

THE COALITION'S POLICY  
DISCUSSION PAPER ON

**FOREIGN INVESTMENT IN  
AUSTRALIAN AGRICULTURAL  
LAND AND AGRIBUSINESS**

August 2012

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Let's get Australia back on track.



# Introduction

## *Foreign Investment in Australia*

Foreign investment has been a key element in the development of Australia.

The Coalition unambiguously welcomes and supports foreign investment.

The importance of foreign investment to the Australian economy cannot be overstated. It has provided critical funding to projects, business and industry that has enabled the development of a sophisticated economy centred on agriculture, financial services, mining and resources, manufacturing, tourism, and retail and wholesale services. There is no sector in the modern Australian economy that has not benefited from foreign investment and it remains integral to Australia's economic expansion in the future.

Despite its ongoing importance to the development of Australia's economic assets, it has long been accepted that foreign investment should be subject to government scrutiny depending on the scale, scope, and to some extent the type of investment, to ensure that transactions are not contrary to Australia's national interest.

Heavy-handed restrictions on inward foreign investment could negatively affect debt and equity markets or potentially cause restrictions on Australia's outward foreign investments.

However, some restrictions may generate economic or social benefits that outweigh potential costs and protect the national interest, including by promoting the long-term stability of sectors critical to the economy (e.g. restrictions in the *Qantas Sale Act 1992* and the *Financial Sector (Shareholdings) Act 1998*).

The body that scrutinises proposed foreign investment transactions is the Foreign Investment Review Board (the 'FIRB'). The rules enforced by the FIRB are based on the type of proposed investment (e.g. residential land, general business acquisition) and proposed investor (e.g. public, private or state owned companies, private individuals, or institutional investors, be they pension funds, endowments or sovereign wealth funds).

For some categories of foreign investment, such as the purchase of residential real estate, notification of the FIRB is mandatory. Such transactions are then reviewed, although historically the overwhelming majority have then been approved. Acquisitions of any sort by state owned enterprises or sovereign wealth funds must also be reported to the FIRB for review.

For other classes of foreign purchases, a variety of monetary thresholds apply beyond which the FIRB must be notified to seek approval of the sale.

For example, for most foreign purchasers of an interest in an Australian business, the threshold is 15 per cent or more of a business valued at \$244 million or more (indexed annually)<sup>1</sup>. For developed commercial real estate the corresponding threshold is generally \$53 million (but becomes \$5 million if the property is subject to heritage listing).

Different thresholds apply for US investors under the Australia US Free Trade Agreement (FTA) – and will also apply to NZ investors upon implementation of the Investment Protocol signed with New Zealand on 16 February 2011.

At present, the sale of agricultural land and agribusiness is not treated as a sector specific purchase. Instead, agricultural land and agribusiness purchases are assessed under the category of general business acquisitions.

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<sup>1</sup> Note that if a business is valued at less than \$244 million, foreign acquisition of an interest in it does not attract the FIRB's attention (unless by a government controlled entity) even if the interest acquired is far more than 15 per cent. For instance, an agricultural property or agribusiness valued at \$240 million could be acquired in full without requiring FIRB notification or review.

While Australia's foreign investment regime has effectively promoted inward direct capital, there is growing community and industry concern that some types of acquisitions may be contrary to the national interest and that a strengthening of the regime may be advantageous to the long-term prosperity and food security of Australia.

The creeping cumulative acquisition of agricultural land, for example, may be inconsistent with both the national interest and the interests of local communities, even though foreign acquisitions of discrete land holdings will generally not of themselves be a matter of concern for the FIRB.

There are also concerns that the extent of foreign land ownership is insufficiently documented and understood. This is unsurprising given the lack of robust data and the absence of foreign land ownership registers maintained by the Commonwealth or most States.

This lack of data has undoubtedly stirred rather than dampened concerns about the extent of foreign land ownership that may (or may not) be occurring throughout Australia.

