American Farm Bureau Federation, Mr. Robert Hitzhusen.

STATEMENT OF ROBERT HITZHUSEN, ASSISTANT DIRECTOR FOR NATIONAL AFFAIRS, AMERICAN FARM BUREAU FEDERATION

Mr. HITZHUSEN. We appreciate this opportunity to present our views on S. 2928, a bill to amend the International Investment Survey Act of 1976.

American farm and ranch families are concerned by the trend toward increased foreign investment in U.S. farmland. Farm Bureau policy for 1978 reflects this concern with specific recommendations for action to:

Oppose foreign investment in agricultural land when such investment is economically advantageous due to federal tax law or treaty provisions.

Support legislation to require disclosure of the ownership of farmland by nonresident aliens and to provide for a study of the impact of such ownership on American farmers.

At present, we do not know the exact extent of foreign ownership of U.S. farmland. Foreign investors remain hidden within a maze of financial devices including trusts, partnerships, and offshore corporations.

Enlightened public policy at the State and local levels will not be possible until reliable data regarding foreign investments in U.S. agriculture have been gathered and analyzed.

Congress has taken two positive actions which we believe can help to supply needed information on this very important public policy matter.

First, Congress passed the International Investment Survey Act in 1976. Section 4(d) of that act specifically authorized the President to conduct a study to determine the feasibility of establishing a system to monitor foreign investment in agriculture. Second, the Senate Agri-

culture Committee requested a General Accounting Office investigation in January 1978. The GAO investigation is designed to help the Congress to assess the extent of foreign investment in farmland and the implications of such investments.

Unfortunately, the extent and consequences of such investments are as unknown today as they were almost 2 years ago when this committee reported the International Investment Survey Act of 1976. To date, the section 4(d) study has not been made, despite the fact that this legislation became law over a year and half ago. In fact, funding for the study has only recently been requested by the administration in supplemental appropriations for fiscal year 1978. That request calls for \$450,000 in fiscal year 1978 for the Economic Research Service of the USDA to conduct the study.

The need for reliable data concerning foreign investors in U.S. agriculture is urgent. Growing public concern over the possible consequences of foreign investment has led to numerous State laws which attempt to place various restrictions on alien landowners. So far, much of the public debate has been dominated by rumors and sensational stories of wealthy foreign investors gobbling up U.S. farmland. Hard facts on the issue are difficult to find.

If carried out promptly and aggressively, the section 4(d) study and the GAO investigation can be an effective start toward disclosing foreign ownership of U.S. farmland.

We recommend that Congress move quickly to fund the section 4(d) study authorized by Public Law 94-472. This can be accomplished by approving the \$450,000 requested in the supplemental appropriations bill for fiscal year 1978 now pending in Congress. Since the 2 years provided in the act for completion of the study are drawing to a close, it appears necessary to extend the time authorized for completion of the study for an additional year, as provided in section 2 of S. 2928; however, it is imperative that completion not be further delayed.

We also support increased authorization for the section 4(d) study, as provided in S. 2928.

We are less clear about the objectives of the new section 4(e) funds which would be authorized by S. 2928. In particular, we find the goal of "improving State enforcement of laws regarding real estate purchases" troublesome. This would appear to sanction those State laws which have already been enacted. We believe it should be made clear that, at the present time, the new section 4(e) funds should be used to improve the States' ability to collect and monitor data relative to foreign investment in U.S. agriculture. Any funding to help implement the enforcement of State laws regarding real estate purchases would be premature until the section 4(d) study has demonstrated a need for such a program.

Senator INOUE. Well, I thank you very much, Mr. Hitzhusen.

You have heard the testimony of Dr. Harl, I presume?

Mr. HITZHUSEN. Yes, sir.

Senator INOUE. Do you believe that that extent of foreign investment in agricultural land justifies the adoption of a comprehensive system described by Dr. Harl?

Mr. HITZHUSEN. I can't comment on the specifics of the proposal Dr. Harl offered, other than to say most States need something more com-

prehensive than they have now. As we look at how land ownership is hidden, it is clear that it will take new innovative approaches by the States if we are going to draw out the real ownership of U.S. farmland.

Senator INOUE. Do you believe that foreign ownership of agricultural land is a burden to the American farmer to the extent that it inhibits his ability to expand or increase his efficiency and productivity?

Mr. HITZHUSEN. I don't think the facts are in to make that conclusion right now. I think it has potential dangers, not just for the American farmer but for the entire U.S. security and economy, but I don't think the facts are in on that yet.

Senator INOUE. Am I correct in concluding that essentially you would support this measure?

Mr. HITZHUSEN. Yes, sir; with the reservations made in the statement.

Senator INOUE. Thank you very much.

The committee will stand in recess, subject to the call of the Chair, and the record will be kept open to receive further testimony.

[Whereupon, at 11:30 a.m., the hearing was adjourned, subject to the call of the Chair.]

[The following information was subsequently received for the record:]

STATEMENT OF RON MARLENEE, U.S. REPRESENTATIVE FROM MONTANA

Mr. Chairman and members of the committee, I am Congressman Ron Marlenee and I represent Montana's Eastern District which is one of the nation's largest agriculture areas and has a great amount of coal and other resources.

I have become somewhat concerned in recent years, and just a little frustrated too, by not being able to know with any certainty whether our farmlands are being purchased by foreign investors, either through trusts or agents.

What I think is very important is that we know what is happening and then think about what the implications of increasing alien ownership might be. For that reason I favor the concept outlined in Senator Inouye's bill, S. 2928.

I specifically agree that the states should have the responsibility for any program to monitor investment. And I would resist any new agency being set up to perform this function. I believe the approach of asking for an interim report on alien investment by October with a final report the following year is reasonable and realistic considering the position we are now in.

I do want to call to the committee's attention a series of newspaper articles recently completed by a couple of young, enterprising Montana reporters, Shaun Higgins and Jeannie Cross.

They did a series of investigative stories concerning foreign ownership of land in Montana. I was impressed with the depth of their reporting and the questions raised by these stories, which were done by the Lee Newspapers and run in a number of Montana papers.

I am attaching to my testimony a copy of the Higgins-Cross stories for the subcommittee's consideration. I believe the information may be very helpful in your deliberations since they deal with the very same concerns as does S. 2928.

I would suggest also, that if the committee intends to hold additional hearings on this issue you may wish to hear directly from these reporters who spent many, many long days sorting through piles of information trying to find answers to the foreign investment questions. I would suggest their experience might be helpful to the committee.

FOREIGNERS BUYING MONTANA: WHO, WHY

(By Shaun Higgins and Jeannie Cross)

They are the secret sharers in our agricultural wealth: Arabs, Frenchmen, West Germans and Venezuela's richest man.

In the past five years they have acquired title or rights to some 100,000 acres of Montana and Wyoming by investing millions of dollars in U.S. real estate.

They are now being joined by other foreign nationals whose money is being lured here by advertisements placed in European newspapers such as the International Herald-Tribune in Paris and the Frankfurter Allgemeine in Germany.

Their presence disturbs many ranchers and farmers who feel ownership of land is a sacred trust—one that should remain in U.S. hands. But others indicate that the new money assures that agriculture will remain in the hands of people who can afford additional investments in ranch buildings and equipment.

The Standard State Bureau recently completed a six-month investigation of foreign ownership of Montana farmland. Among its findings:

At least three Montana ranches totalling more than 30,000 acres are now controlled by foreign investors. Another Montana ranch of about 32,000 acres was in foreign hands three years ago but it has since passed back into domestic ownership.

Ranches with substantial backing from non-resident foreigners appear to hold lease rights, through U.S. partners, to an estimated 15,000 acres of federal land in Montana.

A large ranch near Cody, Wyo., has been sold, apparently to West German interests. That \$5 million transaction involved 17,000 deeded acres and leases to an additional 10,000 of public land, according to a Montana land salesman familiar with the transaction.

Arabs, Canadians and West Germans have inquired directly about purchasing large tracts of land in at least six counties—Beaverhead, Madison, Pondera, Teton, Big Horn and Carbon.

Other overseas investors have inquired about land purchases here through Montana real estate agencies, two of which have advertised their services in European newspapers.

Foreign buyers have acquired land by four methods—direct purchase (the transfer of deed from Montana seller to foreign buyer); stock trading (purchase of domestic ranch corporation stock by non-U.S. corporations); trust purchase (made on behalf of non-U.S. buyers by the trust departments of large, out-of-state banking firms); and, purchase by limited partnership agreements in which the principle limited partners have been non-U.S. residents.

There is, of course, nothing new in the purchase of Montana land by non-resident aliens. During the late 1800's, English and Scot cattle companies covered the state's plat maps, their owners having been drawn here by the promise of riches set forth in books like Gen. James Brisbin's "The Beef Bonanza" and Baron von Richthofen's "Cattle Raising on the Plains of North America."

But the earlier investment was a regional phenomenon, largely confined to the northern plains; today's buyers are part of a nationwide trend that is putting millions of acres of U.S. farmland into foreign hands. Another difference: The earlier transactions were usually more open than today's which are sometimes marked by efforts to conceal not only the names but also the nationalities of buyers.

Concern over such secrecy prompted the last session of Montana's legislature to consider a bill requiring nonresident aliens to file land ownership statements with the state. But the bill failed after both its effectiveness and constitutionality were questioned.

Only one state, Iowa, requires non-resident aliens to report their acquisitions. But Iowa officials report that the law presents no real barrier to owners who sincerely desire to conceal their identities.

Why do aliens buy U.S. farm land?

The reasons are diverse as the nationalities of the investors.

Financially, U.S. farmland is a solid investment promising excellent capital appreciation. Politically, it represents a means of sheltering financial resources from government instability or economic reforms in their own countries. Psychologically, it is a way of turning the tables on the U.S. which has long been the leader in investing capital in foreign economies.

The financial promise of U.S. farmland is compelling. Land prices . . .

Many foreign investors lease their U.S. holdings back to the Americans from whom they bought, a procedure that protects them from the risks of crop failure while they reap the benefits of land appreciation.

Here are the details of recent alien land acquisitions in Montana and Wyoming:

Kemph Land and Livestock Co. (near Custer) : The Kemph ranch begins 10 miles south of Custer, part of it in Big Horn, the rest in Yellowstone County. It was sold last June to United Industries (UI), Inc., a Panamanian corporation. The sales price of the 23,000-acre ranch exceeded \$1.8 million, according to Morris P. Blakeley, a Livingston outfitter who now serves as UI's chief resident officer. Blakeley discussed the purchase last year with the Billings Gazette but has steadfastly refused to disclose the names of UI's investors. However, the State Bureau has discovered that the principal behind UI is Gustavo J. Vollmer, a self-effacing multimillionaire reputed to be Venezuela's richest citizen. (See related story).

Lion Head Guest Ranch (near Big Timber) : The ranch is owned by Montroy Properties, Inc., a successor to Lion Head Ranch Syndicate, a limited partnership formed in 1968. An amended statement of limited partnership filed with the Montana Secretary of State in 1973 included the following investors and the amount of their investments: A. Al Helalissi, 24 Kensington Place Gardens, London, England (\$65,000); Banque Cantonale Vaudoise, Lausanne, Switzerland (\$52,000); Olayan Properties, Curacao, Netherlands Antilles (\$90,000); Richard Davis, Jr., Schwalback, West Germany (\$42,300); Societe Financier et Immobiliere Franco-Africaine (SOFIFA), Paris, France (\$252,500).

General partners in the arrangement were Montroy Ranch Industries and Jacquesroy, a native of Belgium who lives in Big Timber and now serves as president of Montroy Properties.

Total foreign investment represented about half of the syndicate's \$1.1 million backing at the time the limited partnership was dissolved into Montroy Properties. The ranch includes about 5,000 acres and has rights to use additional federally-owned acreage.

The Andrew Buyer Farm (East of Brady) : Earlier this year a West German citizen, Peter Sandel, purchased this 1,000-acre farm in Choteau County. Sandel bought Buyer's land in his own name, making the acquisition through a Canadian lawyer in Drumheller, Alberta. According to Buyer, Sandel and his family made their money in the drycleaning business, operating a franchise whose territory includes Frankfurt and Munich. Sandel has leased the farm back to the Buyer family, which is operating it just as they were before they sold. Buyer said Sandel is interested in acquiring more Montana farmland and has flown over area farms looking for suitable parcels. But Sandel apparently has no plans to live in Montana: his Drumheller attorney said his German client is planning to take up Canadian citizenship.

Curtis and Skogland Two-Dot Ranch (Near Cody, Wyo.) : This 17,000-acre ranch was sold three years ago by its American owners, then resold a year later, according to Charles Curtis of Cody, one of the original partners in the ranch. Curtis and a Billings real estate agent believe West German money is bankrolling the new owners. When a State Bureau reporter called the ranch to inquire about that possibility, he was referred to a lawyer for Eastdil Realty, a New York City firm which caters to foreign nationals. (Last year an Eastdil agent boasted to Saturday Review magazine that his firm had sold 200,000 acres of western U.S. farmland to aliens during 1976 and claimed he would sell more than twice that much during 1977). Eastdil's lawyer was not in his office last week and the Bureau was unable to fully confirm West German ownership in the Two Dot venture.

Fair View Ranches (between Melville and Harlowton) : This 32,000-acre property was acquired several years ago by the Helbent Co., which board of directors includes three West Germans. Helbent is successor company to the Helena Chemical Co., an agri-chemical concern based in Arkansas. The ranch has since been divided and sold to domestic owners, according to area land records. "The Germans sank a helluva lot of money into the place—fixed up the headgates, new outbuildings, the whole show—and then sold it," one real estate agent told the State Bureau. An area rancher who now owns part of Fair View's property maintains that the former owners also "lost their shirts." He estimated that \$5 million went down the drain, adding that the land was sold at roughly the same price for which it was bought.

In addition to these purchases, the State Bureau estimates that an additional 100,000 acres of Montana land may now be in foreign hands. At least one large trust company specializing in acquisitions for foreigners—Northern Trust Co. of Chicago—has had some dealings in Montana, according to a Billings land broker. But the true ownership of land held by trust companies is virtually impossible to

trace: The owners could be Montanans, large U.S. or non-U.S. corporations or foreign nationals.

BEAVERHEAD LIKES BUCKS

While many Montanans see something sinister in non-U.S. citizens buying U.S. farmland, at least one Montana rancher, John Morse of Beaverhead County, thinks foreign investment is a plus.

The son of a real estate salesman, Morse has contacts with both out-of-state and non-U.S. investors.

He says he has seen no evidence that foreign investors remove their land from production and thus contribute to agricultural unemployment. Rather, Morse says, they hire Montanans as farm managers and sink lots of new money into houses, herds, and outbuildings—all of which pumps money into local economies.

Morse told the Standards State Bureau of a German engineer who wants to pick up a ranch in Beaverhead County. Morse calls this man "Megabucks" because of the money he has earned in his Munich job and from investments in German real estate.

Since German banks are giving only two percent interest on savings accounts, Megabucks is in the market for a more lucrative investment.

That investment clearly is possible in Montana farmland, which even at \$500 an acre cost only one-sixth as much as acreage in rural Germany. The U.S. inflation rate virtually guarantees that Megabucks will turn a healthy profit on a Montana ranch if he decided to sell, Morse says.

Furthermore, the German mark is valued at 30 percent more, in relation to the dollar, than it was two years ago. That means Megabucks' money goes 30 percent farther in the U.S. than it does in his homeland.

To boot, the U.S. and the Federal Republic of Germany have a tax treaty under which a German investor in the U.S. can escape capital gains taxes in both countries.

All these factors combine to put Megabucks in the market for a \$600,000 to \$800,000 ranch, according to Morse.

But Megabucks isn't the only one who will benefit if the deal comes through, Morse says. The German plans to hire both a farm manager and a house caretaker and intends to buy a car here for use when he visits his new property. Megabucks will deposit \$100,000 with a local savings and loan association and use the eight percent interest it earns as spending money when he's visiting.

For convenience, he'll buy locally the food, furniture, clothing, and luxuries for use on the ranch.

"How can that possibly hurt the local economy?" Morse asks.

He contends that most foreign investors will not take their land out of production because that would limit property-value appreciation. "If you have money"—the kind of money that will buy an \$800,000 ranch—"you didn't get it by being stupid," Morse reasons.

He also contends that foreign investment's tendency to force land prices upward benefits U.S. farmers who, he feels, have long undervalued their land. While many Montana farmers decry this upward movement of prices because it jeopardizes their ability to acquire more land themselves, Morse claims it enhances their ability to borrow. "The ability to borrow is based on the market value of the land," he notes.

According to Morse, alien investment is an all-win situation: The investor shelters his money and also sees it appreciate at a good rate while the local economy benefits from an influx of outside dollars and land values rise.

SECRET PURCHASE TRACED TO RICHEST VENEZUELAN

(By Shaun Higgins)

HELENA.—Most Big Horn county residents don't know it but one of their major taxpayers is Venezuela's richest man.

The Standard State Bureau has confirmed that the principal new owner of the Kempf Land and Livestock Co. is Gustavo J. Vollmer, a self-effacing Caracas multimillionaire whose fortune is based in sugar, broadcasting, motion pictures and land.

Vollmer's United Industries (UI) Inc. purchased the 23,000 acre ranch—called by its former owners "the best in the state"—last June. United Industries is a Panama "offshore" corporation financed by Vollmer.

The ranch sale has been clouded in secrecy and the Standard State Bureau was able to trace true ownership only with the help of U.S. Sen. John Melcher, the U.S. embassy in Panama, the U.S. Commerce Department and the Caracas bureau of the Associated Press.

Panama often serves as a corporate "flag of convenience" for persons wishing to conceal their identity in international financial transactions, according to officials at the Commerce Department which maintains information on all foreign firms operating in the United States.

Livingston outfitter Morris Blakeley serves as the corporation's chief resident officer.

Past newspaper reports have speculated that the owners of the Panamanian company were Arabs or Japanese.

Here's a brief history of United Industries and Vollmer as pieced together by the Standard State Bureau from sources in Washington and Caracas:

United Industries was organized in the Republic of Panama on May 31, 1972, as an "offshore corporation," not permitted to operate within Panama. U.S. State Department sources indicate the company was given initial authority to issue stocks and bonds in the amount of \$1 million. On Feb. 4, 1976, that authority was reduced to \$550,000. (UI paid a reported \$1.8 million for the Kempf ranch, a fact indicating that its authority has recently been increased or that it has attracted limited partners to the Kempf venture.)

UI's original incorporators were three Wall Street lawyers with the firm of Sullivan and Crownwell, but a note among UI's records, dated Jan. 15, 1976, designates Vollmer as the only authorized holder of all right-to-vote shares.

Vollmer is reputed to be Venezuela's wealthiest man and Fortune magazine calculated his wealth at more than \$100 million 10 years ago. There are no recent estimates on his worth, which is based on family developed and owned sugar-growing, refining and allied industries, including rum production.

Vollmer heads Grupo Vollmer, which is involved in numerous other enterprises including television and motion pictures.

A contact in Caracas described Vollmer as a third or fourth generation Venezuelan of Dutch descent "who, unlike most wealthy Venezuelans, keeps a very low profile and rarely appears in the press."

Believed to be about 55 years old, Vollmer holds an engineering degree from New York's Cornell University and is active in the world Boy Scout movement. In 1959 he became a leader in Venezuelan scouting and from 1961-65 was chairman of the inter-American Regional Committee of the Boy Scouts World Conference.

In 1963 he was elected one of 12 members of the Boy Scout World Committee and has received one of Scouting's highest awards, the Silver Buffalo for distinguished service.

Vollmer, a Catholic and father of several children, is described by associates as a "devout family man."

One associate ranked him among Venezuela's most important men and said Vollmer is usually accompanied by a personal bodyguard. On trips within Venezuela he has sometimes been accompanied by a carload of government agents armed with submachine guns, the associate said. The reason: Vollmer is considered a prime target for a terrorist kidnapping attempt.

SOME STATES CURB ALIEN OWNERS

Twenty states now have some form of legal restriction on alien ownership of agricultural land.

But loopholes, exceptions, constitutional mandates, and treaty provisions limit the effectiveness of the restrictions.

The laws regulate ownership with one or more of the following provisions:

Outright prohibition of ownership by aliens except those who reside in the U.S., are applying for U.S. citizenship, or are residents of "friendly" countries.

Limitations on the amount of acreage that can be owned or on the distance it may be located from a specific city.

Limitations on the length of time the alien can hold U.S. land.

One state, Iowa, also requires aliens to report their ownership. An alien not filing the required report is subject to a \$1,000 fine but only if the state can prove that his failure to report was "willful." Iowa officials say this has been difficult to do.

In 1977, 23 non-resident alien owners reported to the Iowa Secretary of State. They included 14 Germans, three Britishers, two Austrians, two Guatemalans, one Irishman, and one Canadian.

Iowa, like several other states, has a law limiting the extent of alien ownership. In Iowa's case the limitation is 640 acres. But in 1974 three different Lichtenstein corporations, apparently backed by the same man, bought parcels of land totaling 1,400 acres. The letter of the law was kept because none of the corporations held over 640 acres. Another way to evade the intent of restrictive laws is for one corporation to buy out another's stock. When this happens, the ownership of the land changes hand without the public recording of a deed.

Besides loopholes and legally-granted exceptions, there are two major constitutional limits on laws restricting alien ownership.

The U.S. Constitution requires equal protection under the law for "any person." This applies to aliens. It also applies to corporations, which are legal "persons." Past case history indicates the U.S. Supreme Court would take a dim view of laws restricting ownership purely by nationality.

In addition, the constitution grants to the federal government complete control over foreign policy. Thus, any state law which could be construed as a hindrance to U.S. pursuit of foreign policy goals also could be construed as unconstitutional.

