

# Chapter 1

## Introduction

1.1 The Rural and Regional Affairs and Transport References Committee's inquiry into the Foreign Investment Review Board (FIRB) national interest test continues to grapple with one of the most significant contemporary issues in Australia's agricultural industry: that is, how to properly manage and encourage foreign investment for the industry's and the nation's benefit. The committee recognises the significant wealth and job creating benefits that foreign investments can bring to the Australian economy as well as to the continued development of the agriculture sector. The committee also unequivocally supports foreign investment in Australia and particularly when it is commercial in nature, improves local and national agricultural markets and competes fairly with domestic businesses.

1.2 However, the committee also notes and shares the significant concerns of many of Australia's rural and regional communities that certain recent trends in foreign investment in Australian agriculture are not necessarily in Australia's national interest.

1.3 Mindful of the extent of evidence already received by the committee and the need to regularly update Parliament on its progress,<sup>1</sup> this interim report has identified two major issues which will be considered: issues with the relevant tax arrangements and the out-dated legislative framework for foreign investment in Australian agriculture.

1.4 The evidence before the committee suggests that the current community concerns regarding foreign acquisitions of Australian agricultural assets stem from the increasing pressure created by the growing global food task. This appears to be leading to an increasing trend of foreign governments considering investment in Australia for food security purposes. The inadequacies of the *Foreign Acquisitions and Takeovers Act 1975* (FATA) to deal with contemporary practices in foreign investment have exacerbated these problems.

1.5 Furthermore, the committee heard evidence during its inquiry that there may be tax incentives or loopholes that benefit foreign investors over Australian investors in the agriculture industry. This was coupled with evidence suggesting there is scope for foreign government entities to avoid fair tax liabilities in Australia. Given that the government lists the impact of foreign investment proposals on Australia's tax revenue as a key part of applying the national interest test,<sup>2</sup> the committee considers that the evidence received shows the significant limitations of the current foreign investment review process.

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1 See Senate Standing Order 25(18).

2 FIRB, *Australia's Foreign Investment Policy*, January 2012, p. 6.

1.6 There are a number of other issues that the committee is continuing to investigate in its inquiry that are not addressed in this report. These issues require further consideration and will be discussed in detail in the committee's final report. The issues include:

- the regulatory framework for foreign investment in Australia and the international trends in foreign investment regulation;
- the global context of food security and foreign investment (in greater detail than this report provides);
- major information gaps regarding foreign investment in Australian agriculture;
- the scrutiny and transparency of FIRB in applying the national interest test; and
- the foreign investment review threshold.

### **Structure of the report**

1.7 This interim report is divided into three chapters. Chapter 1 details the conduct of the inquiry and the purpose of the interim report. The chapter also notes the growing challenge of global food security and the need to understand the issues discussed in chapters 2 and 3 in this context.

1.8 Chapter 2 is the key substantive chapter that deals with the concerns the committee has with the current taxation arrangements for foreign investment. In doing so, the chapter discusses:

- the tax arrangements that apply to foreign investment that are potentially different from those that apply to domestic investment, with a particular focus on transfer pricing, capital gains tax and passive income exemptions;
- the possible avoidance of a fair tax share for Australia from foreign government entities investing in Australia for non-commercial food security purposes; and
- the 'pathways' for major domestic investment in long-term Australian agriculture projects and capital that are hindered due to current tax arrangements.

1.9 Chapter 3 provides a discussion of the inadequacies of the FATA to address the contemporary issues regarding foreign investment in Australian agriculture. This stems primarily from the poor and imprecise definition of rural and urban land under the FATA and the failure of the Act to distinguish between agricultural land and agricultural business.

1.10 The committee notes that Government Senators intend to present an additional report to this interim report at a future date.

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## Global food task

1.11 The future global food task is a fundamental issue for this inquiry. As noted by the Department of Agriculture, Fisheries and Forestry (DAFF) in its national food plan issues paper (which was attached to their submission to the inquiry), there are currently:

...one billion people [who] suffer chronic hunger and the United Nations estimates that food production will need to increase by about 70 per cent from 2005–07 average levels to feed the projected world population of 9.3 billion by 2050.<sup>3</sup>

1.12 This represents a major challenge for global agriculture over the coming decades and Australia will have to make an ongoing and increasing contribution into the future. A large number of submitters and witnesses considered that the implications of foreign investment in Australian agriculture need to be examined in this context.

1.13 Furthermore, the committee received evidence that some countries are taking active steps to invest in Australian agriculture to meet their domestic food security needs. Hassad Australia, for example, which is an Australian based, Qatari government owned entity, told the committee that its investments in Australian agriculture were initially based on developing Qatari food security.<sup>4</sup>

1.14 The committee considers future domestic and global food security needs as a fundamental feature of managing foreign investment in Australian agriculture, and therefore, the issues raised in the report regarding tax arrangements for foreign investment are examined in this context.

## Conduct of the inquiry

1.15 On 6 July 2011 the Senate referred the matter of the examination of the Foreign Investment Review Board national interest test to the Rural and Regional Affairs and Transport References Committee for inquiry and report. On 22 November 2012, the Senate extended the reporting date for the inquiry to 27 February 2013. The terms of reference are available in Appendix 1.

1.16 The committee advertised the inquiry in the *Australian*, on the committee's website, and invited submissions from peak bodies, government departments and relevant agricultural companies.

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3 DAFF, *Submission 1 (attachment)*, p. vi.

4 Mr Tom McKeon, Chief Executive Officer, Hassad Australia Pty Ltd, *Committee Hansard*, 16 November 2011, p. 38. Hassad Australia stated that its operations have since moved to a commercial basis.

1.17 To date, the committee has received 31 submissions which are published on the committee website (see Appendix 2) and held 8 public hearings in Canberra (see Appendix 3).

### **Acknowledgements**

1.18 The committee acknowledges the contribution of the many individuals and organisations that made contributions to the inquiry through submissions, providing briefings, or appearing as witnesses to the inquiry.

### **Note on references**

1.19 References to Committee Hansard are to the proof versions. Page numbers may vary between the proof and official version of the Hansard.