In response to public and Opposition pressure over this lack of information, the Government (in November 2010) directed the Australian Bureau of Statistics (ABS) to include questions concerning ownership of agricultural land in a farm survey that was completed late last year.

The survey – of 11,000 of Australia's more than 135,600 agricultural businesses – estimated that the level of foreign ownership of land was virtually unchanged from the only available previous ABS survey, conducted in 1983-84, at 11.3 per cent by area.

However, the validity and usefulness of the ABS data has been widely questioned. In relation to businesses, concerns were raised regarding the limited number of businesses covered (less than 1 in 10) and the interpretation of the data given the inclusion of properties earning as little as \$5,000 per annum.

Questions were also raised regarding the rigour of some of the questions on ownership and, more generally, whether the survey results might be giving a misleading impression by focussing on findings in terms of numbers of businesses and area of land, without taking account of the value of these businesses or land.

As a result, no distinction was being drawn between ownership of a \$1 billion dollar agribusiness and, say, a small hobby farm.

The Government also commissioned (in November 2010) the Australian Bureau of Agriculture and Resource Economics and Sciences (ABARES) to “consider the role and history of foreign investment in the development of agriculture in Australia, the extent of foreign ownership of Australian agricultural land and the factors driving foreign investment in Australian agriculture.”

The ABARES report was published in January 2012 and, on agricultural land acquisitions, simply replicated the data produced by the ABS.

In terms of agricultural businesses it concluded that foreign businesses control 60 per cent of sugar milling, 40 per cent of red meat processing and 50 per cent of milk processing. There have been further acquisitions in the sugar sector since the inquiry reported.

The report conceded that while some sources were accessible to develop the conclusions of the report:

“...there is no systematic source of data on the foreign ownership of agribusiness companies. Nor is there regular information on the nationality of foreign investors or about the type of entity involved. The extent of investment by foreign government entities is also not known.”

The Gillard Government promised in January 2012 to require more detailed surveys by the ABS every two years and, in relation to both land and agricultural businesses, to “expand the Agricultural Census” to provide more information on ownership.

This commitment would be a welcome development were the extent and rigour of the additional information to be gained clearly defined and were useful data to be delivered in a timely manner.

However, the next Agricultural Census will not be conducted until 2016 (which means published analysis may not be available until 2017) and the Government has yet to define what additional data will be collected or explain why such data will provide greater clarity about whether foreign land and agricultural business ownership is increasing or decreasing and/or focused in particular industries, sectors or geographic regions.

### *Coalition Working Group*

In response to community and industry concerns, the Leader of the Opposition (the Hon Tony Abbott MP) announced the establishment of a Coalition Working Group in June 2011 to investigate options to strengthen the rules governing the sale of agricultural land and agribusinesses to foreign entities.

The Working Group was chaired by the Leader of the Nationals, the Hon Warren Truss MP, with the Deputy Leader of the Liberal Party and Shadow Minister for Foreign Affairs and Trade, the Hon Julie Bishop MP, as deputy chair and included a broad range of members.

The Working Group has consulted widely and received submissions from individuals, businesses and interest groups.

### *Release of a Discussion Paper on Foreign Investment in Australian Agricultural Land and Agribusiness*

Following consideration of the Working Group's findings, the Leader of the Opposition asked that a Discussion Paper process be initiated as the next stage in the development of our policy response to the issue of foreign investment in Australian agricultural land and agribusiness.

As foreign investment is vital to Australia's ongoing prosperity, it is critical that any policy decisions are well thought through, practical, achievable, and likely to further promote foreign investment that is not contrary to the national interest.

The Shadow Treasurer, with responsibility for foreign investment matters, will be responsible for the Discussion Paper process.

### *Contributing to the Discussion Paper*

The Coalition encourages industry, the community and interested parties to participate in the Discussion Paper process.