In pursuit of those goals, the U.S. has concluded treaties with many "friendly" countries which grant citizens of those countries the right to own U.S. land. In addition, many treaties give tax breaks to those citizens who do invest in U.S. land.

The treaties also allow U.S. businessmen and investors to operate freely within the "friendly" countries. That's one reason many U.S. goods are produced in foreign nations where production costs are cheaper.

A comprehensive overview entitled "State and Federal Legal Regulation of Alien and Corporate Land Ownership and Farm Operation," produced through the U.S. Department of Agriculture Economic Research Service, concludes that "only Federal legislation could take a comprehensive approach to alien investment" because state laws could simply divert alien investment into other economic sectors or states.

U.S. Sen. John Melcher (D-Mont.) said "legislation for disclosure of ownership of land is clearly in order" along the lines of Iowa law. Melcher, a member of the Senate Agriculture Committee, said the Iowa law, though not entirely successful, "can serve as an emerging pattern for identifying foreign owners."

Melcher believes disclosure laws are constitutional and could be required by either state or federal legislation. But, he said, "only in the case of a demonstrated national urgency where the states could not effectively accomplish disclosure would Congress consider adopting it as a federal law."

"An absolute denial of foreign investment is another matter," Melcher said. "(It) would be difficult to accept or enforce."

FOREIGNERS FACE SELLER'S MARKET FOR MONTANA LAND

(By Shaun Higgins and Jeannie Cross)

HELENA.—As the owner of The Shining Mountains land development near Ennis, Pann Mallas has seen buyers come and go. But there are some who remain fixed in his memory.

"There was this one fellow," Mallas recalls. "He came in a trailer and was dressed in a dimestore cowboy outfit—if a rancher had seen him, he'd have laughed him out of the state. He said he was buying ranches for some Germans."

Mallas couldn't help him; he sells only five to 30-acre parcels, designed for retirement and vacation homes.

Mallas also couldn't help the carload of West Germans—"They were, indeed, in a Mercedes Benz"—that showed up at his office on another day. Mallas explained to them, as he had to the rhinestone cowboy, that he just didn't have the kind of acreage they were interested in. But as they talked, he learned that the group had flown from Germany to San Francisco, then rented the luxury car to take a leisurely tour of the United States in search of land investments. They planned, they told Mallas, to end their trip some weeks later in Florida.

Mallas is only one of many Montanans approached in the last few years by aliens or their representatives seeking prime agricultural land in the Big Sky Country.

Many of those approached strongly oppose the idea of alien ownership.

One such person is Joyce Robinson of Choteau. A Canadian came to her spread last July and offered to buy it without even looking it over. "He said he knew everything about it, down to the last blade of grass," she recalls. But she and her children wouldn't sell despite the "large offer" he made.

An active member of the American Agricultural Movement, Robinson says she and her AM colleagues are "trying to prevent this valuable land, this U.S. of A., from being sold to West Germans and Japanese." They want to preserve the family farm.

"When you own the land, you own the country," she added.

Robinson's sentiments are common among the state's ranchers and farmers, although some think foreign investment provides great benefits for local economies and will boost land values while keeping farms in production.

The State Bureau has learned in a six-month investigation that encounters with alien representatives have occurred in at least six Montana counties during the last year. In addition, some 100,000 acres of prime rangeland in Montana and Wyoming have been sold recently to predominantly foreign-controlled investment firms.

Although the acreage sold is only a minute percentage of Montana's 50 million acres of privately owned land, aliens are eyeing the remainder as it becomes available. Furthermore they are willing to pay \$500 and more an acre to get it.

"If you want to sell foreign, you can sell all you can find," one Missoula real estate broker said.

One firm which wants to sell foreign is Hall and Hall Realty in Billings. It has advertised its services in the International Herald-Tribune, a Paris-based newspaper with circulation throughout Europe. The agency has a special division that specializes in alien land investment and, according to one source close to the firm, has worked hand-in-glove with the Northern Trust Co. of Chicago—reputed by national media to be a major conduit through which foreign money acquires U.S. farms.

Hall and Hall is not the only Montana firm advertising in Europe. Morse Land Co. of Absarokee has been in the international market for 15 years and advertises its services in several European papers, including the Frankfurter Allgemeine of Germany.

One Montana broker explained that other firms probably will follow these companies' leads.

"It (selling abroad) is necessary," he told the Missoulian State Bureau. "An agency has an obligation to its clients to obtain the best possible price for land, and if the client wants to keep the land in one piece, we have to look for a buyer that will keep it together."

Foreign buyers "have the money to buy and pay the best price," he explained. "Most Montana ranchers can't pay as much—and wouldn't if they could."

"The alternative to large-scale corporation and foreign millionaire investment is subdivision. Most Americans want a quick return on their investment, and they're not going to be happy with the 3 or 4 percent from ranching. That's why they subdivide. But most of the foreign buyers are people whose wealth has been based in land and that's where they want to keep it. They don't care about high returns; they're comfortable just owning the land."

But another broker who specializes in the international market disagreed with his competitor. He said he had an order for land from a Greek he spoke with in Geneva. "He wanted to get into ranching but wanted a 27 percent return on his investment," the broker said. "Ranching can't do it. I told him he'd have to find something else."

There's no question that foreign investment is a seller's market. Inquiries outnumber available properties by a 100-to-1 margin, according to a Big Timber broker who says he won't deal with aliens.

But in some cases, land purchases by aliens have not resulted in the hoped-for profits. A case in point: Fair View Ranches, Inc. near Harlowton. The ranch was put together from smaller ranches purchased from local owners about three years ago by a group with West German connections.

According to area residents, the investors pumped a lot of money into the operation and also lost a lot of it. One rancher, who bought a portion of Fair View when the alien owners sold out, said he wasn't surprised.

"They (non-resident aliens) can't compete with people who are willing to work 14 to 15 hours a day for peanuts," he said. "If this country would allow a family farmer to make an honest living farms would stay family farms."

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ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

[The following information was referred to on p. 6:]

RECENT SALES OF AGRICULTURAL PROPERTIES TO FOREIGN BUYERS BY OPPENHEIMER INDUSTRIES, INC.

| State (closing date) | Price | Acres |
|--------------------------------|------------|--------|
| Missouri (January 1978)..... | \$925,000 | 1,178 |
| Kansas (December 1977)..... | 414,720 | 640 |
| Missouri (November 1977)..... | 4,060,000 | 2,700 |
| Arkansas (October 1977)..... | 1,400,000 | 1,168 |
| Missouri (October 1977)..... | 1,450,000 | 1,440 |
| Do..... | 202,125 | 165 |
| Missouri (August 1977)..... | 349,960 | 306 |
| Missouri (July 1977)..... | 499,100 | 1,524 |
| Do..... | 860,000 | 840 |
| Georgia (May 1977)..... | 1,377,500 | 2,800 |
| Kansas (April 1977)..... | 1,360,000 | 1,856 |
| Kansas (January 1977)..... | 213,000 | 203 |
| Illinois (January 1977)..... | 886,500 | 1,182 |
| Missouri (January 1977)..... | 171,050 | 171 |
| Do..... | 4,175,000 | 1,052 |
| Missouri (December 1976)..... | 252,000 | 102 |
| Do..... | 1,000,000 | 941 |
| Kansas (December 1976)..... | 63,000 | 60 |
| Missouri (December 1976)..... | 184,000 | 160 |
| Do..... | 116,000 | 102 |
| Missouri (September 1976)..... | 300,000 | 320 |
| Missouri (June 1976)..... | 427,500 | 368 |
| Total..... | 20,686,000 | 19,278 |

AGRICULTURAL PROPERTIES SOUGHT FOR PURCHASE BY FOREIGN BUYERS

FEBRUARY 1978.

Ranches—Texas; other Southwest States: 5 properties, aggregate value \$9 million.

Southern farms—Texas, Arkansas, delta, etc.: 12 properties, aggregate value \$29.5 million.

Corn Belt—Farms: 13 properties, aggregate value \$38.5 million.

Diversified packages—(Combinations): 7 properties, aggregate value \$7 million.

Specialized—Plants, apartments, estates: 7 properties, aggregate value \$11 million.

[The following information was referred to on p. 16:]

FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

[In millions of dollars]

| | 1975 | 1976 | 1977 |
|---|--------|--------|-------|
| Net capital inflows..... | 1,414 | 2,176 | 1,527 |
| Reinvested earnings..... | 1,189 | 1,585 | ----- |
| Valuation adjustments..... | -85 | -1,242 | ----- |
| Total addition..... | 2,518 | 2,520 | ----- |
| Foreign direct investment, position, yearend..... | 27,662 | 30,182 | ----- |

¹ Preliminary.
Source: U.S. Department of Commerce.

1976 FOREIGN INVESTMENT IN U.S. REAL ESTATE INDUSTRY

| Country: Ultimate foreign parent | Transaction type | Property type | Location | Transaction cost (millions) | Status |
|--|--|--|------------------------------|-----------------------------|----------|
| Canada: | | | | | |
| Petryn Investment Corp., Ltd. | Construction | Apartment building | New York | NA | Pending |
| Cadillac Fairview, Ltd. | Purchase (100 percent) | Industrial parks (4) | Maryland (1), California (3) | \$8.0 | Complete |
| Four Seasons Hotels, Ltd. | Acquisition (100 percent) | Hotel | California | NA | Do. |
| Nu-West Development Corp., Ltd. | New subsidiary | Development corporation | Colorado | NA | Pending |
| Westwater Sacramento, Inc. | Acquisition (100 percent) | Inv. | California | 4.0 | Complete |
| West Germany: | | | | | |
| Dixieland Grundstuecks GmbH | Purchase (100 percent) | Industrial park | Texas | NA | Do. |
| Friedrich Flick Group | do | Office building | do | 40.0 | Do. |
| Werner, Otto Group | New subsidiary | Investments group | Illinois | NA | Do. |
| Bank Consortium (led by Deutsche Bank) | Purchase (60 percent) | Office building | Texas | \$2.0 | Do. |
| Unknown Individual Investor | Purchase (100 percent) | Shopping center | do | 1.6 | Do. |
| East Germany: Government of the German Democratic Republic | Purchase | Apartment buildings | Virginia | 1.5 | Do. |
| Hong Kong: World Union Industrial Corp., Ltd. | Purchase (100 percent) | Forest land (32,550 acres) | Hawaii | 6.0+ | Do. |
| Iran: | | | | | |
| Bank of Omran | New joint venture | Multi-use development project | Louisiana | 250.0 | Do. |
| Michael & Maryann Mohsen | Purchase | Private household | California | 2.5 | Do. |
| Republic of Ireland: Aer Lingus | Acquisition (100 percent) | Hotels and motels | New Hampshire | NA | Do. |
| Italy: Government of Italy | Purchase | Private household | Washington, D.C. | 4.3 | Do. |
| Japan: Seibu Hyakkaten K. K. | do | Land (186 acres) | Connecticut | 1.9 | Do. |
| Republic of Korea: | | | | | |
| Sun Myung Moon | do | Residential building | New York | 1.2 | Do. |
| Do. | do | Commercial building | do | 1.0 | Do. |
| Do. | do | Hotel | do | 5.0 | Do. |
| Kuwait: | | | | | |
| Kuwait Investment Co. | Equity increase from 50 percent to 100 percent | Hotel/office building | Georgia | 10.0 | Do. |
| Government of Kuwait | Purchase | Office building | Washington, D.C. | 22.0 | Do. |
| Netherlands: | | | | | |
| Building Exploitative Building B.V. | do | do | California | 16.0 | Do. |
| Hexalon B.V. | Acquisition (50 percent) | Shopping centers | Maryland | 35.8 | Do. |
| Netherlands Antilles: Unidentified investors | Purchase | Office building | California | 30.9+ | Do. |
| United Kingdom: Unidentified group of investors | do | Office building and adjacent 85,000 ft. ² parcel of vacant land | Connecticut | 3.3 | Do. |
| Australia: Westfield Ltd. | Purchase | Trumbull Shopping Center | Connecticut | \$21.0 | Complete |
| Bahamas: Realco Holdings, Ltd., Inc. | Acquisition (53 percent) | Woodway Realty Corp./Realty Corp. | New York | .4+ | Do. |
| Belgium: Unknown Individual Investor | Purchase | Commercial building | Florida | NA | Do. |
| Bermuda: Amprovest, Ltd. | Purchase (100 percent) | Office/commercial building | New York | 1.3+ | Do. |

The first part of the document discusses the general principles of the proposed system. It is intended to provide a framework for the future development of the project. The following sections will describe the various components and their interactions.

The second part of the document details the specific implementation of the system. This includes a description of the hardware and software requirements, as well as the methods used for data collection and analysis. The results of the initial tests are also presented, showing the effectiveness of the proposed approach.

The third part of the document discusses the future work that needs to be done. This includes the development of more sophisticated models and the implementation of more advanced data processing techniques. The goal is to create a system that is both efficient and accurate, and that can be used in a wide range of applications.

In conclusion, the proposed system has the potential to be a valuable tool for the study of the phenomena under investigation. Further research and development are needed to fully realize this potential, but the work described in this document provides a solid foundation for future efforts.

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FEDERAL TAXATION OF AND INCENTIVES FOR
FOREIGN INVESTMENT IN U.S. REAL ESTATE
AN INTRODUCTION
WITH EMPHASIS ON FARMLAND

April 1978

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ABSTRACT

The recent interest in U.S. farmland purchases by non-resident foreign investors evidences the attractiveness of U.S. farmland to foreign investors. One source of attraction reserved exclusively for foreign investors lies in tax provisions found in the United States Tax Code and in tax treaties between the United States and other countries. This paper explores how farmland opportunities which favor the non-resident foreign investor over the United States investor can arise for the non-resident alien individual and corporate investor in United States real estates, quantifies some of the incentives for foreign farmland purchases and discusses potential consequences for land tenure and land use.

FEDERAL TAXATION OF AND INCENTIVES FOR
FOREIGN INVESTMENT IN U.S. REAL ESTATE

by

Donald Abramson, Karl Gertel and James A. Lewis*

INTRODUCTION

This report is part of a larger study in which returns from absentee investment in farmland are compared to returns to common stock. This summary review of U.S. taxation of foreign investment with emphasis on farmland has been prepared as an interim report.

Examples from two nations have been selected for illustration:

(1) West Germany, to describe the effects of a treaty allowing special treatment of real estate investment for tax purposes, and
(2) Kuwait, to describe the situation in the absence of a treaty.

For each of these two nations we consider an individual investor, a corporation investing through a branch in the U.S. and a corporation investing through a subsidiary corporation incorporated in the United States. The tax rules for each category are summarized in appendix table 1. The incentives for foreign investment of these tax rules, and the implications for land tenure and land use in agriculture are discussed in the last section of the report.

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Not covered in this report is an analysis of real estate investments from several other nations (e.g. Canada, France, Italy, Switzerland) with generally similar treaty provisions for taxing income from real estate. Use of tax havens whereby an investor from a non-treaty nation might benefit from the advantages of a tax treaty are briefly discussed. Other investment vehicles such as U.S. or foreign trusts and various types of partnerships are not covered. The purpose of this report is not to provide an exhaustive list of all possibilities. It is to give the policy maker and general reader an overview of the type of advantages enjoyed by the foreign investor in U.S. farmland and some appraisal of the economic consequences.

THE NON-RESIDENT FOREIGN INDIVIDUAL INVESTOR

Taxation in the Absence of a Treaty

Income from investment versus income from a trade or business

The federal income tax provisions applicable to the foreign owner of real estate operating in an individual capacity depend upon whether the foreigner is determined for tax purposes to be engaged in the conduct of a U.S. trade or business or acting merely as a passive investor.

In the absence of a treaty, the Internal Revenue Service (IRS) requires a withholding tax of 30% on certain items of gross income derived from property owned by a non-resident foreigner if it is ruled to be an investment. 1/ No deductions are allowed for expenses such as interest payments or depreciation on capital outlays incurred in the production of the income even if those expenses are so large that there might be no net income. 2/

However, income which is effectively connected with a U.S. trade or business is taxed according to the standard U.S. tax rates regardless of the nationality of the income recipient. Therefore, income will be taxed not on a gross basis but on a net income basis stemming from U.S. based activities only, with deductions for ordinary and necessary business

1/ U.S. Department of Commerce. Foreign Direct Investment in the United States, Vol. 6, Appendix J, Taxation, April 1976, p. 23.

2/ Internal Revenue Code §873(a). Expenses of a lessor which are paid by a lessee constitute additional rental income of the lessor and are thus subject to the 30 percent tax. Rev. Rul. 73-522.

expenses. The graduated tax scale applies to an individual's effectively connected trade or business income with the potential to range from negative taxation (tax savings if losses occur which are used to offset taxable income) to a 70% tax at the highest taxable income bracket.

An important difference between the taxation of investment and business income concerns the treatment of capital gains. If the foreigner's purchase is considered an investment, no tax upon any gain from the sale or other disposition of the property is imposed as long as the foreigner is in the U.S. for less than 183 days of the taxable year. ^{3/} However if the foreigner's purchase is determined to be related to engagement in a U.S. trade or business (e.g., if an individual purchased land so that he could farm the land and sell its produce), any gain from the eventual sale of the land will be subject to a U.S. capital gains tax. ^{4/}

^{3/} U.S. Dept. of Commerce, Foreign Direct Investment in the U.S., op cit. p. 95(4).

^{4/} Ibid., p. 95(1). To qualify for long term capital gain treatment, the real estate must be considered a capital asset. Real estate will be considered to be a capital asset unless the taxpayer involved in the real estate transaction is determined to be a "dealer"--one who engages in the particular occupation of buying and selling real estate. Profits from dealer property are treated as ordinary income. The typical non-resident foreigner investing in farmland, who participates in only a small number of real estate transactions (even though the transactions may involve large acreage) and holds onto the land for extended periods of time without subdividing it, should be able to avoid "dealer" status.

What type of real estate activity constitutes being engaged in a U.S. trade or business? A 1973 ruling by the IRS (Rev. Rul. 73-522) dealt with the "net lease" situation where the taxpayer owned rental property in the United States. The property was leased on a long term basis and the lessee paid a monthly rental plus all operating expenses, repairs, real estate taxes, mortgage interest and principal, and property insurance. The foreign investor came to the United States one time for a week to supervise new leasing negotiations, draft documents, and make phone calls. The IRS concluded that this particular individual was not engaged in a trade or business within the United States. However, the ruling and related court cases imply that while the negotiation of a lease does not constitute being engaged in a trade or business, any considerable, continuous, and regular activity beyond negotiation, receipt of rent, and payment of expenses would constitute engaging in a trade or business. Activities conducted by the foreigner or his agent limited to lease negotiation, collection of rent and payment of expenses are likely to escape classification as a U.S. trade or business. 5/

Although the IRS has not laid down a firm rule on the distinction between investment versus business status, the more limited the management function of the foreign investor or his agent, the more likely "investor" status will not be challenged or refuted. The nature of the rental

5/ M. Abrutyn, "U.S. Real Estate and the Foreign Investor", the International Tax Report, April 29, 1975, p. 4.

agreement between the foreigner and the tenant will also affect investor status. A cash rental agreement in which the tenant pays a fixed dollar amount to the owner and also assumes all operating expenses, real estate taxes, insurance premiums, and mortgage payments, will very likely characterize the owner as an investor. A crop share arrangement in which the owner and tenant participate in the risks and rewards of the agricultural enterprise will tend to classify the owner of the farm as one engaging in a trade or business. 6/ Yet it must be stressed that the IRS proceeds on a case by case basis in analyzing the status of the property owner. 7/

The real property election.

The nonresident foreigner who is deemed to be an investor in real estate does have an alternative to the 30% tax on gross income. A special provision of the U.S. Tax Code, §871(d), pertaining only to real estate investment, allows the nonresident alien investor to elect to be taxed on the real property income as if he were engaged in a trade or business, and thereby be taxed at ordinary graduated rates on a rent income basis rather than on a gross income bases. 8/ The election applies to all real estate owned by the person making the election and cannot be made selectively for certain parcels of land (unless these parcels are insulated through the employment of a corporate ownership device).

6/ Telephone interview with Harold Oppenheimer, Chairman of Oppenheimer Industries agricultural management service. August 4, 1977.

7/ Telephone interviews with Steve Hannes, U.S. Dept. of Treasury, and with staff member of Office of International Operations, IRS, July 27, 1977.

8/ Foreign Direct Investment in the U.S., p. 254, op cit. There is no election which permits a trade or business to be treated as an investment.

Once the election to be treated as an ordinary business and taxed at graduated rates is made by the individual, it generally cannot be revoked unless the IRS consents to the revocation. In the absence of IRS consent allowing revocation of the election, the taxpayer must continually be treated under the ordinary domestic tax provisions. If the IRS would give its consent (a rare occurrence), the gross income taxation method would apply again. ^{9/}

The usual disadvantage in making the election concerns the treatment of capital gains upon sale or other disposition. Before the election to be treated as if engaging in a trade or business in the U.S. was made, the individual investor may not have been taxed by the U.S. on any capital gains. After the election is made, the usual tax on gains is imposed on the individual. The investor has the flexibility to choose either taxing method and must balance the advantage of being treated as a investor and possibly paying no U.S. tax on capital gains against the corresponding disadvantage of being taxed on gross income even if there is little or no income after all expenses are deducted.

The case of Kuwait.

