

House of Representatives
Supplementary Order Paper

Tuesday, 18 September 2001

UNIVERSITY OF OTAGO
Apple and Pear Industry Restructuring Act Repeal Bill

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Proposed amendments

Hon Jim Sutton, in Committee, to move the following amendments:

Clause 3

To insert, in their appropriate alphabetical order, the following definitions:

2001 supply agreement means the agreement called ENZAFRUIT Agreement–2001 Edition entered into by ENZA and its suppliers

2002 foreign exchange contracts means the foreign exchange contracts that are specified in the **Schedule**

apples and pears has the meaning set out in regulation 2 of the Regulations

supplier means a person who supplied, under a supply agreement, apples or pears (or both) to ENZA or the New Zealand Apple and Pear Marketing Board (before its conversion to ENZA)

supply agreement means—

- (a) the 2001 supply agreement for the supply of apples and pears to ENZA;
- (b) any earlier supply agreement for the supply of apples and pears to the New Zealand Apple and Pear Marketing Board (before its conversion to ENZA).

New clause 5C

To insert, after *clause 5B* (after line 35 on page 3), the following clause:

5C Suppliers not liable for certain losses of ENZA

- (1) On and from the commencement of this Act,—
 - (a) ENZA must not make any deductions (either directly or indirectly) from the returns payable to suppliers under a

- supply agreement in respect of any losses arising from the 2002 foreign exchange contracts; and
- (b) ENZA must refund to each supplier any deductions (not already refunded) made—
- (i) from returns paid to suppliers under a supply agreement; and
- (ii) in respect of any losses arising from the 2002 foreign exchange contracts.
- (2) ENZA must, by 31 January 2002, provide to each supplier an audited statement of account in relation to all deductions made from the supplier's returns under the 2001 supply agreement.
- (3) The audited statement of account must include the following information:
- (a) a schedule of payments made by ENZA to the supplier:
- (b) an itemised list of the deductions made by ENZA from the supplier's returns under the 2001 supply agreement:
- (c) a statement relating to the purpose of the deductions.

New Schedule

To add (after line 14 on page 4) the following Schedule:

Schedule s 5C
**Schedule of foreign exchange contracts entered into
by ENZA with Citibank NA**

Foreign exchange contracts referred to in paragraph 3 of letter from Citibank NA to ENZA dated 13 June 2001

Citibank NA reference	Citibank buys	Citibank sells	Rate	Value date
1081156313	SGD 1,000,000	NZD 1,092,776.75	0.9151	12 June 2001
1081156211	SGD 2,000,000	NZD 2,187,465.82	0.9143	25 June 2001
1081156209	SGD 2,000,000	NZD 2,195,148.72	0.9111	25 July 2001
1081156198	USD 2,500,000	NZD 4,959,333.47	0.5041	7 August 2001
1081156196	USD 2,500,000	NZD 4,960,317.46	0.5040	23 August 2001
1081157027	DEM 15,000,000	NZD 12,782,275.24	1.1735	9 July 2001
1081156192	DEM 15,000,000	NZD 12,782,275.24	1.1735	16 July 2001
1081156190	DEM 15,000,000	NZD 12,781,186.09	1.1736	23 July 2001
1081156188	DEM 15,000,000	NZD 12,781,186.09	1.1736	30 July 2001
1081156186	DEM 10,000,000	NZD 8,520,790.73	1.1736	7 August 2001
1081156184	DEM 10,000,000	NZD 8,520,064.75	1.1737	13 August 2001

Foreign exchange contracts referred to in paragraphs 2(b)(iii) and (iv) of letter from Citibank NA to ENZA dated 6 April 2000

Citibank NA reference	Rate	NZD amount	DEM amount	Expiration date
658070	1.0350	57,971,014.49	60,000,000.00	28 June 2002

Citibank NA reference	Rate	NZD amount	GBP amount	Expiration date
658130	0.3375	77,037,037.04	26,000,000.00	28 June 2002

Explanatory note

This Supplementary Order Paper amends the Apple and Pear Industry Restructuring Act Repeal Bill by—

- inserting *new clause 5C*, which deals with the 2002 foreign exchange losses incurred by ENZA that the company sought to bring forward into 2001 and deduct from supplier's returns under the terms of its 2001 supply agreement. *New clause 5C* prevents ENZA from making those deductions under the 2001 supply agreement (or any earlier agreement) and provides that the company must, if it has not already done so, refund to suppliers any deductions it has made. However, *new clause 5C* does not affect any other foreign exchange losses incurred by ENZA:
- adding a *new Schedule* to the Bill that lists the foreign exchange contracts entered into by ENZA with Citibank NA for the purpose of identifying the relevant contracts referred to in *new clause 5C*.