Written submissions are invited by 31 October 2012 and can be sent electronically to [philip.lindsay@aph.gov.au](mailto:philip.lindsay@aph.gov.au) or by mail to:

Mr Philip Lindsay (Foreign Investment Review)  
C/- Office of The Hon Joe Hockey MP  
Parliament House  
Canberra ACT 2600

If interested parties have any questions or need any further information, they should not hesitate to contact Philip Lindsay at the email address above or by phone on **(02) 6277 4022**.

# Background

## *The Foreign Investment Review Board and Australia's Foreign Investment Rules<sup>2</sup>*

The Foreign Investment Review Board (the 'FIRB') was established in 1976 to scrutinise investment in Australia. As discussed above, the applicable rules for FIRB assessment of proposed transactions differ according to investment type (e.g. residential land) or investor (e.g. public company, state owned enterprise or sovereign wealth fund).

The role of the FIRB is advisory only. The *Foreign Acquisitions and Takeovers Act 1975* and the *Foreign Acquisitions and Takeovers Regulations 1989* allow the Treasurer or his delegate (usually the Assistant Treasurer) to review investment proposals to decide if they are contrary to Australia's national interest.

The Treasurer can block proposals that are contrary to the national interest or apply conditions to the way proposals are implemented to ensure they are not contrary to the national interest. The Treasurer relies on advice from the FIRB when making such decisions.

The Government's published *Australia's Foreign Investment Policy* statement provides guidance to foreign investors on the Government's approach to administering the *Foreign Acquisitions and Takeovers Act 1975* (henceforth the Act). The policy statement also identifies a number of investment proposals that need to be notified to the Government even if the Act does not appear to apply. It includes a brief annex specifically on foreign investment in agriculture, although this sets out no rules specific to foreign investment in either agricultural land or agribusinesses.

A final decision by the Treasurer on a foreign investment proposal cannot be appealed.

The role of the FIRB is to:

- examine proposed investments in Australia that are subject to the Government's published *Australia's Foreign Investment Policy* statement and supporting legislation, and to make recommendations to the Treasurer on these proposals;
- advise the Treasurer and other Treasury portfolio ministers on the operation of the Government's published *Australia's Foreign Investment Policy* statement and the Act, and on proposed investments that are subject to each;
- foster an awareness and understanding, both in Australia and abroad, of the Government's published *Australia's Foreign Investment Policy* statement and the Act;
- provide guidance to foreign persons and their representatives/agents on the Government's published *Australia's Foreign Investment Policy* statement and the Act;
- monitor and ensure compliance with the Government's published *Australia's Foreign Investment Policy* statement and the Act; and
- provide advice to the Treasurer on the Government's published *Australia's Foreign Investment Policy* statement and related matters.

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<sup>2</sup> The material in this sub section draws directly on information in the *Foreign Acquisitions and Takeovers Act 1975* and on the FIRB web site ([www.firb.gov.au](http://www.firb.gov.au)).

Treasury's Foreign Investment and Trade Policy Division acts as the secretariat to the FIRB. It is responsible for the initial examination of proposals received and for preparing recommendations to the Treasury Ministers or the Divisional officers whom the Treasurer may have authorised to make decisions according to the Government's published *Australia's Foreign Investment Policy* statement and the Act.

The FIRB also provides a contact point for foreign investors and their representatives or agents. Proposals are initially examined by Treasury, in its role as secretariat, with the Board's direct and early involvement in significant applications.

The *Foreign Acquisitions and Takeovers Act 1975* provides a 30-day statutory period for a decision to be made on proposals lodged under the Act, with up to a further 10 days after the day of the decision to advise the applicant of the decision.

Proposals are examined as to whether they conform with the requirements of the Government's published *Australia's Foreign Investment Policy* statement and the Act. While the overwhelming majority of proposals proceed without objection, the Treasurer has powers under the Act to prohibit proposals that are contrary to the national interest or to raise no objections to them subject to conditions that are considered necessary to ameliorate national interest concerns.