The foreign investor from Kuwait (and from any other country without a tax treaty with the U.S.) has the option to be taxed as an investor at the 30% rate on gross income without any tax on capital gains or taxed as if engaged in business at regular U.S. rates on net income and capital gains. The election to be taxed as if engaged in business is not revocable

^{9/} Zagaris, Bruce, Investment by Non-Resident Aliens in U.S. Real Estate. University of Miami Law Review, Vol. 31, No. 3, Spring 1977, p. 581. However, treaties greatly reduce or eliminate the difficulties in revocation and can prove very advantageous to the taxpayer. See, e.g. Article 7 of the Germany-United States Tax Treaty, Vol. 16, U.S. Treaties 1882.

at will. Kuwait is unusual in that it does not impose any tax on an individual's income so U.S. taxation is the sole concern.

Taxation Under Treaty Provisions

One of the most important ways in which some treaties modify the tax provisions applicable to non-resident investors is the opportunity for the investor to switch yearly between treatment as an investor and treatment as one engaged in a U.S. trade or business. 10/

The case of West Germany

The U.S. Tax treaty with Germany provides the opportunity for a German investor in real estate to produce higher after-tax rates of return than a United States investor faced with an identical pre-tax rate of return. A German investor who has substantial expenses from operations, depreciation, and interest could elect to be treated as engaging in a U.S. trade or business and be taxed by the U.S. on income after deducting expenses. It is possible for him to claim losses after expenses which can be used to offset other U.S. income. Germany does not tax this income due to the tax treaty. The German investor who elects to be taxed on a net income basis has a good chance of reverting to be taxed as a passive investor in subsequent years. 11/ Thus the capital gain will be free from German tax as well as from the U.S. tax since Germany does not impose any

10/ In all tax treaty matters, the United States permits the foreign investor to choose between the treaty provisions and the United States Tax Code and select the most favorable alternative. Foreign Direct Investment in the U.S. op cit. p.157..

11/ IRS has not published a position on whether the real property election under the German Treaty can be revoked without the permission of the Commissioner of Internal Revenue Service. IRS has so ruled for the Canadian and French treaties (Rev. Rul. 77-174), which have language concerning the real property election similar to that of the German treaty.

tax on capital gains in non-business property if held for more than two years. ^{12/} Therefore, the German investor often possesses the advantage of escaping from all capital gains taxes and does not relinquish the privilege of being treated identically with U.S. taxpayers in other aspects.

All nonresident aliens, irrespective of country, are denied the opportunity available to many U.S. investors and businessmen to elect to be treated as a Small Business Corporation under Subchapter S of the U.S. Tax Code §§1371-1379. Stockholders in Subchapter S corporations are allowed to partake of several institutional advantages inherent in the corporate entity such as limited liability, free transferability of property interests, and centralization of management yet avoid the double taxation imposed on the income flowing to the usual corporate investor. The income from the Subchapter S corporation will be taxed not at the corporate level but only as a part of the shareholder's income (except in special situations specified in §1378 of the U.S. Tax Code). Although there are countervailing limitations which can offset Subchapter S advantages--e.g., a shareholder may not claim any deductions in excess of the amount contributed or loaned to the corporation so that tax shelter features are curtailed, the election of Subchapter S status has been popular.

For the domestic investor who purchases and rents out farmland the Subchapter S corporation is of limited advantage. If more than 20 percent of the corporate income is passive income, such as rent, the exemption from corporate taxes is not available.

^{12/} op cit. p. 95(4). Also Bureau of National Affairs Tax Management Portfolio: Business Opportunities in West Germany, p. A-54.

THE FOREIGN INVESTOR AS A CORPORATION

The foreign investor might employ two different types of corporate devices for real estate investment in the United States. The first type of corporation has its place of incorporation outside of the United States and derives income through a branch within the United States. The second type of corporation is incorporated in the United States and is a subsidiary of the foreign corporation. In both types, the foreign individual investor receives dividends and capital gains or losses on stockholdings attributable ultimately to U.S. real estate transactions. Kuwait provides an example of a country with no tax treaty with the United States and Germany represents a country with a U.S. tax treaty.

The case of Kuwait

Investment through a branch: One possibility for corporate ownership of U.S. real estate would be for a Kuwaiti corporation to establish a branch in the United States which functions solely as an investment vehicle. If the branch does not engage in a trade or business, but invests in real estate only, the choice of how the parent corporation wishes to be treated for tax purposes is available (§882(d) of the U.S. Tax Code) just as it was available for the individual investor to choose. If the corporation declines to elect to be treated as if it were engaging in a trade or business, gross rental income from U.S. will be subjected to the 30% withholding tax, but capital gains will not be taxed by the U.S. ^{13/}

^{13/} Direct Foreign Investment in the U.S. op. cit p. 97.

If the corporation elects to be treated as if engaging in a trade or business, net rental income will be taxed at ordinary U.S. tax rates. 14/ The corporation incurs no penalty due to its foreign incorporation unless more than 50% of the gross income of the entire corporation is effectively connected with the conduct of a trade or business in the United States. If more than 50% of the foreign corporation's gross income is so effectively connected, a 30% withholding tax is imposed on that share of dividends and interest paid by the foreign corporation which derive from earnings attributable to business in the U.S. This tax is on the shareholders receiving the dividends or on the creditors receiving the interest and is satisfied by the withholdings. It is separate from the tax imposed on the corporation.

Subsidiary incorporated in U.S. The other possibility for corporate ownership of U.S. real estate involves the use of a subsidiary incorporated in the United States owned by a Kuwaiti corporation. Ordinary U.S. corporate tax rates will apply to the subsidiary corporation, but 30% of the dividends from the subsidiary will be withheld for U.S. taxes. 15/ However both withholding taxes on dividends and capital gains taxes from a U.S. subsidiary of a foreign corporation can be avoided or minimized. Devices for this purpose include the sale of stock in the subsidiary by the parent corporation or liquidation of the subsidiary by the parent corporation. However, these methods have some risk, e.g., penalty taxes may be imposed if profits are accumulated in lieu of dividend payments. 16/

14/ A 20% tax is imposed on the first \$25,000 of net income, a 22% tax is imposed on the next \$25,000 and a 48% tax is imposed on income beyond \$50,000. A 30% maximum tax rate on long-term capital gains will be imposed. Foreign Direct Investment in the U.S. op cit. p. 15.

15/ Op cit. p. 23.

16/ Forry, John I., Planning Investments from Abroad in U.S. Real Estate. International Lawyer, Vol. 9, No. 2, 1975, pp. 245-247.

Whether investing through a branch or a subsidiary incorporated in the United States, the Kuwaiti investor needs to consider only U.S. taxes since Kuwait imposes no taxes on income derived outside its borders. 17/

The case of West Germany

Germany has a tax treaty with the United States which provides attractive opportunities for the German corporation creating a branch that invests in U.S. real estate, but is not considered to be engaging in a trade or business. 18/ The treaty also reduces the tax liabilities for the German corporation with a subsidiary incorporated in the United States.

Investment through a branch. A German corporation establishing a U.S. branch that possesses the characteristics of an investor in the United States is permitted to elect to be treated as if it had real property income that is effectively connected with a trade or business in the U.S. for any taxable year, just as a German individual investor is permitted an election yearly. 19/ The gross rentals received by the branch will be taxed at the 30% rate and capital gains will not be taxed in the U.S. if the election to be treated as a business is declined. If the election to be treated as a trade or business is made, net rental income and capital gains will be taxed at the ordinary U.S. corporate rates with a maximum of 48% on income and 30% on capital gains. 20/

17/ Foreign Direct Investment in the U.S. op cit. p. 226.

18/ United States--Federal Republic of Germany Income Tax Convention 5 U.S.T. 2768, TIAS No. 3133, as modified by Protocol, 16 U.S.T. 1875, TIAS No. 5920.

19/ Article 9 of the treaty and Article 7 of the Protocol.

20/ Foreign Direct Investment in the U.S. op cit., p. 254, 255.

Whether the election is made or not, there will be no taxation of annual corporate income from the U.S. branch by Germany. Dividends paid by the German parent corporation to German shareholders who are not U.S. residents will be exempt from U.S. taxes but subject to German taxes. 21/

Like the individual German investor, the German Corporation often has the advantage of escaping from all capital gains taxes while not relinquishing the privilege of being treated identically to U.S. corporations in other respects. However unlike the situation favorable to the individual German investor, Germany will impose its ordinary income tax on capital gains earned by the corporation if such gains are not taxed in the U.S. 22/ The German Corporation can claim ordinary and capital losses in the U.S. to offset domestic income earned in Germany even though profits from the U.S. branch would be exempt from German taxation

21/ U.S. Federal Republic of Germany Income Tax Convention, 5 U.S.T. 2768, TIAS No. 3133, Article 14.

22/ The German U.S. Treaty gives the United States the right to tax foreign real estate investment within its borders. The U.S. Treasury Model Tax Treaty has a similar provision (Commerce Clearing House Tax Treaties, May 17, 1977, p. 154). The general view is that the U.S. has primary but not exclusive right to tax foreign real estate investment within its borders. Therefore the investors' home county is free to tax income from real estate in the U.S. earned by the investor to the extent that the U.S. has imposed no tax. However a number of U.S. treaties, e.g. with Iceland, Japan, Norway contain a provision allowing only the situs country to tax real property income.

under the treaty. 23/

Subsidiary incorporated in the United States. Ordinary U.S. corporate tax rates apply to the income of the U.S. subsidiary. If a German company owns 25% or more of the voting shares of the U.S. corporation, the dividends from the subsidiary will be subject to a 15% rather a 30% U.S. withholding tax and will be exempt from all German taxation because of the treaty between Germany and U.S. 24/

The possibility for softening the impact of a graduated tax scale arises when a German corporation sets up a U.S. branch or U.S. subsidiary and also when a German individual invests in U.S. farmland which yields moderate net income. (Many other treaty countries provide similar situations). The income splitting possibilities for the German individual and for the corporate branch or subsidiary located in the U.S. occur because income earned in the U.S. is exempt from German taxation

23/ Foreign Direct Investment in the U.S. op cit. pp. 193-196. If losses from U.S. operations are claimed to offset German income then profits from U.S. operations in subsequent years are taxed by Germany up to the amount of U.S. losses claimed. Thus losses from U.S. operations can be used to defer taxes on German domestic income.

24/ Ibid. p. 166. If the German Cooperation owns less than 25 percent of the voting shares, the dividends are not exempt in Germany, but a tax credit for the 15% U.S. withholding tax is premitted. The United States may impose a 25% withholding tax if the German parent company reinvests in the dividends in its U.S. subsidiary. Foreign Direct Investment in the U.S., p. 60.

due to the tax treaty. ^{25/} Income from Germany is not combined with U.S. income so each country's taxing authority has a lower amount of income upon which to levy the income tax. Corporations serve as income splitting devices because they are treated as separate entities by both countries and therefore will be taxed separately.

Use of third country as tax shelter.

A foreign national of a country which has no treaty providing favored U.S. tax treatment may invest in the United States through a corporation of a third country which has such a treaty as well as low corporate and dividend taxes of its own with regard to U.S. real estate investment. The Netherland Antilles is one example of a third country which has attracted considerable capital from other countries for the purpose of investing in U.S. real estate. ^{26/} However this investment route is not simple or without risk. For example, if the foreign investor's contacts with the treaty country are minimal the advantages of the tax treaty may be denied. "Even though sophisticated investors from non-treaty countries who are willing to accept complexity and incur costs and risks can reduce the burden of the 30 percent U.S. withholding tax through a treaty between the United States and another country, there are many potential foreign investors who are not willing to do that. Some invest anyway and pay whatever U.S. taxes are imposed upon investments made without a treaty.

^{25/} Foreign Direct Investment in the U.S., op cit. p. 154.

^{26/} Forry, op cit., pp. 247-249, also Zagaris, Bruce, Investment of Non-Resident Aliens in U.S. Real Estate, op cit. Spring 1977, pp. 604-607.

Others just do not invest in the United States because of the 30 percent tax." 27/

The foreign government corporation.

Under §892 of the U.S. Internal Revenue Code, certain income of foreign governments within the United States is exempt from Federal income taxes. Corporations formed by foreign governments are tax exempt provided that U.S. income derives from passive investments and net income from the corporation does not accrue to the benefit of private persons. 28/ The extent of immunity from U.S. taxes by entities formed by foreign governments will be further clarified in new IRS guidelines expected in 1978.

SOME ECONOMIC IMPLICATIONS

Tax incentives for foreign acquisition of U.S. farmland

The question addressed in this section and elaborated in appendix 2 is the extent to which the special provisions for taxing foreign investment in real estate provide incentives foreign investment in farmland. The question is examined for the individual investor, and some tentative judgments are made for the corporate investor.

It is clear that the tax provisions offer some incentive for foreign investment in U.S. farmland. However the important question is how strong is this incentive? We estimate the incentive in terms of how much more the individual foreign investor who is not "effectively connected" with a U.S. trade or business is willing to pay for farmland because he is exempt from the capital gains tax.

27/ Foreign Direct Investment in the U.S., op cit. p. 69.

28/ Rev. Rul. 75-298, 1975-2 C.B. 290.

The calculations in appendix 2 clearly indicate that the incentive of the exemption from the capital gains tax will vary widely depending on the investors' anticipation of future appreciation of farmland prices, [the rate at which he discounts future appreciation of farmland prices], the rate at which he discounts future income, how long he plans to hold his farmland investment, and his expected taxable income in the year of sale.

Using plausible combinations of the above variables, estimates are provided in appendix 2. For a large investor whose capital gains would place him in a 60 percent tax bracket for ordinary U.S. income and a 30 percent effective bracket on capital gains, the incentive would range from about 12 to 15 percent if he expects farmland to appreciate at the rate of 8 percent per year. This calculation assumes a 10 percent discount rate on future income. The implication is that the foreign investor would be willing to pay 12 to 15 percent more for farmland as a result of the capital gains tax exemption. The incentive would be no more than 9 percent if he expects farmland value to appreciate at 6 percent per year and it could be as high as 24 percent if he expects farmland to appreciate at an average rate of 10 percent over a 20 year period, and expects to be in a high tax bracket.

For the investor from a non-treaty country the incentive of the capital gains tax exemption will generally be offset or more than offset by the disincentive of the 30 percent tax on annual gross income. Only for the large investor who expects a long time period in which farmland appreciates at a rate of 10 percent or more do the tax provisions provide an incentive to pay more for farmland. For example, with anticipated

land appreciation averaging 10 percent over a 10 year period, a large scale investor with a discount rate of 10 percent would pay about 5 percent more for farmland.

For the investor from a treaty nation the disincentive of the 30 percent gross income tax may not apply. Nevertheless the investor from a treaty nation will incur some disincentive which can be described but not quantified. To maintain this status as a passive investor, the foreign investor can not enter a share lease agreement which yields probably higher but more uncertain returns (see p. 5) His cash lease must be carefully drawn to avoid the status of "effectively connected" with a U.S. trade or business. While the lease can probably contain a hedge against inflation by indexing the cash rent or a general cost of living index, frequent changes in lease terms, lands leased, or tenants may disqualify the investor from the capital exemption. 29/

In summary, the incentive for investment in U.S. farmland that the tax regulations provide for the individual foreign investor vary with the expectations and circumstances of the investor. They can be substantial, especially in periods of sharply rising farmland prices and optimistic expectations of future farmland appreciation. However tax incentives are only one of the several reasons why citizens of other countries may

29/ Based on discussions with staff members of the Office of International Operations of IRS. An advance ruling on the eligibility of the leasing arrangement for "not being effectively connected" with a U.S. trade or business may be obtained from IRS. However IRS can not guarantee against future adverse rulings from future activities not evident in the leasing arrangements.

wish to purchase U.S. farmland. Other reasons are diversification of investments, the security of farmland investment, the stability of annual returns and the favorable price of U.S. farmland compared to farmland prices in Western Europe and Japan, reinforced in recent years by more favorable currency exchange rates for some foreign investors. An analysis of the incentives for farmland investment provided by the tax rules applicable to the foreign corporate investor is beyond the scope of this study. However some statements can be made.

The foreign corporation with a U.S. branch investing in real estate enjoys the same exemption from capital gains taxes as the individual private investor provided the branch is ruled to be "not effectively connected" with a U.S. trade or business. However in the case of West Germany, the advantage of exemption from the U.S. capital gains tax is offset by home country taxation. West Germany will tax capital gains of a branch of a German corporation but exempt the individual investor from such a tax. Kuwait will impose no taxes on U.S. earnings by a Kuwaiti Corporation or individual investor but since Kuwait is a non-treaty nation the incentive of exemption from capital gains taxes would be offset or diminished by a 30 percent tax on gross income. Thus the tax incentive of investing in farmland through a branch of a foreign corporation depends on tax provisions in the home country of the corporation and on whether a treaty exists between the U.S. and the home country. The attraction of the Netherland Antilles as a home country for corporations investing in U.S. real estate is a combination of tax treaty with the U.S. and no Netherland Antilles taxes on income from U.S. real estate.

Considerable tax incentives for investing in farmland are available to a U.S. incorporated subsidiary of a foreign corporation. While the subsidiary will be taxed at U.S. corporate rates, and dividends paid to

foreign investors are taxed at 30 percent, treaty provisions reduce tax on dividends to 5 or 15 percent. Moreover, taxes on dividends and capital gains can be avoided or minimized through sale of stock of the subsidiary by the parent corporation or liquidation of the subsidiary.

Land tenure and land use

Two noted land economists, Folke Dovring and Mason Gaffney have suggested that absentee ownership by non-resident aliens carries the potential of less intensive land use. ^{30/} This would lead to decreased employment opportunities for non-land factors of production, especially labor.

Reasoning from a priori grounds, both authors conclude that maximization of returns from land by an absentee owner, whose management is limited by time and distance, would lead to a smaller gross farm product and less use of labor than would result if the farm were run by an owner-operator who employs his own labor and attends full time to the farm enterprise.

Gaffney also gives empirical evidence. He cites the U.S. Census of Agriculture of 1900 which shows a systematic increase in size of farm as the distance between farm and owner increases. At the same time intensity of use declined with size of farm. He also lists other references the most recent of which is date 1953. We can only repeat Gaffney's remark that the vintage of these sources "testifies glowingly to the need for more recent information."

^{30/} Folke Dovring, Economic Impact of Foreign Investment in Real Estate, pp. 132-146, Mason Gaffney, Social and Economic Impacts of Foreign Investment in U.S. Land, pp. 147-163. Both in Foreign Investment in U.S. Real Estate, Economic Research Service, USDA, 1976.

The reasoning of Dovring and Gaffney assumes that land use is determined by the foreign landowner. As we have seen, the exemption from the capital gains tax of the foreign individual and corporate branch investor depends on not being effectively connected with the landed enterprise. This requires that the land be leased on a cash rent basis with decisions on how to farm the land being left to the tenant. Foreign investment in farmland is thus conducive to tenancy with a particular type of lease, a cash lease rather than a share lease in which returns and expenses are shared between landlord and tenant. 31/

A popular vehicle for foreign investment is the U.S. corporation. This form of investment offers possibilities of avoiding capital gains and reduced taxes on dividends by foreign shareholders from treaty nations without the strictures on active management by the owner. Thus foreign investment in agricultural land is conducive to corporate farm ownership. The corporation may lease land to tenants, or engage in farming directly by employing a full time manager or using a farm management company. In the latter two cases the locus of decision on intensity of land use is made by the foreign investor or his agent and the priori arguments of Dovring and Gaffney apply.

31/ The head of a leading firm engaged in sales of farmland to foreign investors related to the author that, when feasible, he recommends a net cash lease for his clients. However share leases and even custom farming are utilized in some cases. In Iowa, where share leases are predominant, 5 out of 8 known leasing arrangements on foreign owned farmland were cash leases. Currie, Craig, et al. Foreign Investment in Iowa Farmland in Foreign Investment in U.S. Real Estate, ERS, USDA, 1976.

What are the implications of tenant and corporate farming for land use? As best we can judge they are a tendency towards less intensive use, induced in part by larger farms. Let us briefly review the evidence.

The U.S. census of agriculture consistently shows both tenant operated farms, and farms operated by owners who rent a portion of the units they operate to be larger in land area than farms entirely owned by the operator. The largest farm size is for farms operated by managers.

Detailed studies of differences between owner-operated and tenant-operated farms in the cornbelt were made by Miller, Chryst and Ottoson, and by Hurlburt. ^{32/} In terms of efficiency, assuming market prices for all products and inputs including the farmer's own labor, no significant difference could be found between the tenure types. However, both studies report a larger average land area for tenant operated farms and a smaller gross product per acre. ^{33/}

^{32/} Miller, Walter G.; Chryst, Walter E.; and Ottoson, Howard W., Relative Efficiencies of Farm Tenure Classes in Intrafirm Resource Allocation. Research Bul. 461, Iowa State College, Nov. 1958. Hurlburt, Virgil L., Use of Farm Resources as Conditioned by Tenure Arrangements, Univ. of Neb., College of Agriculture, Research Bul. 215, April 1964.

^{33/} The results reported by Miller et al. and by Hurlburt are primarily for farms rented on crop shares but we believe the finding would be similar for farms rented solely for cash. It has been argued that share leasing is less conducive to intensive land use than owner operatorship or cash leasing because the share lease tenant furnishes all the labor and equipment but receives only a portion of the crop. Against this must be set the interest of the share-landlord in maximization of the gross product of the land and the share landlord's contribution towards production costs. Hurlburt states (p. 29, op cit) "Tenant and owner operator follow essentially the same farming practices for the same size of business."

Thus, under conditions of plentiful employment opportunities and mobility of labor the research does not show any advantage for a particular type of land tenure. If alternative employment opportunities are scarce, and labor can not easily move out of agriculture, the advantage lies with owner operations.

Finally we wish to stress research needs. Our assessment of the consequences for tenure and land use of foreign investment in farmland under U.S. tax laws is based on a priori reasoning combined with limited evidence, it is a hypothesis. We suggest investigations of the following questions for a firmer assessment and basis for policy decisions:

a) What is the extent and location of foreign ownership of land?

The answer to this issue will give some idea of the significance of the issue although it should not be the sole criterion.

b) Why do foreigners invest in U.S. farmland? How long do they plan to keep the land? and what are their expectations of annual returns and capital gains?

c) Under what type of ownership is the foreign investment held, individual, corporate, trust, etc.? Is the land operated by the owner or is it rented for cash or for shares of the product? Does the locus of land use decisions lie with the owner, his agent, or his tenant? Answers to these questions will indicate if the investment is eligible for various tax advantages if combined with country of residence of the owner.

d) Do farm sizes and farm operations owned by foreign investors differ significantly from those of U.S. owned farms in the same area?

Regrettably we can not turn to a ready list of foreign land investors; foreign ownership can take a variety of forms, many of which are not easily identified as foreign. The challenge lies in coming up with carefully structured and reasonably priced methods of finding answers in which some confidence can be placed.

Appendix 1.--U.S. and home country taxation of the individual and corporate investor from Kuwait and West Germany

| Country | Individual investor | Corporation with U.S. branch | Corporation with subsidiary incorporated in U.S. |
|-----------------|---|---|--|
| Kuwait | Investment considered by IRS a passive investment in active business $\frac{1}{}$ Taxed at U.S. rates A Thirty percent of gross income with- held $\frac{2}{}$ / estate and gift taxes | Investment considered by IRS a passive investment on active business $\frac{1}{}$ Net income $\frac{3}{}$ and capital gains $\frac{4}{}$ taxed at U.S. corporate rates $\frac{2}{}$ | Net income and capital gains $\frac{4}{}$ of subsidiary taxed at U.S. corporate rates Dividends subject to 30 percent withholding tax $\frac{1}{}$ |
| U.S. taxes | No capital gains tax, subject to estate and gift tax. or B Elect to be taxed as active busi- ness | No tax on capital gains No tax on divi- dends $\frac{5}{}$ or B Elect to be taxed as if active busi- ness | No tax on dividends $\frac{5}{}$ |
| Kuwait taxes | None | None | None |
| Germany | A or B as above but with poten- tially greater flexibility for reverting to A after choosing B | A or B as above but with potentially greater flexibility for reverting to A after choosing B | Same as Kuwait except that withholding tax on dividends paid to German stock- holders is 15 percent $\frac{1}{}$ |
| U.S. taxes | None | None | None |
| German Taxes | None $\frac{5}{}$ | Dividends taxed-Capital gains taxed if not taxed in U.S. Branch losses creditable against income of German parent company | None |

- $\frac{1}{}$ A U.S. trade or business or effectively connected with a U.S. trade or business, see pp. 5, 6 for discussion.
 $\frac{2}{}$ In determining gross income, local taxes, maintenance, and other expenses incidental to the investment are not deductible even if paid by a tenant.
 $\frac{3}{}$ Taxable income includes income stemming from U.S. based activities only.
 $\frac{4}{}$ Taxable capital gains can be avoided or minimized by exchange for like property. This device is also available to U.S. investors.
 $\frac{5}{}$ Property must be held more than two years to avoid German tax on capital gains.
 $\frac{6}{}$ In the case of Kuwait, dividends are tax exempt unless more than 50 percent of the gross income of the Corporation is effectively connected with a U.S. trade or business.
 $\frac{7}{}$ Foreign corporation may avoid or minimize capital gains taxes and withholding taxes on dividends through sale of stock in a U.S. subsidiary by a foreign corporation or liquidation of the subsidiary certain requirements are met. In this case Germany may tax capital gains when repatriated.

APPENDIX 2 - ESTIMATES OF TAX INCENTIVES FOR THE INDIVIDUAL
FOREIGN INVESTORThe Present Worth of Exemption from Tax on Capital Gains

The model used in this analysis assumes an investor who is security minded, interested in a relatively long term investment, well informed, and interested in productive land used for cash crops or ranching, 1/ The foreign investor is further assumed to examine historical data on farmland appreciation and rental income in the United States as a whole and in particular regions before making a judgment about the future. We have summarized such information in table 1 for the United States and four farming regions of potential interest to foreign investors. 2/ The

1/ Paulsen, Arnold, Goals and Characteristics of Foreign Purchasers of Farmland in the U.S. Also Currie, Craig et. al. Foreign Investment in Iowa Farmland, p. 124. Both in Foreign Investment in U.S. Real Estate, Economic Research Service, USDA 1976.

2/ Illinois and Mississippi for which land values are displayed in table 1 are among the 12 states which prohibit or have major limitations on foreign landownership. Illinois limits individual (but not corporate) foreign landownership to six years. Mississippi prohibits individual (but not corporate) alien landownership except by way of security for a debt. The data for Illinois and Mississippi are shown to provide a basis for anticipating returns for cash crop areas of the cornbelt and the Mississippi Delta, rather than for specific states. State prohibitions and limitations on alien landownership can be avoided by a variety of legal methods. They may however present some risk and expense, especially for the foreign investor who wishes to avail himself of the potential tax advantages available to foreign investors. For details see Foreign Direct Investment in the U.S. op cit. Vol. 8, Appendix M., Land Law.

Table 1.--Value per acre and annual rates of appreciation of farmland.

| Period | Farms and grazing land rented for cash | | | | |
|-------------|--|-----------------------------------|---------------------------------------|---------------------------------|-------------------------------|
| | All U.S. farm real estate | Central Kans. wheat ^{1/} | Central Ill. cash grain ^{2/} | Upper Miss. Delta ^{3/} | Montana grazing ^{4/} |
| Years | dollars | dollars | dollars | dollars | dollars |
| Spring 1977 | 456 | 402 | 2513 | 658 | 98 |
| Spring 1967 | 161 | 173 | 655 | 333 | 30 |
| Spring 1957 | 93 | 118 | 379 | 147 | 15 |
| | Compound annual rate of appreciation ^{5/} | | | | |
| | percent | percent | percent | percent | percent |
| 1967-1977 | 11.0 | 9.0 | 14.5 | 7.0 | 12.5 |
| 1957-1967 | 5.5 | 4.0 | 5.5 | 8.5 | 7.0 |
| 1957-1977 | 8.0 | 6.5 | 10.0 | 8.0 | 10.0 |

^{1/} Crop Reporting District 5, Central Kansas

^{2/} Crop Reporting District 6, Central Illinois. For restrictions on alien land ownership in Illinois, see appendix footnote 2.

^{3/} Crop Reporting District 1, Northwest Mississippi. For restriction on alien land ownership in Mississippi, see appendix footnote 2.

^{4/} State of Montana except for crop Reporting District 1, Northwest Montana, where value and rentals of grazing land are affected by recreational demand and not typical of the rest of the State.

^{5/} Rounded to the nearest half percent.

Sources: U.S. farm real estate. Farm Real Estate Market Developments, CD-81, July 1976 and Supplement No. 2, March 1977, Economic Research Service, USDA. Farmland rented for cash, annual surveys conducted by the Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture

land appreciation for 1967-1977 ranged from 7 to over 14 percent per year. The conservative investor is unlikely to count on such favorable rates in the long term future. He will look at earlier periods when real farm income and farmland appreciation were generally lower. Considering the 20 year period 1957 to 1977, the anticipated future rates of land appreciation of most foreign investors, is likely to be covered by a range of 6 to 10 percent.

The present worth of future appreciation of the land investment will depend on the investor's rate of discount. For the security-minded investor this rate should be at least as high as the rate at which he can borrow funds secured by a farm mortgage. We assume a discount rate of 10 percent, somewhat higher than the mid-1977 rate on farm mortgage loans made by life insurance companies.

If the foreign investor is not exempt from the capital gains tax, the present value of the expected capital gains will be reduced by the amount of the capital gains tax. The amount of the reduction will depend on the investor's income taxable by the U.S. in the year the land is sold. Taxable income could be quite high even if the foreign investor's sole U.S. based income is capital gains from farmland investment. For example, with an annual appreciation rate of 6 percent, capital gains, before land selling costs, from an investment of \$100,000 would be \$79,000 after 10 years, and \$100,000 is only a fraction of the investment required if the investor wants to purchase an adequate size farm unit in a cash grain or ranching area. Allowing for a 50 percent reduction of long term capital gains permitted for reporting such gains as taxable income, joint ownership by husband and wife, and the possibility of spreading the sale over a number of years, we estimate a tax rate on capital gains, ranging from 10 to 30 percent.

Given the foreign investors anticipation of future farmland appreciation, his rate of discount and effective tax rate on long-term capital gains, the calculation of the present (discounted) worth of the capital gains tax is presented in table 2. ^{3/} We show the present worth of the capital gains tax per \$100 invested assuming a discount rate of 10 percent. The figures in table 2 give the percent by which an investor will reduce the purchase price for land because of the capital gains tax. Conversely, the figures also show how many percent more the investor would be willing to pay for farmland if he were exempt from the capital gains tax.

Even when confined by the range of our assumptions the present worth of the capital gains tax shows a wide range. If the investor discounts future income at 10 percent and anticipates average annual land appreciation

^{3/} The present worth of the capital gains tax is given by:

$$\frac{T \times [0.95 \times 100 (1 + r)^n - 100]}{(1 + i)^n}$$

where T is the proportion of capital gains payable as tax.

0.95 is the proportion of sales proceeds retained by the seller after payment of sales commission and other sales costs.

r is the annual rate of land appreciation

i is the rate of discount

n is the number of years the investment is held

The numerator of the above expression gives the amount of capital gains tax due on \$ 100 invested. Since this tax is due n years after the investment is made, the denominator discounts the tax payment to an equivalent present value, as of the time the investment is made. The quotient is the present value of the capital gains tax per \$100 invested. It is the percentage by which the investor will reduce the purchase price he bids for the land because of the capital gains tax.

at 8 percent the incentive will range from about \$4 to \$15 per hundred dollars invested. The interpretation of this result is that under the assumptions made, the foreign investor would be willing pay 4 to 15 percent more for farmland property because of the exemption from capital gains. The incentive would be ^{no} more than 9 percent if the investor anticipates at 6 percent rate of land appreciation and could be as high as 24 percent if he expects farmland to appreciate at 10 percent over an investment period of 20 years.

Table 2. -- Present worth of the capital gains tax per \$100 invested in farmland, discounted at 10 percent. 1/

| Years land is held | <u>Average annual rate of appreciation in land values</u> | | |
|-----------------------|---|----------------|----------------|
| | 6 percent | 8 percent | 10 percent |
| | <u>dollars</u> | <u>dollars</u> | <u>dollars</u> |
| 10 | 2.7 - 8.1 | 4.1 - 12.2 | 5.6 - 16.9 |
| 15 | 3.1 - 9.2 | 4.8 - 14.5 | 7.1 - 21.3 |
| 20 | 3.0 - 9.1 | 5.1 - 15.3 | 8.0 - 24.0 |

1/ The low figure in each cell assumes an effective rate of Taxation of capital gain of 10 percent. The high figure assumes a 30 percent rate. See footnote 3 for method of calculation.

The Present Worth of Higher Taxation of Annual Rental Income

Offsetting the incentive of exemptions from capital gains is the disincentive of higher taxation of annual rental income. This disincentive does not apply to the investor from a treaty country who can choose to be taxed at U.S. rates on net income. It does apply to the investor from a non-treaty country. The latter must pay a 30 percent tax on gross income to obtain exemption from capital gains taxation.

Nevertheless the investor from a treaty nation who escapes the 30 percent gross income tax may incur some disincentives. These can be described but not quantified. To maintain this status as a passive investor eligible for the capital tax exemption he can not enter in a share lease agreement which would probably yield higher, but more variable net returns. Further the cash lease must be carefully drawn to maintain the investors passive status. Frequent changes of lease terms, tenants, or of land under lease is likely to disqualify the investor from the capital gains exemption.

The foreign investor from a non-treaty nation who wishes to avoid the capital gains tax must accept a 30 percent tax on annual gross income. The bottom line of table 3 gives the present worth of a 30 percent tax on gross income from 1967 to 1977 per \$100 invested. At a discount rate of 10 percent, the present worth of the 30 percent gross income tax paid by the investor from a non-treaty nation ranges from 11 to 15 percent of the amount invested. If the investor elects to be taxed on a net income basis, thereby foregoing the capital gains tax exemption, his annual taxes would be lower. They could well be zero since net income ranges from 4 to 7 percent of the amount invested while interest charges on a mortgage, which are deductible, are 9 to 10 percent.

Table 3. -- Average annual and present worth of gross and net cash rent and 30 percent tax of rent per \$100 invested in 4 farming areas 1967-1977. 1/

| Item | Central Kans. | Central Ill. | Upper Miss. Delta | Montana |
|------------------------------|---------------|--------------|-------------------|--------------|
| | wheat | cash grain | soybean-cotton | grazing land |
| | dollars | dollars | dollars | dollars |
| <u>Average annual</u> | | | | |
| gross rent | 7.3 | 7.7 | 8.4 | 6.8 |
| net rent 2/ | 4.5 | 5.0 | 6.7 | 4.1 |
| <u>Present worth of 3/</u> | | | | |
| gross rent | 42.5 | 44.4 | 49.5 | 37.3 |
| net rent | 26.0 | 28.7 | 39.8 | 22.2 |
| Thirty percent of gross rent | 12.8 | 13.3 | 14.9 | 11.2 |

1/ For location of farming areas see footnotes 1-4, table 1.

2/ Net cash income excluding depreciation but including some capital improvements and therefore close to net taxable income.

3/ Discounted at 10 percent

Sources: Gross rent from annual surveys of rented farms and western grazing land conducted by the Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture. Landowners costs extrapolated primarily from Cost and Returns on Commercial Farms, ERS, USDA, Stat. Bul. 297, 1961, Stat. Bul. 368, 1966, Ag. Info. Bul. 230 Revised Sept. 1963 and Farm Real Estate Taxes REI-15, ERS, USDA, 1976.

Comparing the 11 to 15 percent present worth of the gross income tax to the present worth of the capital gains tax (table 2), we conclude that for the individual investor in farmland from a non-treaty nation, the incentive of exemption from the capital gains tax is frequently neutralized by the 30 percent tax on gross income.

[The following information is referred to on p. 13:]

LANDOWNERSHIP: A STATUS OF FACTS

(By Gene Wunderlich*)

"What information exists today concerning the ownership of rural America is scattered and incomplete. . ."¹

"One of the reasons why we must ask who owns the land is that we simply don't know. . ."²

Implementation of particular land and land-use policies must rest on basic data concerning ownership. The reports from national censuses, federal agencies, commerce and industry, state land agencies, universities, local governments, public interest groups produce interesting fragments of data or inferential information. For determining who owns America, however, these sources are inadequate, partial, and inconsistent. In many situations and in many jurisdictions accurate information is just not available. Nationally the situation is chaotic.

As a policy issue, landownership rather quickly reduces to a problem of facts. Discourse on the appropriate measures for influencing a certain class of landowners, for example, has a hollow ring if the measurable existence of that class is in doubt. And widespread ownership of land as a policy issue has little substance when actual distribution is unknown or is so ambiguously defined that descriptions defy interpretation.

The facts problem consists not only of finding, collecting and reporting available data. The facts problem extends to the definition of concepts, interpretation of data, and methods for obtaining data easily and inexpensively. This paper summarizes currently available data on landownership in the United States, then examines concepts and meanings that affect interpretation of the data, and finally discusses systems by which more useful landownership data are, or might be, obtained.

Before the available facts are reviewed, however, there should be some agreement about the concern for landownership distribution from which need for facts arise.

The importance and uses of ownership data

Landownership is regarded as important not only because it determines the distribution of a nation's economy³ but because it is felt to influence the nation's political and social structure. The notion of equality of opportunity and political liberty is reflected in a frequently quoted passage from Jefferson's letter to Bishop Madison:

"... it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. The small landholders are the most precious part of the state."⁴

When many of America's precepts of freedom and equality were being forged during colonial and revolutionary times, the control of land was closely related to economic opportunity and political democracy.⁵ These precepts of equality have been extended to property generally as exemplified by the Sabre Foundation's recent appeal for:

*Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture, Washington, D.C.

¹ I appreciate review and criticism of an earlier draft by W. D. Anderson, Robert Boxley, Douglas Lewis, David Moyer, J. Peter DeBral and subsequent comments by Frank Reiss, Barlow Burke, Lloyd Fisher and Jerry Shields.

² Congressional Record, Vol. 117, Part 29 at 37649-50 (Oct. 27, 1971).

³ U.S. Senate Hearings Before the Subcommittee on Migratory Labor, 96 Cong., 1st Sess., (Part 2) Who Owns the Land, 299 (1971).

⁴ In 1975 land was valued at 23 percent of the national assets in current dollars. J. Kendrick with Lee and Lomask. The National Wealth of the United States by Major Sectors and Industry 5, 68 (1976). Kendrick shows net national wealth of \$5.7 trillion, of which \$1.3 trillion is land in current dollars. In constant (1958) dollars comparable data are \$2.8 trillion and \$4.7 trillion or 17 percent. See *infra* for discussion of land as a national rather than business asset.

⁵ T. Jefferson letter to Rev. James Madison, October 28, 1785 in Koch and Peden, The Life and Selected Writings of Jefferson, at 390 (1944).

⁶ See generally M. Harris, The Origin of the Land Tenure System in the United States (1953).

"... a nation characterized by a widespread distribution of genuine private property ownership, under the effective control and direction of responsible individual citizens."⁶

Property acquisition.—While agreeing on the principle of widespread property ownership, observers do not agree on the eventual consequences of unrestricted acquisition of private property. Lester Thurow describes the property system as a mechanism whereby chance and inheritance conspire toward increasing inequality:

"Once fortunes are created, they are husbanded, augmented, and passed on, not because of homo economicus desires to store up future consumption but because of desires for power within the family, economy or society."⁷

Property and equality.—The issues of equality of wealth and opportunity pertaining to landownership surfaced most recently in the administration of the Reclamation Act. The Congressional hearings on Federal Reclamation Policy contain the observation that:

"... in the case of the national reclamation program, there is literally no question but that one of its fundamental purposes and intents was to encourage the development of independent, small-business, family-sized farms—to settle people on the land or near it, and to enable them to own the land they farmed; to spread the benefit of subsidized irrigation water to just as many people—independent, bona fide farm families—as possible."⁸

Such policy statements clearly emphasize objectives relating to the distribution of holdings, the use of resources, and the distribution of benefits of public programs.

Property and the distribution of wealth.—Landownership is economically significant primarily as an aspect of the distribution of wealth. Land trades as a commodity; land stores value; land generates utility and income. Because land is a resource and because, in combination with other resources, land produces goods and services, the decisions of owners about its use are also of economic significance. The supply of land for a particular use will depend upon the price to the decisionmaker(s) holding the controlling right(s).

Property and political power.—Why from the standpoint of public policy do we need to know the facts of ownership? Policies concerned with the distribution of political power must take into account the influence of property, including that in land. Well-being and status of the members of society are affected by their ownership and control of resources. To the extent that decisions concerning land use are distributed through a system of private property rights among many owners, the availability of land for particular uses will depend on the impact of various incentives on the diverse owners. Landownership determines how an important segment of our national wealth is distributed.

*Facts of nominal ownership*⁹

Within certain broad limits, and subject to some interpretation to suit a political philosophy, widespread ownership as a political, social and economic goal is reasonably well-established in the United States. It is less clear how ownership is in fact distributed. In other words we know where we want to go. The problem is knowing where we are.

Land use categories.—Currently available facts permit only a gross characterization of the pattern of landownership in the United States. Table 1 shows the division of publicly and privately owned land into broad land use categories. From this table and some supplementary sources it is possible to represent the overall pattern of nominal ownership of land.

⁶ J. McClaughry, Expanded Ownership, Sabre Foundation at 2 (1972).

⁷ Lester Thurow, Generating Inequality, Mechanisms of Distribution in the U.S. Economy at 154 (1975).

⁸ Federal Reclamation Policy (Westlands Water District) Part 1 Will the Family Farm Survive in America? Joint Hearings Senate Select Committee on Small Business and Committee on Interior and Insular Affairs 94th Cong., 1st Sess. at 4-5 (1975).

⁹ Nominal ownership here means owner of record as distinguished from some hidden beneficial owner or owner of a particular, separated interest. It is intended to connote the owner of fee interest or principal bundle of rights. The definition of nominal owner is intended to reflect the common notions of ownership and, as discussed later, is necessarily ambiguous.

TABLE 1.—MAJOR CLASSES OF LAND, BY USE AND OWNERSHIP, UNITED STATES, 1977¹

[In million acres]

| Ownership ² | Cropland | Grassland pasture and range | Forest land ³ | Special use and other land | Total land area |
|---|----------|-----------------------------------|-----------------------------|----------------------------------|--------------------|
| Federal..... | 1 | 159 | 277 | 324 | 761 |
| State and other public ⁴ | 2 | 41 | 38 | 55 | 136 |
| Indian ⁵ | 2 | 33 | 13 | 3 | 51 |
| Private..... | 462 | 365 | 420 | 69 | 1,316 |
| Total..... | 467 | 598 | 748 | 451 | 2,264 |

¹ Source: T. Frey, Supplementary data for: "Major Uses of Land in the United States," NRED working paper No. 34, August 1977.

² Federal, State, local government, and Indian land acreages are approximations based on public records and reports. Private land is the rest of the land area in each major use.

³ Includes 30,000,000 acres of reserved forest.

⁴ Does not reflect land grants from public domain to State of Alaska.

⁵ Tribal and individually held trust lands. Does not include Federal lands used by Indians.