In examining significant proposals, consultations are undertaken by the Board's secretariat with Commonwealth, state and territory government departments and authorities with responsibilities relevant to the proposals (e.g. the Australian Competition and Consumer Commission in relation to competition issues).

In 2010-11, a total of 10,865 applications for foreign investment approval were considered, with 10,293 approved, 43 rejected, 390 withdrawn and 139 exempt as not subject to the Government's published *Australia's Foreign Investment Policy* document or the *Foreign Acquisitions and Takeovers Act 1975*. Of the 10,336 applications decided in 2010-11 (that is, those approved or rejected but not those withdrawn or exempt), 9,734 were decided within the Division under the Treasurer's authorisation and 602 were decided by a Treasury minister.

There are currently four members of the FIRB board, although at times in the recent past there have been five members. The Board consists of three or four part-time members (including the Chair of the Board) and one full-time executive member (generally a senior Treasury officer).

### *International Comparisons*

Many developed and developing countries adopt restrictions on foreign investment in agricultural land or agricultural businesses on national security grounds.

A snapshot of foreign investment rules in various international jurisdictions is at Box 1.

## **Box 1 – International Comparison of Foreign Investment Rules**

### **Argentina**

A 1,000 hectare limit applies to individual foreign investment in agricultural land.

### **Brazil**

In November 2011 President de Silva, citing concern for food security, announced a crackdown to ensure existing law limits foreign ownership to between 250 hectares and 5,000 hectares (depending on location/use).

### **Canada**

The Provinces have particular regulatory requirements in place. For example, Alberta restricts foreign ownership of agricultural land to 20 acres and Saskatchewan restricts foreign acquisitions of agricultural land greater than 10 acres.

### **China**

Foreign ownership of land is not allowed, but nationals and foreigners may lease land.

### **France**

Imposes restrictions on investment in gambling/casinos and 10 other sectors engaging national security interests, principally in defence and technology sectors.

### **India**

Prohibits investment in retail, atomic energy, gambling related businesses, certain housing, and certain types of agriculture. It has recently expanded the potential for foreign investment in telecommunications, petroleum refining, civil aviation, and non-nuclear power generation. India requires notification of all foreign investment, regardless of scale.

### **Japan**

Requires prior approval for any foreign investment over 10 per cent in companies listed on the Japanese stock exchange and any investment in an unlisted company that falls into specified sectors, mostly involving national security issues. All foreign investment is notifiable.

### **Mexico**

Foreigners cannot directly own land within 100km of a border or within 50km of the coast.

### **New Zealand**

All acquisitions of agricultural land of five hectares must be approved. In coastal areas the limit is 0.2 of a hectare. The Finance Minister in December 2010 issued a directive to Land Information New Zealand ordering it to pay greater attention to proposals for investment involving the vertical integration of primary sector operations and aggregations of agricultural land.

### **Norway**

Foreign investment in certain land and property requires the permission of the Minister for Agriculture and Industry.

### **The United Arab Emirates**

Restrictions limiting foreign ownership in local businesses to 49 per cent, regardless of sector, outside designated Free Trade Zones.

### **The United States**

While some States have particular regulatory requirements in place, the Federal Government requires foreign buyers to report all acquisitions of agricultural land within 90 days. The figures are reported annually.

# Issues and Concerns

In consultations and in submissions to the Coalition's Working Group, a wide range of issues and concerns were raised about the operation and effectiveness of Australia's current foreign investment regulatory regime.

There is widespread concern about the lack of reliable, robust and insightful data on the extent of foreign acquisitions in Australia, particularly of agricultural land. Data are particularly lacking on whether foreign ownership of land and agricultural businesses is increasing or decreasing and/or focused in particular industries, sectors or geographic regions.

There is also a common perception that the thresholds for the FIRB to assess foreign acquisitions are too high for the agricultural sector and do not adequately reflect the average value of agricultural assets or land holdings. The threshold for the FIRB to consider a foreign acquisition of an agricultural business or agricultural land is the general business threshold, which is the proposed purchase of 15 per cent or more of an entity valued at \$244 million (indexed annually).