Federal lands.—The Federal government holds approximately one-third of the 2.3 billion acres of land in the United States. Data on quantity, use, and location of this land are available from administering agencies and are relatively abundant and current.¹⁰ Similarly the data on 51 million acres of Indian lands are available in some detail.¹¹ The data on 136 million acres of state and other lands are much less detailed and are adaptations of relatively old estimates.¹² In the United States 1.3 billion acres is privately owned but data about this privately owned land are extremely limited.¹³ Little more than the total area of private ownership is known and it is determined as a residual, by deducting all other owner classes from totals in each use category.

Owners and parcels.—It is possible, from a variety of sources, to compose a general picture of the number of owners, the number of parcels (ownership units) into which land is divided, and the area owned, in broad classes of use. In some cases the numbers must be expressed as ranges which mean simply "cannot reasonably be less than or more than the numbers shown."

Over 63 percent of the privately held land is in farms and ranches.¹⁴ Another 32 percent of privately owned land is forests.¹⁵

The number of farm and ranch landowners is in the range of 3 to 4 million.¹⁶ The number of forest land owners is less certain but an estimate of 4 million has been made¹⁷ and there may be some overlap with the farm and ranch owners. The Bureau of Census and Lewis¹⁸ estimate the number of agricul-

¹⁰ See, U.S. General Services Administration, Summary Report on Real Property Owned By the United States Throughout the World as of September 30, 1976. (1977) and Bureau of Land Management, U.S. Department of Interior, Public Land Statistics (1976). Most of the Federal land, 92 percent, is retained from original public domain. The remainder has been obtained by purchase and exchange.

¹¹ U.S. Bureau of Indian Affairs, Annual Report of Indian Land, As of June 30, 1975 at 3 (1975) also Public Land Statistics, *supra*.

¹² Supplemental data for: Frey, Major Uses of Land in the United States: Preliminary Estimates for 1974 (Aug. 1977). The most recent reasonably complete survey was undertaken by the Public Land Law Review Commission in 1968.

¹³ See, e.g., Economics Research Service, U.S. Department of Agriculture, Our Land and Water Resources, M.P. 1290 (May 1974). See also, Robert Boxley, Landownership Issues in Rural America, U.S. Dept. of Agriculture, ERS-655 (April 1977).

¹⁴ Frey, *Supra*. Of the agricultural land reported in the Census of Agriculture approximately 37 percent is rented land. Of the rented land 87 percent is rented from landowners who are not farm operators. Prepared from U.S. Bureau of Census, 1974 Census of Agriculture, Vol. 1, State Reports (1977). See also B. Johnson, Farmland Tenure Patterns in the United States, U.S. Dept. Agr'l. Econ. Report 244 (1974) and D. Moyer, Harris and Harmon, Land Tenure in the United States, Development and Status, U.S. Dept. of Agr'l. Infor. Bull. 338 (June 1969).

¹⁵ Frey, *id.*

¹⁶ 1974 Census of Agriculture, *id.* Range results from different assumptions of number of landlots per tenant.

¹⁷ U.S. Dept. of Agriculture, Interagency Committee. The Federal Role in the Conservation and Management of Private Non-industrial Forest Lands at it (August 1977). The "4 million or so" is an old estimate believed to substantially understate the current situation.

¹⁸ D. Lewis, Local Assessment Records as Information Sources (tentative title, publication forthcoming, 1978) and U.S. Bureau of Census, Assessed Valuations for Local General Property Taxation, Prelim. Report No. 2 at 85 (Nov. 1977).

tural, forestry, recreational and idle parcels to be 14-17 million. Thus, about 95 percent of private land is divided into 14-17 million parcels and is held by 7 to 8 million owners.

Housing.—While agriculture and forestry occupy most of the area of privately held land, housing accounts for most of the number of owners. There are at least 47 million, possibly as many as 58 million, owners of occupied housing units.¹⁹

The number of parcels may differ from the number of owners. More than one housing unit may be located on one parcel of land. Multiple occupancy of a single parcel reduces the estimate of parcels by 1 million.²⁰ On the other hand, vacancies which do not represent any more owners, do represent parcels. Vacancies, adjusted for multiple units would increase the parcel estimate by 3 million.²¹ The net number of parcels estimated from housing data, therefore, is 49 to 60 million. Other estimates place the number of residential parcels near the midpoint of that range, 55 million.²²

From Manvel and Frey it appears the quantity of land in residences, urban and rural is about 25 million acres.²³ To summarize on the midpoints of the above ranges it would appear that residences use 2 percent of the area of land in the United States, but represent 78 percent of the owners and 60 percent of the parcels.

Commercial, industrial, recreational, etc.—Private land for commercial, industrial, recreational, institutional and other purposes represent the remaining 3 percent of private land. Some owners of housing and of farm and ranch land are also holders of commercial and industrial land. On net, however, at least 6 to 11 million additional owners can be added to the total to account for non-farm/forestry partnerships and corporations.²⁴ Lewis, from Census of Government Sources, estimates the number of vacant, commercial, and industrial parcels to be 21 million.²⁵ The remaining area of private land is 44 million acres.

In sum, the 1.3 billion acres of private land in the U.S. are held in some 84-99 million parcels by 60-77 million owners as shown by land use in Table 2.

TABLE 2.—OWNERS, PARCELS, AND AREA OF PRIVATE LAND IN UNITED STATES (PRELIMINARY 1977)

[In millions]

| Item | Agricultural and Forestry | Housing | Other | Total |
|-----------------------|---------------------------|---------|-------|-------|
| Owner (number)..... | 7-8 | 47-58 | 6-11 | 60-77 |
| Parcels (number)..... | 14-17 | 49-60 | 21-22 | 84-99 |
| Area (acres)..... | 1,247 | 25 | 44 | 1,316 |

Federal management programs.—In terms of area, the largest single owner is the Federal government. Beneficial ownership of this Federal land is vested in all the people of the United States, but in the management of its domain the separate agencies of the Federal government are semi-autonomous and serve separate functional and regional clients. Thus, the Forest Service manages the National Forests. The Forest Service and the Bureau of Land Management manage

¹⁹ Owners are estimated as one-to-one with the number of owner-occupied units in 1976. The lower estimate of 47 million assumes no additional owners for vacant units, that is, owners are assumed to be counted in the owner-occupied units. The upper estimate, 47+11=58, assumes one owner for each of the estimated 11 million multiple rental structures. U.S. Bureau of Census, Annual Housing Survey, H-150-75A (1977), Table A-1.

²⁰ In 1975 cooperatives and condominiums number 988,000. *Id* at 1.

²¹ *Id.* at 1.

²² D. Lewis, *supra*.

²³ A. Manvel, Land Use in 106 Large Cities. Nat'l. Common Urban Problems Report No. 12, Wash., D.C., 1968 at 20 states that one-third of urban area is in residences. Frey *op cit* estimates urban areas at 34.9 million acres. Thus, urban areas would contain 12 million acres of residences. Rural residences are estimated to occupy 13 million acres of which 8 million are farms, farmsteads and farm roads, Frey, *supra* at 22.

²⁴ Projected number of businesses in 1975 based on Internal Revenue statistics of 1974. The 11 million is all non-farm business and 5 million are those who do not pay rent, presumably owning their assets including land. From U.S. Internal Revenue Service, Statistics of Income 1974, Business Income Tax Returns, Pub. 438 at 12, 127 (July 1977); —, Corporation Income Tax Returns at 10 (March 1977).

²⁵ Lewis, *supra*. See also U.S. Bureau of Census, Assessed Valuations for Local General Property Taxation, *supra*.

rangelands while the National Park Service serves tourism and other intensive land uses. Agencies of the Department of Interior administer \$538 million of the 762 million Federal acres. Agencies of the Department of Agriculture administer 188 million acres.²⁶

There are 51 million acres of land managed for the benefit of, it not always used by, Indians.²⁷ These lands are often included in statistics of Federally owned lands.

The remainder of the public lands are owned by States, 97 million acres, and other governments 39 million acres. It is not known how many of the 27 thousand possible jurisdictions²⁸ and agencies actually own land.

Informational deficiencies.—This simplified picture of landownership, while useful for overall perspective, should not be regarded as an adequate statistical pattern of ownership. The facts are taken or adapted from a variety of sources,²⁹ some of the data are extensions of ancient estimates, and many data depend upon reasoned rather than empirical relationships with other data. There has been no recent national survey of landownership.³⁰ The data in Table 1 and 2 are intended to show only general magnitudes, and possess not only estimation limitations but ambiguities in concept. Some of the sources of these conceptual ambiguities are discussed below.

Ownership: Ambiguities and some refinements in data and concepts

The ownership of land can be ambiguous on at least two counts: (1) specification of the owner, that is, principal holder of rights, and (2) identification of others holding separated interests in land other than those of the owner. To these conceptual ambiguities can be added, (3) the problem of valuation, for it is through price or some other expression of value that ownership is given weight and substance. These 3 topics respectively comprise the next 3 sections.

Owners, persons, ownership.—Who (or what) is an owner? The owner, as distinguished from all other holders of interests³¹ in the property object, land, here connotes the principal or focal owner of record—the apparent or nominal owner. As discussed in this section even this nominal owner may be hard to identify and count.

Ownership is a relation among persons with respect to an object—a parcel of land for purposes here.³² Owners may be persons, combinations of persons, or legal entities such as trusts and corporations. Land may be owned solely, jointly or severally with respect to any particular parcel. Several parcels may be owned by one owner. Some of these relationships are sketched in Chart 1. The chart illustrates how numbers of persons, owners, interests and parcels of land might be counted depending on which is observed. In the third situation, for example, a count of persons would show two persons for a total of 2 owners; a count of all the entities having an interest in the land would show two persons and one partnership for a total of 3 owners; a count of all the separable interests inland could show four ownership interests for a total of 4 owners.

The distribution of ownership can be affected, in one sense, by the composition of an "owner." Owners may consist of more than one person, most commonly hus-

²⁶ U.S. Bureau of Land Management, Dept. of Interior, Public Land Statistics, 1976, Table 9 at 11-13 (1976). The Bureau of Land Management administers 470 million acres.

²⁷ United States Bureau of Indian Affairs, Annual Report of Indian Land as of June 30 at 3 (1975).

²⁸ The 27,000 number includes states, counties, municipalities, and townships. There are 66,000 units of government with taxing power, some of which own land. U.S. Bureau of Census, Statistical Abstract of the United States: 1976, Table 419 at 257 (1976).

²⁹ For a thorough review of secondary data see D. Moyer and A. Daugherty, Land Ownership in the Northeast United States; A Sourcebook, USDA, Economic Research Service, April 1976.

³⁰ For report of a 1946 survey which was limited to farmland see: B. Inman and W. Fippin, Farm Land Ownership in the United States, USDA, Bur. Agr. Econ., Misc. Pub. No. 699, Dec. 1949.

³¹ "The word 'interest' is used in this Restatement both generally to include varying aggregates of rights, privileges, powers and immunities and distributively to mean any one of them." Quote out of Restatement of Property, Vol. 1, Chpt. 1, 3-26 (1936) by M. McDougal and Haber, Property Wealth and Land at 27 (1948).

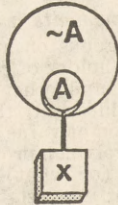
³² The significance of the parcel is that it is a unit of land over which there is uniformity of relationship such as time of acquisition, level of equity, proportion of interests, and conditional agreements. The parcel in a sense is the ownership equivalent to the physical measure of acre or hectare as a measure of land. For discussion of the land parcel see generally: H. Ziemann, Land Unit Identification. An Analysis, Nat'l. Research Council Canada P-PR46 (1976); D. Moyer and Kenneth Fisher, Land Parcel Identifiers for Information Systems, Am. Bar Fdn., Chicago 1973.

bands and wives. In studies of landownership in the Great Plains and Southeast, for example, over half of the owners owning about half of the land are husbands and wives.³³ Partnerships, estates, and corporations are legal entities also consisting of more than one person. At some indefinite point in combining persons into an ownership entity, the individual control, identity or interest of an individual becomes so small that it loses its relevance. For example, the shareholder in a large public corporation which owns land cannot be regarded as a landowner by virtue of his holding stock. From the data on husband/wife, partnerships, and other owner entities it seems safe to assume the number of persons who own an interest in land is at least twice the number of owners.

WHAT IS AN OWNER?

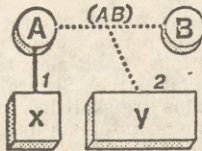
PEOPLE, OWNERS, INTERESTS, AND PARCELS

- 1 Person
- 1 Owner
- 1 Ownership interest
- 1 Parcel



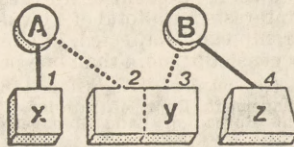
One person A, one owner A one parcel, undivided ownership interest. Person A (owner) shown in-relation to all others without such an interest (~A).

- 2 Persons
- 2 Owners
- 2 Ownership interests
- 2 Parcels



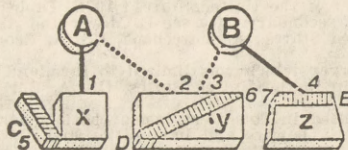
One person A, with one parcel x and two persons AB with a joint and undivided interest in one parcel y.

- 2 Persons
- 3 Owners
- 4 Ownership interests
- 3 Parcels



Two persons A and B each one parcel x and z. Two persons, A & B with tenancy in common in parcel y held severally.

- 5 or more persons
- 6 Owners
- 7 Ownership interests
- 3 Parcels



Same as above with mineral rights separation on x to C, an easement on y to D, zoning restriction on z to E.

³³ R. Strohbehn and Wunderlich, Land Ownership in the Great Plains States, 1956, U.S. Dept. of Agr., ARS Stat. Bull. 261 at 18 (1960) reports 59 percent of owners and 49 percent of land by husbands and wives; R. Strohbehn, Ownership of Rural Land in the Southeast, U.S. Dept. of Agr. ERS Ag. Econ. Rept. 46 at 4 (1963) reports 64 percent of owners and 53 percent of land by husbands and wives.

The number of owners, by itself, is only a partial indicator of the distribution of ownership. An owner, to be so defined, must own at least one parcel, but may own more than one parcel. Therefore the number of parcels must equal or exceed the number of owners. From the relation of owners to persons who comprise owners it seems the number of persons who have an interest in land may be as great or greater than the number of parcels. The number of persons involved in an ownership relationship with parcels of land in the U.S. cannot be determined from available information.

Parcels and size.—Parcels may vary in size and value so the distribution of ownership can be measured in at least two more dimensions. With number of parcels, area, and value data it is possible to measure the distribution of ownership respectively as the number of units of control or decision, span of area control, and the strength of economic assets.

Some of the ambiguity in ownership data, therefore, may be a matter of selecting the unit of observation or the unit of measure. Other ambiguities may result from the lack of uniformity of data sources. A sample of owners taken from tax records would differ from a sample of owners shown on the grantee index in the recorder's office. Both would differ from the names actually contained in the deeds, also found in the recorders office.

Public records

Conceptual problems aside, how does one identify owners of land in the sources available? A practical difficulty in assembling information on nominal ownership from public records, is that each county or town is a self-contained unit and additions across jurisdictional lines will result in an over count of numbers of owners and some owner characteristics unless there is additional information from outside the public records. While it is possible to estimate the number of owners and degree of concentration of landholding within a county or town from public records it is difficult to make such estimates at any higher level of aggregation such as a region or state without supplementary information.

Public records rarely provide more information about owners than name. Even the name inadequately represents all the persons or the proportion of interest involved in multi-person owners. Spelling is not uniform or often even accurate. Even if names were complete, accurate and uniformly spelled it would be difficult to classify owners without additional information about their characteristics. Public records, if standardized and fully exploited could greatly improve data on ownership, but are not now an adequate substitute for detailed surveys.

The conceptual and practical problems of obtaining facts about nominal ownership are compounded by the possibility of nominees, strawmen, trusts, corporate layering, output contracts, equitable interests and other devices to conceal beneficial ownership. The differences between nominal and beneficial ownership may not be great, but the doubts are sufficient to warrant specific studies on the methods for, and extent of, masking actual ownership.

Separation of rights and complexity

The distribution of control of, and returns from, land is determined not only by nominal ownership but by a bundle of interrelated rights, duties, privileges and obligations.³⁴ When the question who owns America's land is asked, then, it is important to know whether the questioner means nominal ownership or possession of a particular set of rights. Ownership can be distributed by fracturing the bundle of rights. The collection and use of data on separated rights assumes a rather unconventional, but none the less useful perspective of ownership.

Limited ownership

Rights to explore and drill for oil may be separated from surface rights through reservation, sale or lease. An easement for a pipeline may be granted. A property may be mortgaged. A mechanic lien may be created. Zoning restrictions may be imposed. Ownership may be splintered and distributed among a

³⁴The bundle of rights concept has been widely used to describe Anglo-American notions of property in land, e.g., R. Noyes, *The Institution of Property* (1936) or more generally W. Hohfeld, *Fundamental Legal Conceptions*, 1919 (Yale paperback 1964). Recent overviews of the property concept in economics are indebted directly and indirectly to the bundle of rights notion, e.g., G. Wunderlich and Gibson (ed.) *Perspectives of Property* (1971) and E. Furubotn and Pejovich, *Property Rights and Economic Theory: A Survey of Recent Literature*, 10 *Jour. of Econ. Lit.* 1137-62 (1972). An even more recent but somewhat obscure use of the bundle of rights notion of property is contained in B. Ackerman, *Private Property and the Constitution* at 39 (1977). S. Simpson, *Land Law and Registration* at 7 (1976) has preferred to call ownership a container for the bundle of rights, where the owner has the "right to give out the sticks."

wide variety of rights holders. Data on these separated interests can be determined for an individual parcel of land by examining tax and title records, ordinances of local jurisdictions, and the physical appearance of the property. However, aggregative statistics on separated rights cannot be obtained economically from public records in their current state.³⁵ Is there, then, any useful relationship between the bundle of rights idea and designs for land information systems?

The bundle of rights.—The bundle of rights concept is rich in logical qualities but unfortunately it is poor as a practical guide for collecting and assembling land data. Its shortcoming as a working format for a data system, however, does not diminish its usefulness as a conceptual model. The bundle of rights idea, rather than being discarded, might usefully reside on the reference shelf, there to serve as a framework for thinking about property. It can serve in the way Bonnen describes a metatheory of information.

"A metatheory for information system design may well be an impossible goal, but the logic of its necessity is valid and has the virtue of keeping in front of as designers of information the true complexity of the task."³⁶

While general systems for land information are being designed, special purpose records for various sets of rights may be created, developed and improved. Within the current state of the arts it is possible to vastly improve land record systems without awaiting the millennium of some complete land data bank which can measure simultaneously all the separable sets of rights. Facts on nominal ownership can be made more accessible through better tax or title³⁷ records and then the separable sets of rights can be developed as improvements in subsystems.

Mineral and water rights.—Some of the complexity of the right system, and the records which reflect that system, can be seen in the extensions and modifications of nominal ownership, such as mineral and water rights, easements, leases among private holders; and taxation and eminent domain in relation to government. For legal and administrative purposes many of these rights must be recorded. Documents and records for all of the rights, duties, immunities, and liabilities separated from or attached to a parcel of land do not exist at present. Mineral and water rights separation have a long history in the United States, and in many of the Western states these rights are recorded in separate books.³⁸ Airspace rights emerged in urban development since the early 1900s³⁹ and their separate status is acknowledged in public records. Solar rights are in the early stages of articulation in statutes⁴⁰ as a distinct right rather than an immunity from a nuisance.

Easements, etc.—Easements, restrictive covenants and conditions transferable development rights⁴¹ leases, condominiums are separations of interests in land which are often recorded. These separations of interests while adding to the complexity of documentation and records also attenuate the access and control associated with ownership.

Ownership may be further qualified by some possible event or passage of time. Documentation of conditional, revisionary and future interests is usually a part of deeds and other records of interest. However, some events, e.g., intestate

³⁵ See generally on state of land records and economy thereof: D. Moyer, Behrens and Wunderlich, *Land Title Recording in the United States: A Statistical Summary*, U.S. Dept. of Agr. and U.S. Dept. of Commerce, Special Studies No. 67 (March 1974); P. Maggs, *Automation of the Land Title System*, 22 Am. Univ. Law Rev. 369 (Winter 1973); G. Wunderlich, *Public Costs of Land Records*, 22 Am. Univ. Law Rev. 333 (Winter 1973) and J. Janczyk, *An Economic Analysis of the Land Title Systems for Transferring Real Property*, 6 Jour. of Legal Studies, 213 (Jan. 1977).

³⁶ J. Bonnen, *Improving Information on Agriculture and Rural Life*, 57 Am. Jour. Agr. Econ. 760 (Dec. 76).

³⁷ On tract indexing see Burke *infra* chpt. 4

³⁸ The United States is one of the few nations in the world wherein mineral rights can be private property. See M. Gillis, *Taxation, Mining and Public Ownership in Church* (ed.) *Non-Renewable Resource Taxation in the Western States*, Lincoln, Inst. Mono. 77-2 at 5 (1977). On water law see generally, W. Hutchins, Ellis and DeBraul, *Water Rights in the Nineteen Western States* (Vol. 1, 71) (Vol. 2, 74) (Vol. 3, 77).

³⁹ Daniel, *et al* *Valuation of Air Space*, Highway Research Board, Nat'l. Acad. Sci. Rep. 142 at 3 (1973). Also generally, R. Wright, *The Law of Airspace* (1968).

⁴⁰ 1977 New Mexico State, Chpt. 169, H.B. 294. Concern has been expressed by some legal analysis that the water rights model of law (e.g. New Mexico) is misplaced in solar law.