The result is that many purchases of agribusinesses, and virtually all sales of agricultural land, are never reviewed by the FIRB against the national interest test. Moreover, the scope for even very substantial agricultural land holdings to be acquired by a foreign interest without triggering the FIRB's review, via creeping acquisition of separate parcels of land, was noted.

Conversely, counter concerns were raised that too low a threshold for agricultural sector purchases could generate administrative costs in policing such thresholds (with an increased workload for the FIRB) and could deter desirable, productivity enhancing foreign investment. Moreover, this could contribute to financing difficulties for Australian agricultural producers, to the extent that any reduction in the appetite for foreign investment in agricultural assets might make banks lower their assessments of the value of collateral, and hence become more wary about lending to the sector.

The 'national interest test' is widely supported but, as noted, there is concern that the test is not adequately taken into account when foreign acquisitions are made in the agriculture sector.

Finally, the practical effectiveness of the FIRB in assessing proposed foreign acquisitions was also raised as a matter of concern. For example, issues were raised about:

- the capacity of the FIRB to adequately identify the true beneficial owners of a foreign purchase of agricultural land or to prevent subsequent transfer of such ownership (e.g. to a state owned enterprise);
- the degree to which competition considerations were being sufficiently taken into account by the FIRB in its review processes (as, say, in the decision by FIRB to approve Spanish company Ebro's planned takeover of SunRice Group – notwithstanding that this bid was later rejected by shareholders);
- risks arising to Australian farmers, in terms of the prices they would receive, arising from purchase of Australian agricultural producers or agribusinesses by large, vertically integrated foreign firms (to the extent that this might undermine the proper operation of competitive markets for these farmers' output);



- risks to the integrity of industry quality-assurance processes or the taxation of Australia's agricultural output, again in the event of purchases by large, vertically integrated foreign firms (were this to give rise to extensive related-party transactions, with possible transfer pricing implications); and
- the appropriateness of the current size and composition of the FIRB itself. It was noted that current arrangements may, for example, limit the extent of practical knowledge of the agriculture sector within the Board at the decision-making level. This could potentially undermine the proper weighing by the FIRB of competing aspects of a proposal for foreign investment in agricultural land or an agribusiness, in terms of applying the national interest test.

# Matters for Public Discussion

## 1. National Register

There is currently no national register of foreign ownership of agricultural land or agricultural businesses in Australia. Queensland is the only state that maintains a register of all foreign land acquisitions (both agricultural and urban).

Knowledge about the extent of foreign investment in Australian agricultural land is extremely limited. The FIRB reports annually on transactions in the broadly specified “agriculture, fisheries and forestry” sector, which technically includes any land acquisitions that trigger its interest.

However, these data are not disaggregated – either geographically, by country of ownership, or by type of agricultural activity – and information on foreign ownership in other sectors is not available.

The lack of knowledge about what is happening, and why, is highlighted by the divergent views held by Treasury and the Department of Agriculture, Fisheries and Forestry on a perceived recent expansion of foreign investment in agricultural land.

A Treasury official told the Senate Rural Affairs and Transport Committee inquiry into the FIRB national interest test that the growth was prompted by the end of the long Australian drought. A Department of Agriculture, Fisheries and Forestry official, in evidence to the same committee, attributed it completely to the stimulus of the worldwide food price spike of 2007-08.

This knowledge gap is feeding public and industry concern about whether all approved foreign investment in the agricultural sector is not contrary to the national interest, especially set against the global and highly publicised phenomenon of significant pools of investment funds targeting the agriculture sector worldwide in recent years. The parallel prominence of the discussion on global and local food security is also feeding concerns.

There is no database capable of tracking acquisitions of land across Australia to inform public debate or policy. To rectify this unsatisfactory situation, the Coalition will establish such a database or databases, as an up to date public register.

### **The Coalition seeks industry, community and interested party comment on:**

- 1a. The Commonwealth directly implementing and managing a national register of foreign ownership of real property in cooperation with State land titles offices.
- 1b. The Commonwealth directly implementing and managing, through the Australian Securities and Investments Commission, a national register of foreign ownership of businesses valued above an appropriate threshold (e.g. \$15 million), via instituting direct reporting requirements for foreign owners at the time of transfer of the business or businesses.
- 1c. The Commonwealth requiring foreign individuals or interests to inform either a Commonwealth register or State-based registers of foreign ownership of any future acquisition within 90 days.
- 1d. What other information might be contained in the register (e.g. hectares, type of title).

## *2. Threshold for the Acquisition of Agricultural Land*

Except in the case of purchases by US or NZ investors (under specific free trade agreements) the threshold for the FIRB to consider a foreign acquisition of agricultural land is the general business threshold – that is, the proposed purchase of 15 per cent or more of an entity valued at \$244 million (indexed annually).

Since most purchases of land are for 100 per cent of the property the effective trigger for the FIRB's consideration is \$244 million.

Very few agricultural properties are valued at \$244 million.

Further, there is no formula to trigger the FIRB considering cumulative land acquisitions by a single entity where successive acquisitions are below the threshold. Each acquisition is regarded separately, which means it is possible for a foreign entity to acquire vast aggregated land holdings without ever being subject to scrutiny by the FIRB.

Any foreign investment, regardless of scale (including agricultural land) by a state owned enterprise or sovereign wealth fund, must be notified to the FIRB.

A means of tracking the development of aggregations would be to apply a trigger to the FIRB's consideration of cumulative acquisitions above a certain monetary level – accompanied by a beneficial entity test.

There are precedents for industry specific triggers in existing foreign investment policy. They include the zero trigger for urban residential real estate acquisitions, a zero trigger for direct foreign investment in media companies (or 5 per cent limit for portfolio acquisitions in the media sector), a \$5 million trigger for commercial real estate that is subject to a heritage order, and a \$53 million trigger for acquisitions of commercial real estate without a heritage order.

Special triggers also apply to the U.S. under the Australia US Free Trade Agreement (with the same special triggers shortly to apply to NZ investors). The general trigger for FIRB review of acquisitions by U.S. entities under the FTA is a 15 per cent stake in businesses valued at \$1,062 million or more, but is the same '15 per cent of \$244 million' that applies to all investors in certain prescribed sensitive sectors such as telecommunications, transport, and defence. U.S. investors must also apply for acquisitions of urban residential real estate – but are not subject to the \$53 million trigger on developed commercial real estate.

In terms of arriving at an appropriate trigger in relation to the acquisition of agricultural land, the wide range of agricultural land values in Australia poses a challenge.

### **Box 2 – Examples of Australian Agricultural Land Values**

Several dairy farms in Victoria of circa 100-150 hectares are currently being advertised for sale for between \$500,000 and \$1 million. A grazing property, the 2,590 hectare Kaladbro Estate station, recently changed hands for \$25 million; Barton Station, 2,826 hectares, for \$11 million; and Watgania, 1,310 hectares, for \$5.5 million.

A 1,000 hectare cropping farm on the Liverpool Plains in NSW sold recently to Hakubaku Agri for \$1.6 million, while Ho Myoung Farms recently paid \$2.7 million for 178,000 hectares in Bourke. A Swiss group recently purchased five properties near Gundagai, totalling 4,300 hectares, for \$8.275 million. The NSW Farmers Federation says the average sale price for grain farms in the State in 2011 was \$1.25 million.

Discussion on a valid trigger has been broad, with suggestions ranging from zero to \$53 million, or a common agriculture/urban trigger of \$800,000, through to \$2 million.