⁴¹ See, e.g., J. Rose (ed.) *The Transfer of Development Rights at 20* (1975), also D. Carmichael, *id* 38-51, sees the TDR as analogous to utilization of oil and gas fields. The friendly critics of TDR, for example, acknowledge some administrative and political problems but rarely trace the full implications of separating rights and developing a whole new system of markets, records, and enforcement to maintain them.

death, adverse possession and preemption of title, however, will influence the ownership structure even though there is no documentation.

In addition to the separation of interests contracted by private parties, the ownership of land is qualified by powers of government which have the effect of rights reserved or acquired by government. Some of these rights are created by the powers of taxation, regulation, eminent domain, and escheat.

Documentation for the rights of government to control land use such as those listed above do not appear in title or cadastral records. Nevertheless those sticks in the bundle of rights are held by government.

A complete analysis of the rights, duties, privileges and liabilities associated with a parcel of land is an extremely complex process and, because some interests are conditional, not entirely certain. Nominal ownership is only a first, although important, step in the answer to "Who owns America's land?"

Values

The complexity of the network of rights in land is only part of the ownership data problem, however. How does one weigh the relative importance, in a given circumstance, of each of the rights? The issue is not merely theoretical. Courts, for example, must decide the value of a "taking." The transferable development right may have a price. Real property tax administration in the United States requires the assessment of the value of land. Leases imply rents for the value of rights held by the tenant.

The market value of land is usually the exchange price of nominal ownership. That price will normally account for expected income and expenses such as rentals, consideration for easements, and taxes. The nominal owner usually functions as rent collector and taxpayer. Values of the individual rights, duties, liabilities, and privileges are not separately enumerated in the records of a land sale. Empirically, therefore, values of sticks in the bundle of rights are even more difficult to establish than values of nominal ownership.

The market price of land systematically understates the value of land by an amount equal to the capitalized value of real property taxes.

The market price of land is net of taxes.⁴² The full value of land should include both market price and capitalized value of taxes. The asset value of land, estimated by Kendrick in current dollars was \$1,285 billion in 1975.⁴³ That value should be raised by the capitalized value of \$43 billion of real property taxes,⁴⁴ which at 6 percent, for example, would be \$717 billion.

The market price placed on the nominal ownership of land is one particular value for land. It is a price that may, or may not, include a value for rights separated. For example, owners of mineral rights, who are not the nominal owners may have their interests separately assessed and taxed. On the other hand, some nominal owners may have their land assessed without regard to separated mineral rights.⁴⁵ An easement for buried cable may not affect the price of land and yet the easement might be valuable to the owner of the cable and its customers. A restrictive covenant which limits the use of land for a higher priced purpose has a value not one likely to appear in any land record.

The distribution of wealth and income will be affected not only by the distribution of nominal ownership, but by some separations of interests and by the values attached to those interests. Data which accurately reflect the distribution of interests and their values are not easily obtained. Costs must be incurred to determine not only the price of the resource but the identity of the holder, and value of specific rights in the resources. These information costs are part of a more general class of transaction costs.

⁴² See, e.g. E. Pasour, *The Capitalization of Real Property Taxes Levied on Farm Real Estate Taxes*, 57 *Am. Jour. of Agr. Econ.* 539-548 (Nov. 75). Pasour's study of farm real property is "consistent with the generally accepted hypothesis that changes in property taxes are largely capitalized into farm real estate values." *Id.* at 547. Pastor refers to a number of other studies that affirm the idea that real property prices are responsive to taxes.

⁴³ J. Kendrick *supra* at 68. Values in current dollars.

⁴⁴ Another national data deficiency is the distinction between real and personal property tax revenues. Census of Governments reports (as is reported to them) only revenue from all property (real and personal) taxes combined, e.g., U.S. Bureau of Census *Assessed Valuations for Local General Property Taxation GC77(P)2 at 1* (Nov. 77). For the same year as the Kendrick value of land (1975) we estimate that the value of real property revenue is \$43 billion of the \$54.3 billion total property revenue. The proportion of property tax that is based on real property, 79 percent, is estimated from the 1972 data in: Advisory Commission on Intergovernmental Relations, *The Property Tax in a Changing Environment at 267* (Mar. 74).

⁴⁵ J. Strasma, *Mining in Wisconsin*, U. of Wisconsin Economic Issues 12 at 2 (Aug. 77).

Transaction costs

Transaction costs⁴⁶ are the costs incurred by all public and private parties involved in the negotiation, transfer, and protection of property.⁴⁷ To the extent they are identifiable, transaction costs appear as reductions in the values attached to the (separable and marketable) sticks in the bundle of rights. However, not all of the costs of finding, evaluating, exchanging, and enforcing property are assignable to a particular interest or party. Inability to assign such costs results in a so-called externality problem.⁴⁸

Non-assignability of some transaction costs does not imply neutrality of economic effect. For example, the structure of title examination fees, or title assurance charges, fall unequally on different values of realty. Police protection of property may differ by geography or economic class and these affect differently the values of various rights. And land use regulations may not impact properties evenly.

The real estate industry incurs over \$8 billion of transaction costs many of which are spent to determine who owns the land.⁴⁹ And finding out is not limited to title examination. Market studies, location of sellers and buyers, site evaluation, tax appraisals, land use plans require various levels and types of ownership information. Unfortunately, much of the information about ownership is duplicative, partial, and time depreciable. Public information on landownership is concentrated in county, city and town offices, most of it in a form requiring additional processing to be useable.⁵⁰ Private information is not freely exchanged, indeed, is often cartelized and tightly restricted.

The distribution of benefits and costs cannot be completely identified through the market. Economic weighing of sticks in the bundle of rights is not accomplished entirely through the land price market. The non-neutrality of transaction costs—the cost of a functioning property system—result in a grey area of value surrounding the sticks in the bundle of rights and consequently ownership.

These transaction costs are a major challenge to research. Their identification and measurement, and the analysis of their effects on discussions and the distribution of wealth and income will contribute much to the success and improvement of the property system.

Ownership facts: Surveys and system

The limitations of available facts about landownership and some of the conceptual and empirical complications in obtaining better facts were examined above.⁵¹ From that examination it seems reasonable to ask how the quantity

⁴⁶ Crocker refers to these as ICP costs for informing, contracting and policing. Crocker, "On Air Pollution Control Instruments," 5 *Loyola of Los Angeles Law Review* 280 (1972). See also E. Furubotn and Pejovich, *The Economics of Property Rights* at 46 (1974) for discussion of costs of defining, exchanging, policing or enforcing property rights.

⁴⁷ For an example of one type of transaction costs—the conveyancing of residential real estate, see the carefully documented B. Burke, *American Conveyancing Patterns* (1978).

⁴⁸ The economic literature on property in the early 1960s and 70s, resting on the Coasian theorem of social cost, was concerned primarily with issues of externalities. The Demsetz extension toward a theory of property measured the value of a property interest against transaction costs to determine whether a benefit or cost could be assigned. Because the externality issue emphasized microeconomic efficiency issues, the broader issues of the costs of a whole property system were not addressed. R. Coase, *The Problem of Social Cost*, 3 *Jour. of Law and Economics* 1-44 (1960); H. Demsetz, *Toward a Theory of Property Rights*, 57 *Am. Econ. Rev.* 347 (1967); Furubotn and Pejovich, *supra*. For general treatment of the implications of the Coasian theorem see W. Samuels, *The Coase Theorem and the Study of Law and Economics* 14 *Nat. Res. Jour.* (Jan. 74). The cost of and returns from obtaining, organizing and distributing facts are the economics of the property system.

⁴⁹ U.S. Dept. of Commerce, 57:7 *Survey of Current Business* 44 (July 1977) gross national product represented by the real estate industry was \$180 billion in 1976. Of that amount \$8 billion was compensation to employees and the remainder was profit, interest, taxes, and capital consumption. The \$8 billion is therefore a conservative proxy for transactivity to which some portion of profit might be added. These transaction costs are over and above the productivity value of land; they might be assigned as costs of decision-making rather than land *per se*.

⁵⁰ See, e.g., the detailed study of real estate transaction costs in D. Moyer, *An Economic Analysis of the Land Title Record System* (1977) (Unpublished Ph.D. dissertation, University of Wisconsin library), also Burke, *supra*.

⁵¹ The presumption underlying the critique of ownership facts is that such facts would be useful for a better understanding of the functioning of the property system. For literature on the institution of property see: Furubotn and Pejovich *supra* and Wunderlich and Gibson *supra*. For slightly different approach see G. Wunderlich, *A Concept of Property*, *Agr. Econ. Res.*, Vol. 21, No. 1, Jan. 1969 and G. Wunderlich, *Property Rights and Information*, 412 *The Annals* 80 (Mar. 74). See also B. Schwartz, *A Commentary of the Constitution of the United States, Part II, Rights of Property* (1965).

and quality of data might be improved. Improvement can be expressed in terms of particular needs, some of which extend beyond research or a general enhancement of the knowledge base. It is useful, following Edgar Dunn,⁵² to group these needs, and the data to meet the needs, into two broad categories: intelligence and statistical. Intelligence data connote a complete profile of information on every relevant unit in a population under observation. Statistical data connote descriptive parameters about the population under observation without regard to an individual unit. Statistical data might be from a sample, intelligence data are not.

Intelligence data.—Intelligence data on landownership require such specific information as the owner's identity, the particular parcel of land, its characteristics, nature of legal interest or value. Such information is needed for transferring title, administering a property tax, investigating a source of income, granting a building permit, or reviewing a zoning. Users of such data would include, for example, title attorneys, building inspectors, and program administrators.

Statistical data.—Statistical data on landownership would be reported in classes, categories, or measures without regard to specific people, parcels or places. Such information may be used for research, background for legislation, planning, policy and program development and evaluation. Users of such data would include for example, statisticians, analysts, planners, legislators and citizens. The distinction between intelligence and statistical data is not always sharp. Statistical information for example may require the owner's identity in order to classify, assemble and report on categories of owners, land or tenure. Often the differences between intelligence and statistical data is not the source but the final report, i.e., use of data rather than its collection.

These two categories of data, and the uses to which they are put, may call for different organizations and procedures to obtain, store and report or retrieve the data. Intelligence data require some continuous or periodic process such as inspection, regulation, conveyance, or recording that often generates information as a by product. Statistical data may be obtained by special surveys, perhaps on a one time basis, independently of any function other than data collection.

The distinct requirements of intelligence and statistical data are a challenge to an information systems designer hoping to serve both classes of needs. Such multiple purpose information systems have been suggested as a proper way to serve many of the needs of local, state and Federal governments as well as the needs of private traders, brokers, merchants, financiers, and users of land. The American Bar Association's Committee for Improvement of Land Data, under the acronym CULDATA (Comprehensive Uniform Land Data) has proposed and continues to encourage the development of such systems.⁵³ Local governments, regional organizations and professional groups⁵⁴ are designing land data systems that can also serve several intelligence needs as well as provide statistical data periodically or on call.

Current improvements.—Two federal enactments currently contain authorization for the improvement of land records. Section 4(d) of the International Investment Survey Act of 1976,⁵⁵ specifically authorizes study of feasibility of multiple purpose data systems to acquire land ownership information both foreign and domestic; Title 13 of the Real Estate Settlement Procedures Act of 1974,⁵⁶ seeks to improve the recording procedures and related land records. The Uniform Simplification of Land Transfers Act⁵⁷ contains suggestions for tract indexing to improve the referencing system of land records. The North American Institute for the Modernization of Land Records,⁵⁸ a non-profit corporation

⁵² E. Dunn, *Social Information Processing and Statistical Systems—Change and Reform* (1974).

⁵³ *Modernization of Local Record Keeping of Land Title Information*. Report of Committee on Improvement and Modernization of Land Records in "Real Property, Probate and Trust Journal" Vol. 11.343 (1976) at 343-351.

⁵⁴ Examples of each are respectively, Forsyth County, North Carolina Land Information System, Computer Assisted Mapping and Records Activities System, sponsored by American Public Works Association, test project Memphis, Tennessee (CAMRAS) and Land Registration and Information Service (LRIS) in the Maritime Provinces, Canada. Another experiment such as Regional Mapping and Land Records (RMLR) in Norristown, Pennsylvania is supported by utilities.

⁵⁵ 22 USC 3103.

⁵⁶ 12 USC 2611, 12 USC 2612.

⁵⁷ National Conference of Commissioners on Uniform State Laws, *Uniform Simplification of Land Transfers Act* (July-Aug. 1976).

⁵⁸ North American Institute for Modernization of Land Data Systems, *Proceedings of Conference on Modernization of Land Data Systems: A Multiple Purpose Approach* (1975.)

representing professional groups and government agencies, supports the design, evaluation and development of multiple purpose land data systems.

Awareness of needs

The awareness of needs for better land information and the commitment to design systems for improved information based on the multi-purpose concept continues to grow. However, secondary sources such as tax and title records in county offices, while potentially useful are now neither coordinated or sufficiently detailed to adequately portray landownership. The detail of owners, ownership, and the land owned in the United States is best obtained by direct survey of current owners. Such a direct survey has been designed by the Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture, and is being implemented in 1978. This national survey of non-Federal landownership will provide data on characteristics of owners, method of acquisition, and land use. Ownership will be linked to physical features such as soil type, structures, improvements, cover, and current use. This survey will provide a core of data on nominal ownership of land in the United States. Beginning with the core data on nominal ownership it will be possible to build a more refined picture of the separated interests in land.

If ownership information can be obtained from files and records used to serve regular functions such as title transfer and taxation, it is possible that no special system or surveys need be created. In their current form, however, title records are not suitable for aggregating data. Tax records, although offering more potential than title records for aggregating data, often do not contain sufficient information. Tax exempt properties, for example, may be omitted. In some jurisdictions, not all assessment data are accessible. Lack of uniformity in title and tax records even within states is an obstacle to obtaining ownership statistics on anything other than a local basis. Finally, tax and title records often do not carry detailed information on owners such as occupation, income status, or organizational form. Although much could be done to improve the statistics of ownership from public records it would still be necessary to rely on special surveys to obtain detailed information.

Statistical surveys will provide aggregative information for broad policies. But one time, special purpose surveys are expensive in the sense that costs cannot be spread over many functions. And, also, sample surveys cannot serve the needs for information on particular owners or particular units of land.

Combinations of surveys and public land records may yield data with only a minimal reporting burden. However, the mixing of public record data with confidential survey data, unless scrupulously administered, could result in unintentional, perhaps illegal, disclosures. Therein lies another ownership information issue: Should the ownership of land be secret? A preliminary examination revealed no constitutional or economic reasons for allowing land holdings to remain secret.⁵⁰ However, there are public agencies, private plants and listings, and individual wealthholders whose interests might be affected by complete disclosure of ownership information. They might resist improved surveys, systems or combinations often on the grounds of privacy, even of improved access to information in public records.

The issue of disclosure goes much beyond the collection, assembly and reporting of ownership data. Does the right to own property carry a correlative obligation to report that fact publicly? What is the need to know and for what purposes is the information to be used? If the intention of revealing beneficial ownership is to be regulate or control specified classes of owners or ownership arrangements, a registration or reporting requirement may be needed.

The concern for ownership as a policy issue, and its implied threat of regulation or control, is likely to increase the desire of some owners to shelter or obscure information about their holding. If better data are to be obtained, therefore, it becomes increasingly important to design information systems to acquire only needed data and to enlist the cooperation of the owners of interests in land as well as those who record, tax, and protect those interests.

The use of America's land will be strongly influenced by a large number of decisionmakers who own outright, or have a significant interest in, the land.

⁵⁰ Seminar on Secrecy and Disclosure of Wealth, sponsored by Farm Foundation, May 18-19, 1977. See especially: D. Whitman, Secrecy and Real Property and Lester Thurow, Economic Effects of Secrecy in Burke and Wunderlich (ed.) Secrecy and Disclosure of Wealth in Land.

Policies concerned with land use must take into account policies affecting land-ownership. But planner Frank Popper reminds us that ownership is important not only for its possible effect on use but on the distribution of power and wealth:

"The long-range consequences of land ownership are staggering, not only from a political viewpoint but from the standpoint of how land is controlled for ulterior motives, by whom, and how it might or might not be developed."

It's not that information on land ownership doesn't exist. It does, and it's on file in every assessor's and recorder's office in every city and county courthouse in America. But few individuals have bothered to collect and analyze it.⁶⁰

The distribution of wealth and income, and the flow of benefits and costs from many public programs will be influenced by the pattern of landownership. Underlying almost any of the issues of landownership, however, is a factual base. Policies and programs which seek to implement the policies will be no better than the facts on which they rest.

[From Business Week, March 27, 1978]

LAND INVESTMENTS

FOREIGN INVESTORS FLOCK TO U.S. FARMLANDS

Further investment markets have waned, but a cheap dollar, political instability overseas, and a long record of rising prices have made U.S. farmland the single hottest area for foreign investors. Although much of the foreign money is hard to trace. European Investment Research Center, a private consulting firm based in Brussels, estimates that foreigners invested some \$800 million in farmland last year. That would come to a startling 30% of all foreign direct investment in the U.S., according to the Commerce Dept. "What we are witnessing," says Kenneth R. Krause, a senior economist for the Agriculture Dept., "is the biggest, continuing wave of investment in American farmland since the turn of the century."

Nor does it look as if the trend is slowing down. Real estate advisers and brokers report that the buying interest, mostly from Western Europe but also from Latin America and Japan, is on the increase. The Arab oil states have apparently not yet been big investors. And marketing activity aimed at the potential investors is heating up. For example, Amrex, Inc., a San Francisco-based real estate firm, is holding a meeting in Zurich next week to introduce buyers to sellers who represent as much as \$750 million worth of U.S. farmland. Some observers warn that the industry is attracting its share of hucksterism as well. West German newspapers are being flooded with real estate advertisements, apparently from small U.S. brokers, that often offer only an anonymous post office box number for an address.

Predictably enough, U.S. farmers are irate, and the Agriculture Dept. and most recently, Congress, are growing increasingly concerned as well. Despite some recent softening, farmland prices are dramatically higher than they were a few years ago, and critics blame foreigners for much of the speculation. Also, many foreigners can take special tax breaks at home or through Caribbean subsidiaries that give them a significant advantage over domestic investors. Since last year's \$24 billion in agricultural exports represented a major component of U.S. trade, Washington is especially worried about increasing foreign control of U.S. farmland.

What also concerns the Agriculture Dept., as well as local farmers, is that the identity of the foreign purchasers is seldom known. Brokers and bankers steadfastly refuse to divulge names, although they claim that most investors are wealthy individuals rather than corporations or investment groups. "We simply cannot get a handle on farmland," says a Commerce Dept. official, "since ownership is disguised through the extensive use of trusts, partnerships, and corporations headquartered offshore."

⁶⁰ Frank Popper, "we've got to dig deeper into who owns our land," in *Planning*, Am. Soc. Plng. Off., Oct. 1976. See also, D. Moyer, *Problems of Land Ownership Data and Related Land Records* in *Institute for Environmental Studies Data Needs and Data Gathering for Areas of Critical Environmental Concern* at 147 (1975). See generally also, L. Harris (ed.) *The Good Earth of America* (1974); W. Reilly (ed.) *The Use of Land: A Citizens Policy Guide to Urban Growth* (1973); G. Bowman (ed.) *Land Use: Issues and Research Needs for Planning, Policy and Allocation* (1976); G. Bjork, "Property Rights, Scarcity, and Economic Rent: Some Considerations in Land Use Planning" in *Sorenson and Stoevener, Economic Issues in Land Use Planning*, Oregon State Exp. Sta. Report 469 (1977); and *Boxley supra*.

SAFE INVESTMENT

Angry farmers and their allies in state capitals are trying to crack down on foreign investors by seeking registration of ultimate ownership and outright restrictions on foreign purchases. Kansas and Missouri have recently undertaken investigations of foreign investments. And the General Accounting Office is just beginning what will be the most sweeping probe. At the request of the Senate Agriculture Committee, the GAO will try to determine the extent and locations of foreign investment in farmland. "Once we get answers to these questions," says one committee aide, "we will decide what, if anything, we shall do about the trend."

INVESTMENT FIGURES OF THE WEEK

Long-term interest rates fell somewhat, and short rates were stable, as the money supply dropped and the dollar strengthened. Stock prices were generally higher, with broader-based averages doing particularly well.

| | Latest week | Previous week | Year ago |
|--|-------------|---------------|----------|
| Money market rates (percent): | | | |
| Federal funds..... | 6.75 | 6.72 | 4.61 |
| New 3-mo Treasury bills..... | 6.30 | 6.32 | 4.55 |
| 3-mo commercial paper..... | 6.75 | 6.75 | 4.80 |
| Stocks: | | | |
| Average price/earnings ratio* (1,500 stocks)..... | 8.80 | 8.63 | 10.42 |
| Average dividend yield* (1,500 stocks) (percent)..... | 4.72 | 4.79 | 3.98 |
| Dow Jones industrial average..... | 762.56 | 746.79 | 965.01 |
| Standard & Poor's 500 stock index..... | 89.35 | 87.36 | 101.98 |
| Value Line composite index..... | 92.69 | 90.51 | 92.85 |
| Lipper growth mutual fund index..... | 80.69 | 78.82 | 83.05 |
| Average daily NYSE volume (millions)..... | 23.9 | 19.7 | 20.0 |
| NYSE blocks (10,000 shares and over)..... | 295 | 227 | 219 |
| Bonds (percent) | | | |
| New Aaa utility bonds*..... | 8.60 | 8.70 | 8.30 |
| New Baa utility bonds*..... | 9.25 | 9.35 | 9.00 |
| New Aa industrial bonds*..... | 8.50 | 8.60 | 8.10 |
| U.S. Government bonds (8½ percent issue of 1994-99)..... | 8.14 | 6.18 | 7.73 |
| Bond Buyer municipal bond index (20 bonds)..... | 5.58 | 5.63 | 5.92 |

Note: All figures are as of Tuesday, Mar. 14—except those marked*, which are from Friday, Mar. 10 and the Bond Buyer index from Thursday, Mar. 9, 1978.

Data: Salomon Bros., Standard & Poor's Compustat Services, Inc., Lipper Analytical Services Inc.

The weakening dollar is only the latest of a number of reasons that foreigners are so attracted to farmland. Political instability in their home countries is pushing foreigners into U.S. investments. With stock and bond prices both down, real estate in general, and farmland in particular, is drawing foreign money. Many Europeans also believe that agricultural land is guaranteed to retain its value because they anticipate worldwide food shortages in the future. "American agriculture is nothing less than the safest investment around," says Ernst-Ludwig von Bülow, who specializes in U.S. real estate for a Hamburg-based investment fund, Lehndorff Vermögensverwaltung.

Present economic trends in U.S. agriculture have further whetted the foreigners' appetites. Land prices in recent months have fallen or softened just about everywhere, including the corn belt, but more noticeably in the Great Plains. As a result, the current annual rate of growth in farmland values has slowed to 5% or less from 17% a year ago. The slippage is due primarily to the continuing cost-price squeeze on American farmers, which is being worsened by depressed farm prices.

SUNBELT PURCHASES

But if land prices begin soaring again, it still makes sense for the Europeans to buy in, say real estate advisers. Farmland prices in Western Europe are roughly double the price of the same quality land in the U.S.—\$3,000 an acre for prime farmland in West Germany and France vs. \$1,500 an acre in the U.S. last year, according to Chicago's Northern Trust Co., which manages about 400 farms in 35 states.

While it is difficult to pinpoint where foreigners are buying most heavily, Jules A. Horn, director of the European Investment Research Center, says the so-called Sunbelt, which runs across the bottom third of the U.S., is attracting

most of the money. He considers prices ranging between \$600 to \$1,000 an acre to be particularly attractive to Europeans. Until the present sag in the land price boom, Horn says, Europeans were far more interested in investing in California and the upper Midwest states such as Illinois and Wisconsin.

Hamburg-based Lehdorff has kept its investors out of the nation's richest farmland states, such as Iowa and Indiana, preferring to concentrate investments in Wisconsin, Missouri, and Arkansas. Singled out by von Bülow: farmland near the resort area of Lake Geneva, Wis., 60 miles from Chicago. "Lake Geneva is gradually expanding," he says, "which means that we may eventually be able to sell the land for construction." Jeffery White, head of Iowa Agronomics Inc., a farm management firm, adds that prices for Southern farmland are down drastically this year, and bargain hunters could come up with good buys in such states as Arkansas and Texas.

Meantime, real estate firms report that the growth in foreign business is providing a major fillip to their sales. Oppenheimer Industries Inc., a Kansas City (Mo.)-based farm brokerage and management firm that operates a rural land portfolio comprising roughly 1 million acres of farm and ranch land, for example, reports that sales to foreign investors more than doubled in the past few years and now account for one-third of its annual volume. A typical Oppenheimer deal recently involved the purchase of a 1,215-acre soybean and corn farm for nearly \$1 million by a Western European. Two weeks ago, the company helped an Italian investor buy a 315-acre citrus grove for \$1.4 million. San Francisco's Amrex says that of the approximately \$100 million in agricultural deals that it arranged last year, half were with foreigners.

UNFAIR COMPETITION

What especially worries U.S. officials is the possible widespread use of foreign tax havens by farmland investors. Lionel S. Steinberg, director and former president of the California State Board of Food & Agriculture, finds it "totally objectionable" for foreign investors to buy California land through corporations headquartered in the Dutch Antilles, for example, which require payment of little or no income taxes. "This is unfair competition and a threat to bona fide family farming in the U.S.," says Steinberg, noting that tax-privileged foreign investments make it difficult for prospective local buyers to compete.

NOTHING SINISTER

Understandably, brokerage firms, banks, and other intermediaries for foreigners are defensive about their activities. "Much of the paranoia concerning absentee ownership is due to poor communications," declares Reed J. Oppenheimer, vice-president for Oppenheimer's international activities. "These people are not the suspicious cloak-and-dagger people they are made out to be," he says.

Nevertheless, Oppenheimer concedes that foreigners "often purchase through a foreign corporate entity," which he adds, is designed "to facilitate tax considerations in their own countries and here." But he argues vehemently that they are not driving up land prices, except possibly in what he describes as "a few isolated cases." "The well-heeled American farmers who can afford it are the ones who are driving up land prices," he maintains. And, Oppenheimer adds, only 3% of all farmland turns over each year.

What bothers dealers and managers of U.S. farmland is the new breed of promoters. "They are difficult to identify, but they are all over Europe huckstering farmland. We assume most of them are American brokers trying to cash in on what they perceive to be a booming market in Europe," says the vice-president of a large Midwestern bank, who prefers not to be identified. "We worry about them because they claim buyers can make 10%, 15%, or more in net returns on their farm investments, and that is just ridiculous."

"SOMETHING SOLID"

The bank official's point explains why large, U.S. institutional investors and corporations have generally shied away from investing in farmland on anything but a very modest scale. Bankers and agricultural economists generally agree that, depending on crops, productivity, and location, net cash returns on professionally managed farms rarely exceed 4% and are usually closer to 2%, without taking into account debt servicing and taxes. "Investors seeking fast or high gains should definitely not be in agriculture," cautions a vice-president for one of the big Chicago banks.

The European investors and their American intermediaries would be far happier if all the fuss died down. "The trend toward land investments by Europeans stems from the need for a safety factor, like gold," argues Horn of the European Investment Research Center. "These investments are not made for speculation, but forever." However, the controversy seems destined to continue simmering for the foreseeable future. Warns a staffer on the Senate Agriculture Committee, which will review the GAO's probe: "We have no intention of dropping this issue until all the facts are in."

[From the National Journal, Apr. 29, 1978]

MAKE WAY—THE FOREIGN INVESTORS ARE COMING

(By Robert J. Samuelson)

Not since the railroad boom days of the late 19th century have foreign interests been displaying such enthusiasm for investing their money here. There hasn't been anything like it for more than half a century.

Not since the era of railroad building in the late 19th century have foreigners displayed such enthusiasm for investing in the United States. From plush Manhattan condominiums to neighborhood shopping centers to major chemical companies, foreigners are buying record amounts of American property and business.

That's a dramatic reversal. Until only a few years ago, foreign private investment in the United States focused almost exclusively on the stock market, where foreigners held an estimated \$45 billion worth of securities at the end of 1977. Foreign interest in stocks hasn't evaporated—indeed, it's been frequently cited as a critical factor in the recent surge of stock prices—but it's now rivaled by the rising volume of direct investments: purchases of U.S. companies and real estate or, in a few cases, the construction of plants in the United States.

The new investment boom has created a countertide to the massive expansion of American multinational companies abroad in the past 20 years. Although U.S. foreign direct investment, totaling \$137 billion at the end of 1976, still dwarfs foreign investment here, non-American direct investment is now growing far more rapidly. Between 1973 and 1976, it jumped 50 per cent, from \$20.5 billion to \$30.2 billion.

So far, the new inflow of funds has provoked little nationalistic backlash. In part, foreigners have concealed their identities, particularly in real estate purchases. In part, major direct investments by oil countries, which might arouse controversy, have been virtually non-existent. Instead, oil countries have channeled most of their funds into U.S. Treasury securities (\$14.5 billion at the end of 1977), stocks and bonds (\$10.6 billion) or interest-bearing deposits (\$6.7 billion). The remaining \$10.7 billion of oil funds is thought to represent prepayment for exports (including military) and repayment of outstanding debts.

Mostly, American officials continue to welcome foreign investment—indeed, at the state level, to compete actively to get it. There are now 23 states with offices in Europe and three in Tokyo.

"It's just incredible what happens overseas when it becomes known [that a major firm] is considering coming to the United States," said Norton L. Berman, director of Michigan's office of economic expansion.

There's one glaring exception to this eager reception of foreign funds—farms. "There's been a tremendous boom of foreigners buying land in the South and Midwest," said Richard A. Apar, senior economist in the Commerce Department's Office of Foreign Investment.

But no one really knows just how much of that boom is fact and how much is rumor. In recent congressional testimony, Reuben L. Johnson, director of legislative services for the National Farmers Union, estimated that foreign farm purchases may have totaled \$1 billion in 1977, but that guess could be wildly inaccurate. Land records are kept at county courthouses, and straw man buyers are not uncommon. One rural Member of Congress had every courthouse in his district checked, but no evidence of foreign buying surfaced.

THE FOREIGN TIDE

A variety of motives lies behind the new investment surge. Often, fear is the driving force. Many individuals and medium-sized companies see the United States as a refuge from upheaval at home—be it a separatist Quebec or a new

left-wing government. In other cases, companies have reacted to growing U.S. trade restrictions, Japanese television manufacturers and ball-bearing producers, for example, have invested heavily here to minimize the impact of trade barriers.

But just as often, the investment reflects the impact of large foreign-based multinational firms searching for expanded markets and profits in a changing world economy. In contrast with the 1960s, when the United States grew more slowly than the major economies, it's now expanding more rapidly and steadily. Moreover—again in contrast with the 1960s—investments in the United States have been made cheaper by the decline of the dollar. Even before the currency's recent slump, the dollar was worth, on average, 10 per cent to 15 per cent less than in the 1960s.

Finally, the American economy remains the world's largest single market. With the dollar's drop increasing import prices, foreign firms risk losing U.S. sales unless they establish a beachhead in the United States.

Whatever the cause, it's clear that foreign investment has grown more visible. For example:

Volkswagen of America Inc. has recently opened the first major foreign auto assembly line in the United States—a plant in New Stanton, Pa., costing more than \$300 million, which is expected to employ 4,000 to 4,500 workers by the end of the year and produce cars at a rate of 200,000 a year, about 80 per cent of Volkswagen's U.S. sales last year. Initially at least, many of the parts, including engines and transmissions, will be imported from Germany.

Honda Motor Co. Ltd.'s U.S. subsidiary has announced plans to build a \$25 million motorcycle assembly plant near Columbus, Ohio. If that operation proves successful, Honda says, it will begin assembling cars at the same location. Many government officials believe that the makers of Datsuns and Toyotas also inevitably will locate plants here. And Renault and American Motors Corp. recently announced a tentative agreement under which American Motors would sell—and probably produce—Renaults in the United States.

The Hongkong & Shanghai Banking Corp.—a British-owned bank that is the largest in Hong Kong—has proposed pumping \$200 million into the Marine Midland Banks Inc., the 13th largest in the United States. The plan, which still must be approved by the Federal Reserve Board and Marine Midland's shareholders, ultimately would give the Hong Kong bank 51 per cent control. These proposed purchases represent the latest expansion of the foreign banking industry here. Between late 1972 and early 1978, the assets of foreign bank subsidiaries, branches and offices in the United States jumped from \$25 billion to \$83 billion. (*See box, p. 667.*)

Bayer AG, one of Germany's major chemical firms, with sales of \$10 billion in 1977, purchased Miles Laboratories Inc., manufacturer of Alka Seltzer and SOS soap pads, for \$270 million. Another U.S. subsidiary of a German chemical giant, Hoechst AG, also has been eagerly buying U.S. firms, including Foster Grant Co. Inc., the largest manufacturer of sunglasses in the country.

The Bank Omran—the Iran Development Bank—has pledged an equity investment that could now run as high as \$250 million in Canal Place, a massive real estate development project in downtown New Orleans that is expected to be completed in seven to 10 years and that will include offices, apartments, hotel space and stores.

STOCK, BOND PURCHASES

[Net foreign purchases of U.S. stocks and bonds; in millions of dollars]

| | Stocks | Bonds |
|-------------------|--------|-------|
| 1967 | \$757 | \$313 |
| 1968 | 2,270 | 1,964 |
| 1969 | 1,487 | 1,202 |
| 1970 | 626 | 956 |
| 1971 | 731 | 703 |
| 1972 | 2,188 | 1,881 |
| 1973 | 2,790 | 1,961 |
| 1974 | 540 | 1,039 |
| 1975 | 4,678 | 766 |
| 1976 | 2,743 | 1,207 |
| 1977 ¹ | 2,675 | 1,622 |

¹ Preliminary.

Source: Treasury Department.

DIRECT INVESTMENT 1976¹

[In billions of dollars]

| | Foreign companies in the United States | U.S. companies abroad |
|---------------------------------|--|-----------------------|
| Total..... | \$30.2 | \$137.2 |
| Canada..... | 5.9 | 33.9 |
| Europe..... | 19.9 | 55.9 |
| Germany..... | (2.1) | (10.4) |
| Netherlands..... | (6.2) | (3.7) |
| United Kingdom..... | (5.7) | (15.7) |
| Switzerland..... | (2.3) | (5.7) |
| Other..... | (3.6) | (20.4) |
| Japan..... | .9 | 3.8 |
| Latin America..... | 3.1 | 23.5 |
| Other countries..... | .4 | 20.1 |
| Repatriated earnings, 1976..... | 1.4 | 11.1 |

¹ Defined as 10 percent ownership of a company's stock.

Source: Commerce Department.

British, German, Japanese and Canadian firms have invested aggressively in small and medium-sized high-technology firms. The American Electronics Association said it has counted at least 14 such investments—totaling about \$150 million—over the past year in a variety of U.S. computer and component firms. The association said its members are forced to turn abroad for “high risk” investment funds because American tax laws are too severe on the profits from such investment.

LOW VISIBILITY

The long-standing openness of the United States to foreign investment isn't typical of other countries. During the 1960s, Europeans bitterly criticized the huge presence of American multinational firms on the continent; only recently, Hitachi Metals Ltd., a Japanese firm, withdrew a plan for a television plant in Great Britain after protests from local industry.

But, if the United States is more accepting of foreign investment, the liberalism shouldn't be surprising: even with recent growth, foreigners still account for a puny proportion of American business.

Putting a precise figure on total assets controlled by foreigners in this country is difficult, perhaps impossible. The \$30 billion figure of “net” direct investment probably understates reality because, in addition to funds from their home countries, foreigners have borrowed in the United States to increase their holdings. This is especially true of real estate purchases.

At the end of 1974, for example, when the “net” position was about \$25 billion, the Commerce Department estimated that the total assets of foreign affiliates in the United States was nearly \$175 billion. However, that figure almost certainly exaggerated foreign holdings because it included a substantial amount of bank loans backed by domestic U.S. deposits. The loans are counted as bank “assets.”

But, whatever the true number, it palls against total business assets in the United States, which stood about \$2.5 trillion at the end of 1976. Domestic bank assets—counted separately—totaled nearly \$1 trillion.

Likewise, foreign companies here vigorously Americanize themselves, installing American executives and deemphasizing their links to overseas owners. Unlike Europe, where multinational companies usually deal across national borders, the United States is so large that it lends itself to separate treatment. Indeed, this approach is so natural and so successful that it's doubtful that most Americans know of many of the U.S. companies controlled by holding companies abroad: Shell Oil Co. (69 per cent owned by the Royal Dutch/Shell Group); Lever Brothers Co., makers of Pepsodent toothpaste and Dove Soap (wholly-owned by Unilever N.V., an Anglo-Dutch company); the Nestle Co. Inc., the chocolate company (a subsidiary of Nestle Alimentana SA of Switzerland); the Standard Oil Co. (Ohio) (nearly 54 per cent owned by British Petroleum Ltd.); and Gimbel Brothers Inc. (wholly owned by British-American Tobacco Co. Ltd.).

Foreign companies also diminish their public visibility by entering the United States market through acquisition of an American company or a joint venture. Indeed, the purchase of Gimbel Brothers (including its subsidiary, Saks & Co.) and British Petroleum's interest in Standard of Ohio represent recent acquisitions, as does Bantam Books Inc. (now 51 per cent owned by the German firm Bertelsmann Publishing Co.). According to a Commerce Department tabulation, acquisitions and mergers—as opposed to new plants—accounted for about 60 per cent of foreign direct investment in 1976. Other recent acquisitions include the Keebler Co., an Illinois bakery, acquired by United Biscuits (Holdings) Ltd. for \$62 million; Libby, McNeil & Libby, an Illinois fruit and vegetable processor, by Nestle for \$24 million; the Colorox Co., for \$20 million by Henkel GmbH, a German chemical firm; and the Magnavox Co. of Tennessee, a television and electronics firm, by NV Philips Co. of the Netherlands for \$25.5 million.

States, of course, are most interested in new plants and, to get them, they pay special attention to potential foreign investors. To lure the Volkswagen plant, Pennsylvania offered the company more than \$60 million in low-interest loans. And Michigan cuts taxes sharply for new plants or old ones that are renovated. A new plant can receive a 50 per cent reduction of property taxes for 12 years, plus the freedom to write off the capital investment in the plant against state business taxes in a single year instead of over a longer period of time.

Despite these inducements, there is a distinct tendency on the part of foreign companies to imitate their U.S. competitors in deciding where to locate. "In Michigan's case, a large part of our ability depends on the auto industry," said Berman. "[Automotive] component companies know that if they want to break into the U.S. market, they have to consider whether it's to their advantage to be anywhere else but where the buying decisions are made and where nearly 40 percent of the cars are produced."

James Harwell, executive director of the Texas Industrial Commission, said that his state has the easiest time attracting chemical companies because the industry already is heavily concentrated there. As for other firms, he said, "Our biggest problem is convincing them that they can service the Northeast from here."

MOTIVES

What the states don't have to do, however, is sell the idea of investing in America. Foreigners are coming for their own reasons—not being dragged by heavy-handed merchandising.

Politics and psychology seem to motivate smaller investors most. The evidence of this is widespread, even if it's largely impressionistic. "We had a group of Italians through here last week. One had been kidnapped by the Red Brigade, and they were thinking of moving here," said Garrett Cole, vice president for real estate of Oppenheimer Industries Inc., a Kansas City, Mo., investment firm that has purchased a large number of southern and midwestern farms for foreigners.

(Cole, however, thinks the total amount of such purchases is still infinitesimal. Last year in Missouri, for example, foreign purchases may have amounted to 25,000 to 30,000 acres out of 32 million acres in the state, he estimated.)

Michael D. Wilburn, senior vice president for real estate of Amivest Corp., an investment banking firm, reports that an increasing number of foreign investors—particularly Germans—are interested in buying small real estate developments in the United States. The Germans, he said, regard these investments not only as a hedge against political uncertainties, but also as an alternative to domestic savings. In Germany, savings accounts now pay only 2.5 percent interest—less than the rate of inflation—and most interest rates are low.

Consequently, according to Wilburn, wealthy investors and banks representing pools of investors have begun dabbling in U.S. real estate. "They're most interested in small neighborhood shopping centers, with a national supermarket and drug store and maybe 10 local stores," Wilburn said. These centers, according to Wilburn, typically can be purchased for \$3 million to \$4 million (\$1 million advanced by the investors and the rest borrowed), yielding a 7 percent to 8 percent cash return on the equity investment.

Mira Wilkens, professor of economics at Florida International University, reported in a massive study for the state that heavy real estate investment in Florida by Canadians and Latin Americans reflects the same factors: fears at home and relatively high returns available in the United States.

And Michigan's Berman attributed the decisions of a number of medium-sized German companies to locate in the state to a backlash against Germany's "co-determination" law, which gives union representatives half the seats on companies' "supervisory boards."

"This scares the devil out of them," said Berman. "Although they think the world is inevitably moving to the left, they think it's going to move to the left last here [U.S.]." There's little doubt that the number of medium-sized German firms (with sales of \$5 million to \$100 million) locating here has increased. Since 1973, more than 300 new German firms—most medium sized—have invested here, according to the German-American Chamber of Commerce.

It's difficult, though, to disentangle precisely the motives underpinning such shifts. Peter Giernoth, deputy executive director of the German-American chamber, said that these small firms "are usually quite active in exports and have been affected very strongly by the exchange rate."

Texas's Harwell agrees. Just back from a sales mission to Germany and Switzerland, Harwell said she found many German executives depressed. "In practically every case, because of the dollar devaluation, their prices are 25 percent higher," he said. "If they don't get over here, they're going to lose their markets."

As those comments imply, changes in labor costs and exchange rates since 1970 have lowered relative costs in the United States compared with most other major industrial countries. That's confirmed by calculations by the Labor Department, which regularly compares labor costs in 12 major industrial countries and adjusts them for changes in exchange rates and productivity. Higher productivity would lower unit costs, as would a decline in a currency's value against the dollar.

The result is the following index, with 100 equaling 1967 unit labor costs for all countries. It shows that, between 1970 and 1976, U.S. unit labor costs have increased less rapidly than those in every other major industrial country. That doesn't mean that U.S. costs are universally lower, but it does mean that the cost advantages of all foreign countries have narrowed or disappeared. Countries such as Germany and Sweden are now considered to be substantially higher. Given the dollar's steep decline in 1977 and early 1978, the shift is likely to be even more dramatic now.

| | 1970 | 1976 | Percent increase |
|--------------------|-------|-------|------------------|
| United States..... | 116.5 | 157.9 | 35 |
| Germany..... | 124.6 | 249.3 | 100 |
| Japan..... | 113.3 | 262.3 | 131 |
| Britain..... | 106.0 | 180.7 | 70 |
| Canada..... | 111.5 | 180.0 | 61 |
| France..... | 98.6 | 188.5 | 91 |
| Italy..... | 119.2 | 213.2 | 79 |
| Sweden..... | 105.1 | 247.4 | 135 |
| Switzerland..... | 99.7 | 242.9 | 144 |

Moreover, the United States has reversed positions with most of the rest of the industrialized world in another important area: growth. Between 1960 and 1970, for example, U.S. growth averaged 3.7 per cent annually against growth of 4.9 per cent for the European Community and 11 per cent for Japan. Since 1976, U.S. growth has averaged 5.5 per cent against 3.5 per cent for the Community and 6.1 per cent for Japan.