The Working Group proposes the inclusion of foreign acquisitions of agricultural land in the list of prescribed sectors of the economy that attract a heightened degree of scrutiny from the FIRB, with a suggested threshold for examination of \$15 million (cumulative) for proposed acquisition of agricultural land. It is important to note that, as with existing thresholds in Australia's foreign investment rules, this would be the point triggering notification of FIRB for review, not a limit beyond which foreign investment in agricultural land would be prohibited.

**The Coalition seeks industry, community and interested party comment on:**

- 2a. The inclusion of foreign acquisitions of agricultural land in the list of sensitive sectors of the economy that attract a heightened degree of scrutiny, but not necessarily automatic review, from the FIRB.
- 2b. The FIRB having to review any proposed foreign acquisition of agricultural land valued at \$15 million or more (cumulative), except where the foreigner is from a country that has a Free Trade Agreement with Australia in which case the terms of that Agreement relating to foreign investment will apply. The zero trigger for purchase of land by an overseas government or a sovereign wealth fund will continue to apply.

### *3. Threshold for the Acquisition of Agricultural Business ('agribusiness')*

A recent report by the Australian Bureau of Agriculture and Resource Economics and Sciences concludes that foreign businesses control 60 per cent of sugar milling, 40 per cent of red meat processing, and 50 per cent of milk processing.

More broadly, as the FIRB annual report for 2009-10 established, investment across the agriculture fisheries and forestry sector has grown dramatically over a three year period – from an average \$284 million a year for the seven years to 2006-07 (and just \$219 million per annum for the three years to 2006-07) to an average \$2.5 billion a year over the three years to 2009-10.

As with agricultural land, the scale of business values across the agribusiness sector is extremely wide.

#### **Box 3 – Examples of Australian Agribusiness Values**

Many acquisitions attract the interest of the FIRB.

Examples include the \$3.5 billion acquisition of National Foods in 2009 by Kirin Holdings; the 2009 acquisition of ABB Grain by Viterra from Canada for \$1.6 billion and the purchase of Dairy Farmers by Lion Nathan (now Kirin) for \$675 million. However, many do not.

The Tasman Group, a Victorian based meat processor, was acquired by the Brazilian company Swift Australia in 2008 for \$150 million. Tatiara Meat Company, Australia's largest exporter of chilled lamb, was also bought by Swift Australia for \$30 million in 2009. Impact Fertiliser was bought by a Swiss international grain and fertiliser trader in 2010 for \$50 million.

The Tully sugar mill was bought by Chinese state-owned company COFCO for \$136 million in July 2011, and Proserpine Sugar Mills was bought by Wilmar (a Singapore company linked to the Singapore government) for \$115 million in June 2011. While both of these purchases ultimately did require the FIRB's approval (because they involved entities linked to foreign governments), they illustrate the point that even many large agribusinesses have values well below the current FIRB monetary threshold.

The threshold for a proposed investment to attract the FIRB's scrutiny, namely 15 per cent in an entity worth \$244 million, means that many acquisitions of agricultural businesses are proceeding without any consideration of the national interest.

**The Coalition seeks industry, community and interested party comment on:**

- 3a. The inclusion of foreign acquisitions of agricultural business ('agribusiness') in the list of sensitive sectors of the economy that attract a heightened degree of scrutiny from the FIRB but not necessarily automatic review, from the FIRB.
- 3b. The FIRB having to review any proposed foreign acquisition of an agribusiness where the proposed investment represents 15 per cent or more in an agribusiness valued at \$244 million (indexed annually) or exceeds \$53 million, whichever is the smaller (except where the foreigner is from a country that has a Free Trade Agreement with Australia in which case the terms of that Agreement relating to foreign investment will apply). The zero trigger for purchase of land by an overseas government or a sovereign wealth fund will continue to apply.

#### *4. The National Interest Test*

A proposed investment that attracts review by the FIRB is subject to an uncodified national interest test.

The test is not codified in order to ensure some Ministerial discretion is retained in relation to what constitutes the national interest at any given time. However the Treasurer, who has responsibility for FIRB matters, from time to time provides advice to the FIRB on issues to be taken into account in assessing the national interest.