COUNTER PRESSURES

If these shifts seem to herald a continuing wave of foreign direct investment, there are countervailing forces. Some foreign imports, for example, do not appear especially price-sensitive: that is, price increases do not cause major sales declines. Thus, between late 1976 and early 1978, Volkswagen increased the price of a typical Rabbit car by about 20 per cent, mostly as a result of appreciation of the mark. Nevertheless, U.S. sales continued to climb, and dealers could handle everything that was shipped. The story is essentially the same for

major Japanese car imports. In other cases, exporters—desperate for overseas sales—have shaved profit margins in an attempt to retain their markets.

Equally important, foreign firms often face both a political and economic dilemma in shifting production to the United States. A new plant here threatens to create unemployment at home and render domestic plants unprofitable. And, in a slow-growing, stagnant world economy, the dilemma is real, as Kawasaki Heavy Industries Ltd., a major exporter of motorcycles to the United States, has discovered. In 1974, it purchased—through its subsidiary, Kawasaki Motors Corp. USA—a plant in Lincoln, Neb., to assemble bicycles shipped from Japan. But, according to Dale Stephenson, the U.S. subsidiary's advertising manager, "the Lincoln plant is not terribly profitable."

"There's a restraint on operating Lincoln at full blast," he said. "The Japanese are bonkers on full employment. Until the motorcycle [market] gets to the point where operations are pure gain, putting more production [here] is to transfer jobs from Japan to the United States. . . . What we need is a boom in the motorcycle market."

Finally, coming into the United States is not a simple matter—especially for a firm with little or no experience. "Before you start producing in another country like the United States, you need an efficient sales organization already operating," Kurt Lane, deputy chairman of Hoerst AG, told a company publication. "The sales organization must achieve a volume of sales of imported products to justify supplying customers with products made in the USA."

And then, there's the complicated, cumbersome process of picking a site of a company to acquire.

Whatever the obstacles, more foreign investors are willing to confront them.* Only time will tell whether these ventures pay off. As Kawasaki has discovered, American plants aren't inevitably profitable, and some real estate specialists are concerned, as one puts it, that "a lot of U.S. real estate people are blatantly taking advantage of foreign investors—selling bad projects at greatly inflated prices. There will be a fallout."

Even if that's not true, any foreign investor in the United States inevitably takes a dollar risk: if the dollar continues to slide, reconverting U.S. dollar assets into other currencies would mean losses.

History provides a cautionary note. Some 19th century excursions by foreigners into the United States were disastrous, according to Douglass C. North, a well-known economic historian and chairman of the economics department at the University of Washington. There were widespread defaults on railroad bonds in the late 1870s and, in the late 1830s, British investors lost huge sums on canal ventures.

"All the canals went broke, and we defaulted on our bonds," North said. "The British were so mad that they even talked of going to war. In the 1840s, we were the crumbs of the world."

FOREIGN ASSETS—AT HOME AND ABROAD

Does the United States have more assets abroad than foreigners have here?

That's what the international investment position of the United States measures, and, as the table indicates, U.S. assets abroad exceeded assets here by \$82.5 billion at the end of 1976.

Most of the accompanying article concerns only one aspect of the U.S. international position—direct investment, defined as ownership of physical property or ownership of at least 10 per cent of a company's outstanding stock. The United States has a decisive advantage there. On the other hand, foreigners own about \$10 billion more of stocks and bonds in the United States than Americans own abroad.

Most of the foreign assets in the United States are dollars that came into foreign hands through U.S. trade, investment and aid abroad. Many of the dollars are reinvested here in U.S. government debt through Treasury securities. When those Treasury securities are held by governments, they're called "official reserve assets." In 1976, they totaled about \$100 billion. In private hands, they fall under "bank and non-bank loans," accounting for a large part of that \$73.5 billion total.

U.S. "official reserve assets" consist primarily of gold, and "other government assets" include a large volume of government loans made abroad that, technically at least, should ultimately be repaid.

[In billions of dollars]

| | U.S. assets abroad | Foreign assets in the United States |
|-------------------------------|-----------------------|---|
| Total ¹ | \$347.4 | \$264.8 |
| Official reserve assets | 18.7 | 100.8 |
| Other Government assets | 46.0 | 5.5 |
| Private assets | 282.6 | 158.5 |
| Direct investment | (137.2) | (30.2) |
| Securities | (44.6) | (54.8) |
| Bank and nonbank loans | (100.8) | (73.5) |

¹ Totals may not add because of rounding.

Source: Commerce Department.

FOREIGN BANKING INVADES THE UNITED STATES

The numbers tell the story of the dramatic expansion of foreign banking in the United States.

In November 1972, about 52 foreign banks had 100 offices in the United States with \$25 billion worth of assets. By the end of February 1978, both the number of banks (now 118) and the number of offices (261) had more than doubled. Assets—about half of which consist of commercial and industrial loans—had more than tripled to \$83 billion.

The invasion of foreign banks into the United States is hardly unique. Indeed, it has followed a rapid expansion of U.S. banks abroad and reflects the increasing internationalization of the banking industry. Banks have moved across national borders to service multinational companies and to provide a rising volume of loans to governments—and government corporations—around the world.

Indeed, at the end of 1977, foreign branches of U.S. banks were estimated to have \$258 billion in assets, more than triple the total for foreign banks in the United States. For many of the biggest U.S. banks, deposits at foreign branches now account for anywhere from one-third to two-thirds of their total deposits. In 1976, according to the Federal Reserve Board, BankAmerica Corp. had 43 per cent of its deposits in foreign branches; Citicorp had 64 per cent; Chase Manhattan Corp., 47 per cent; Manufacturers Hanover Corp., 35 per cent; J. P. Morgan & Co. Inc., 54 per cent; Chemical New York Corp., 40 per cent; and Continental Illinois Corp., 55 per cent.

Like their U.S. counterparts abroad, most of the foreign banks that have opened offices in the United States are big. In mid-1977, about nine out of 10 of the foreign banks with offices here had worldwide assets exceeding \$1 billion. And, like other foreign companies settling in the United States, foreign banks are primarily European (about half of outstanding foreign bank assets), Japanese (about one-third of assets) and Canadian (about one-tenth of assets). The foreign offices cluster in three states: New York, California and Illinois. About two-thirds of total foreign bank assets are located in New York, about one-fifth in California and about one-twentieth in Illinois. But other cities—Atlanta, Houston and Philadelphia—are increasingly interested in attracting foreign banks.

And that's part of the controversy surrounding foreign banks: they can open branches in different states, but U.S. banks can't. For the past three years, the Federal Reserve Board insistently has urged Congress to extend the umbrella of federal regulation over foreign banks. So far, Congress has listened with little enthusiasm. In April, the House passed the International Banking Act of 1978 (H.R. 10899), which followed some of the Fed's recommendations but deleted the key proposal to disallow multi-state branching.

It isn't that the foreign banks are unregulated now. Basically, foreign banks in the United States can take three forms:

A subsidiary bank—the best known is probably New York's European-American Bank & Trust Co., a consortium of six European banks that acquired the assets of Franklin National Bank—is a U.S. corporation that, typically, is chartered by the state in which it is located. Consequently, it faces the same restrictions as U.S. banks chartered in that state—including a restriction on opening branches across state lines. In mid-1977, subsidiaries accounted for slightly less than one-fourth of all foreign banking assets in the United States.

A branch bank is simply that, and a state can choose—about a dozen of them do—to allow foreign banks with branches within its jurisdiction to open branches in other states. Because foreign branches are not now eligible for deposit insurance (up to \$40,000 on an individual account) from the Federal Deposit Insurance Corp., most foreign bank branches do not engage in “retail” banking: that is, accept deposits from individuals. Rather they concentrate on “wholesale” banking, specializing in business loans and accepting the deposits of large businesses. State regulators have routine powers to examine foreign bank branches. In mid-1977, branches accounted for about one-half of all foreign bank assets in the United States.

Agency banks are virtually identical to branches with one major exception—they can't accept deposits. In mid-1977, they accounted for slightly more than one-fourth of all foreign bank assets.

The legislation passed by the House allowed the Fed to impose reserve requirements on foreign bank offices but denied it the power to initiate an independent examination of foreign banks.

As for across-state branching, foreign bankers say their advantage is more apparent than real: U.S. banks can open offices in other states under the Edge Act. In mid-1977, according to the Federal Reserve, there were 57 such Edge Act corporations, with \$8.5 billion in assets. These Edge Act bank offices are restricted to “international business”—making international loans and accepting deposits associated with those loans. But the foreign bankers say that this is most of their business, too. The Senate Banking, Housing and Urban Affairs Subcommittee on Financial Institutions is expected to open hearings on the legislation in June.

State and local officials have been among the foreign bankers' strongest allies in fighting the Fed's proposal to restrict across-state branching. Either for prestige or as an extra lure to attract foreign industry to their states, the local officials want the power to recruit foreign branches for their states. If across-state branching were barred, most foreign banks would remain in the major financial centers of New York, Chicago and San Francisco. In addition, some legislators, including Sen. Thomas J. McIntyre, D-N.H., who chairs the Senate subcommittee, believe that the prohibition on across-state branching—originally imposed on national banks by the McFadden Act—is outdated and should not be extended further.

Whatever happens to the legislation, no one expects the foreign banks to go home. Major foreign banks with offices here include Credit Lyonnais and Banque Nationale de Paris, from France; Swiss Bank Corp. and Union Bank of Switzerland; Barclays Bank International and Lloyds Group from Great Britain, and Japan's Mitsubishi Banking & Trust and the Tokyo Bank & Trust Co.

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THE SELLING OF AMERICA—FOREIGN CAPITAL RUSHES INTO THE UNITED STATES, CREATING JOBS AND SOME CONTROVERSY

“It is as if the rest of the world knows something about the U.S. that Americans themselves no longer dare to remember.”—Edmund Stillman, director of Hudson Research Europe, Ltd., Paris.

While Americans agonize over the nation's real or imagined woes, many people from far off are raiding their savings accounts, borrowing money, taking their business profits and betting on the future of the U.S. Not since British loans helped finance the building of the nation's canals and railroads in the 19th century has the U.S. displayed a more magnetic attraction to overseas investors. Foreign money from almost everywhere is flooding into co-op apartments in Manhattan and Miami condominiums, sprawling petrochemical complexes in Houston and quaint dairy farms in Vermont, suburban shopping centers and downtown office buildings and hotels. Capital from overseas is financing the construction of new factories in every region and the takeover of old-line U.S. corporations of every description. The money is going into farm land, ranch and waterfront resort communities.

The investment rush has been building for years, and now it is gaining momentum. One factor is the dollar's slump, which has enabled holders of West Germany's mark, Switzerland's franc, Japan's yen and other strong currencies to buy a piece of the U.S. at bargain prices. More important, in the new economic

climate of high-energy prices, sluggish international growth and protectionist trade sentiments, the U.S. appears to be the country best suited to ride out the tempest. It also seems the nation least vulnerable to the terrorism that is ravaging Italy and haunting West Germany, or the political unrest that is polarizing Canada and spreading like a plague through the underdeveloped nations. People everywhere are coming to the same conclusion that Johann Wolfgang von Goethe expressed two centuries ago: "Amerika, du hast es besser" (America, you have it better).

Since 1974, foreign investments in the capitalist bastion of America have been growing by a average 13% annually, and now total more than \$171 billion, or two-thirds as much as the sum of U.S. investments abroad. Moreover, the gap between U.S. investment in foreign countries and vice versa is narrowing. For example, U.S. capital did much to fuel West Germany's postwar economic miracle, but now West Germans invest more in the U.S. than Americans put into the Federal Republic.

The figures would be much larger if Government tallies could track all foreign investments. No one knows how many millions, or even billions, are borrowed every year from U.S. banks by foreign investors to set up or expand U.S. businesses. Nor are there data on the annual profits that foreign companies reinvest in the U.S. There is also no way of knowing how many suitcases stuffed with cash are sneaked out of Italy, Brazil and other countries that have strict foreign-exchange control and slipped through airport customs into the U.S.

The foreign-investment surge is not only helping to ease the nation's balance of payments deficit, but is also providing an estimated one new job for every \$26,000 of foreign capital. At least \$1.6 billion in corporate and real estate investment entered the U.S. last year, and that alone created 60,000 new jobs. Says Felix Rohatyn of Lazard Freres & Co.: "The main problem over the next ten to 15 years is going to be employment. For that reason alone, foreign investment that creates jobs is welcome."

The investments fall into four main categories:

CORPORATE DIRECT INVESTMENT

Nearly 1.1 million people work for foreign-owned companies in the U.S., and the number is growing daily as more European and Japanese companies set up manufacturing and assembly plants around the country. Volkswagen's \$250 million investment in its plant at New Stanton, Pa., which by year's end will employ 4,000 workers, is only the best-known example. West German cuckoo clocks are now being made in Virginia, French Rossignol skis in Vermont, Japanese zippers in Georgia and British irrigations hoses in North Carolina. Italian shoes are turned out in New Hampshire, and 50% of the Sony television sets sold in the country are assembled in San Diego. Explains Michael Hamilton, an investment banker with First Boston International in London: "During the 1960s, European companies had to invest whatever funds they had in their own countries. Americans appeared dominant in management skills, technology and products. For Europeans to think then that they could take on U.S. companies in the American market was beyond imagination. Now however, American firms are no longer regarded as invincible."

CORPORATE ACQUISITIONS

More and more foreign corporations are buying control of American companies whose stock prices are depressed; that, of course, is cheaper than starting from scratch. Banks are prime targets. Two week ago Britain's big National Westminster Bank Ltd. reached agreement to buy 75% of the shares of New York's National Bank of North America for \$300 million. Many manufacturing companies are also being acquired. Foreigners now control companies producing such well-known products as Baskin-Robbins ice cream, Mounds and Almond Joy candy bars, Keebler biscuits, Deer Park spring water, Pepsodent tooth-paste, Bantam Books, Alka-Seltzer, One-A-Day vitamins, Calgon bath oil, Bactine antiseptic, S.O.S. soap pads, All and Wisk detergents, Foster Grant sunglasses and Magnavox TVs.

The takeover trend is providing badly needed capital for stagnating domestic firms and bringing in fresh management techniques. In 1976 Britain's computer giant, I.C.L. Ltd., paid \$30 million for some money-losing branches of Singer. Since then, I.C.L. has doubled the labor force of these operations and expects the business to grow by a remarkable 500% this year.

STOCKS, BONDS, AND GOVERNMENT SECURITIES

Foreign money, much of it from Britain and Arab countries, is swirling through Wall Street. Corporate securities held by foreigners as portfolio investments have grown from \$34.9 billion in 1974 to \$57.7 billion last year. In recent weeks foreign buying has become a major force behind the dramatic rise in the U.S. stock market. Overseas investors also hold an estimated \$7.6 billion in U.S. Treasury bills and notes, more than four times as much as in 1974. By making the investments, foreigners are helping to finance the nation's excessive deficit spending, thereby eliminating the need for the Government to borrow the money domestically and divert it from productive investment at home.

REAL ESTATE

Scarcely a single community does not feel the impact. In Dade County, Fla., a consortium led by Canada's Markborough Properties is spending \$1 billion on an 18-year project to build an entire town, Villages of Homestead, that will add more than 14,000 homes to the tight south Florida market and provide 4,000 jobs. On South Carolina's Kiawah Island, the Kuwait Investment Co. is building a \$500 million resort community. In New Orleans' old Vieux Carré district, an Iranian investment foundation is helping finance the development of a 23-acre complex of offices, apartments and a glass-enclosed shopping mall.

Any American owner of a high-quality shopping center, hotel or office building can find foreign investors eager to take it off his hands for a top price. The \$100 million Atlanta Center office and hotel complex was begun in 1973 with a \$10 million participation by Kuwaiti investors; the Kuwaitis have now bought out their American partners. Two weeks ago, a consortium of European banks paid \$62.5 million for one-half ownership of Houston's tallest building, a 50-story office tower at One Shell Plaza, and the 29-story Two Shell Plaza.

Newspapers and magazines in Europe bulge with ads for investment opportunities in American land and buildings. Says Jack Shaffer, a senior vice president of New York City's Sonnenblick-Goldman Corp. mortgage bankers: "Many of the foreigners who invest in U.S. real estate are the wealthiest people and richest institutions. They don't want to get rich. They are rich. They just don't want to get poor."

To serve these rich clients, investment firms abroad are now specializing in American property. Some are one- or two-man operations, and several are as large as West Germany's Lehndorff Management Ltd., which has invested some \$300 million in U.S. properties for 1,800 investors. Reports Time Bonn Correspondent Barrett Seaman: "An American kind of optimism is everywhere. In Frankfurt, a consortium of banks offered \$60 million worth of over-the-counter investment shares in a Houston office building for about \$10,000 each, and in three weeks sold out the offering to customers, many of them walking in off the streets. One Munich businessman has gone into partnership with some American friends to invest in New York City. They have already picked up a loft building in SoHo and an old office building on lower Fifth Avenue. Now the group is toying with the notion of plunging into a truly speculative venture in the economically depressed West Bronx. The Münchner's reason is simple: 'Why not? The property we're looking at is available at a price that makes it quite impossible to go wrong.'"

Predictably, there are occasional grumblings about the blossoming foreign presence. Southern Florida has long had a large Cuban population, but more recent arrivals include tens of thousands of French Canadians small businessmen and their families, who have fled Quebec out of fear that it may secede from Canada and pitch the country's economy into a tailspin. In Hollywood and Hallandale, just south of Fort Lauderdale, 20% of the population is now French speaking; the Canadian flag flies over bars, restaurants and motels, many of which are Canadian owned. Longtime residents gripe that the new arrivals are clannish, refuse to learn English and do not participate in the life of the community.

The most vocal complaints come from farmers, who have a visceral attachment to the land. They are torn by conflicting feelings about foreigners who offer premium prices for their acreage. Farmers often sell out, only to wind up leasing the property back from the new, absentee owners and working for them as tenant farmers. When farm children grow up, they must sometimes seek other occupations, because land prices are so high that they cannot afford the life their parents

led. Complains Vernon Conrad, vice president of California's Fresno County farm bureau: "Buying by outsiders is taking away the family-based farming communities that have helped make this country what it is." Laws preventing or limiting foreign ownership of land have been enacted in Nebraska, Indiana and Iowa, and the Illinois legislature this week will consider a prohibition of its own. There are enough loopholes to enable foreigners to avoid the restrictions, but doing so may become tougher in the future.

Farmers notwithstanding, most Americans welcome foreign capital. A typical reaction comes from Lisa Freeburn, 21, who left her job as a bank teller to become a receptionist for the German-owned Keiper U.S.A., which opened an auto accessories plant in Battle Creek, Mich., 20 months ago. Says she: "I like it much better than the bank. There's more international atmosphere here. You get a bit of both cultures."

In Pittston, Pa., a community of 60,000 that slipped into decline when its coal mines gave out, West Germany's Schott Optical Glass company opened a manufacturing plant in 1969 with 60 employees. It now has 600. Reports Time Correspondent Gisela Bolte: "City fathers have hired a consultant in Switzerland to recruit other foreign companies. A Swiss firm that has developed a friction reducing process for machinery will soon open in Pittston. To make the community even more attractive, the local airport runway will soon be extended to accommodate jumbo jets. In addition, a 42-acre industrial park has been declared an international trade zone, where companies can set up assembly plants that will be exempt from U.S. customs duties so long as the products are exported. Schott's home-office executives find the Pittston employees industrious, hard working and more eager for overtime than West German workers." Company employees also feel well treated by management. Says Joe Chmiel, a foreman: "It's the best company I ever worked for. I've been here nine years and never missed a day. The pay is more than reasonable, and you can get advancement."

Hungry for job-creating investments from abroad, 20 state governments have set up promotion offices around Europe. Several offer long-term, low-interest loans. The states also pitch job training programs, corporate tax deferral plans that stretch out for years and, of course, the lure of the vast American market, which is bigger and faster growing than all of the Common Market. Business people are also impressed by lower labor costs in the U.S. than in many European countries. In West Germany, for instance, wage costs are about the same as in the U.S., but employer contributions to pension, health and other social insurance programs are far steeper.

Both sides benefit from this selling of America. For too long, international investment has been a one-way street, with the U.S. spending billions to set up plants and factories abroad. U.S. multinationals have spread prosperity around the globe, but they have also eliminated jobs for American workers at home, and this has increased pressure to block imports that further threaten American jobs. Now foreign investors are returning those jobs to the U.S., and that will make it more difficult for the U.S. to revert to nearsighted protectionism. Explains Economist Louis Wells of the Harvard Business School, an expert on multinationals: "When you've got a foreign-owned final assembly plant in the U.S., you can't cut off imports of parts as easily."

It makes no difference whether the foreign funds are scared money fleeing political and economic uncertainties, or entrepreneurial investments seeking opportunities for profit. An open-door welcome for all is the least that can be expected from the world's principal champion of free-market capitalism. For all its problems, the U.S. remains a land where foreigners by the millions still see immense potential, plentiful resources, an unshakable faith in the sanctity of private property, and a trust in the rewards of initiative. Now that they are able to afford it, there is nothing that should stop them from trying to invest in—and enhance—America's riches.