National interest considerations include national security, competition, other Australian government policies, impact on the economy and the community, and the character of the investor.

Investments by state owned enterprises and sovereign wealth funds are subject to examination to determine if the proposed investment is commercial in nature or if the investor may be pursuing broader political or strategic objectives that may be contrary to Australia's national interest.

The Coalition does not intend to change the nature of the national interest test.

However, it does accept the importance of ensuring proper consideration of the national interest in relation to foreign purchases of agricultural land and agribusinesses.

As noted earlier, the phenomenon of significant pools of investment funds targeting the agricultural sector worldwide has become an issue globally in recent years, with growing discussion of the strategic purchasing of agricultural land and agribusinesses in the context of achieving food security.

Against this background it is important that practical application of the national interest test take proper account of Australia's food security in assessing foreign purchases of agricultural land and agribusinesses, in terms of ensuring:

- maintenance of competitive pressures in the international markets for Australia's agricultural products, to guarantee domestic producers continue to obtain a fair market determined price in these markets;
- no strategic loss of control in relation to the international marketing or purchase of Australia's agricultural production, or in relation to critical inputs to production such as water; and

- no loss of integrity as regards industry quality-assurance processes or the taxation of Australia's agricultural output.

With regard to taxation issues, it is also clearly relevant to the national interest that the integrity of Australia's revenue base be maintained. In relation to agricultural land or agribusinesses, a potential concern is that purchases by large, vertically-integrated foreign firms could compromise this integrity.

This might occur were such purchases to result in extensive related-party transactions with overseas owners or affiliates at non-market prices, to the extent that these transactions were not captured by Australia's transfer pricing rules.

It is therefore important that the FIRB, in practically applying the national interest test, assure itself that agricultural land or agribusiness investments coming before it will not result in the integrity of Australia's tax base being undermined.

It is also essential that proper account be taken of the possible impact of any foreign purchases of agricultural land or agribusinesses on local and regional communities.

A statement by the Treasurer explaining the importance of the FIRB taking Australia's food security into account in assessing land and agribusiness purchases would help underscore the need for foreign investment in the sector to be not contrary to the national interest.

**The Coalition seeks industry, community and interested party comment on:**

- 4a. Retention of the uncodified national interest test.
- 4b. A statement from the Treasurer explaining the importance of the FIRB taking Australia's food security into account in assessing foreign purchases of agricultural land and agribusinesses.
- 4c. A requirement that any foreign applicant subject to the national interest test disclose any direct or indirect ownership or direct source of influence by a foreign government, such as a state-owned enterprise owning shares in a subsidiary related to the business operations of the applicant.

### *5. Composition of the Foreign Investment Review Board*

The FIRB has considered many applications for foreign investment in Australian agricultural land and agribusinesses and has never rejected an application.

Even the proposed takeover of distributional control for the entire Australian rice industry by Spanish company Ebro was approved by the FIRB.

Distinct from the issue of the rules or guidelines governing foreign investment in Australia's agricultural sector is the issue of how these rules are implemented in practice, and whether this always optimally balances the competing factors at stake.

The four or five member the FIRB is largely comprised of people whose business experience is primarily in the finance sector. A senior Treasury Official is an Executive Member.

Of course, finance sector experience is highly desirable in such a role, given the need to assess detailed financial proposals and investigate complex ownership structures.

Nevertheless, there is a strong case that a wider variety of skills on the FIRB would not only reassure the community that decisions regarding investments are not contrary to the national interest, but also help to ensure the optimal weighing of competing factors in taking these decisions, especially in relation to purchases of agricultural land or agribusinesses.

**The Coalition seeks industry, community and interested party comment on:**

- 5a. Requiring that the FIRB include at least one individual with demonstrated expertise in the agricultural sector.
- 5b. Potential expansion of the FIRB from four or five members to seven, to further broaden the Board's spread of business experience and cope with any additional workload arising from other possible reforms canvassed in this paper.