

Additional comments by Coalition Senators

1.1 Coalition Senators do not support the position set out in the majority interim report that the scope of the current inquiry be expanded to encompass a re-examination of the recent legislative changes to Australia's Foreign Investment Review Framework.

1.2 In justifying this decision, the committee states that (6.8) ‘... a number of recent legislative and policy changes, which significantly alter Australia’s foreign investment regime, have been introduced with seemingly arbitrary thresholds introduced for different investors and types of investments.’ The committee also implies that the recent changes to Australia’s foreign investment regime lack clarity and transparency and threaten to curtail the flow of investment into Australia’s agricultural industry (6.9–10).

1.3 Before addressing these claims we note that given the focus of this inquiry on foreign investment in Australian assets of strategic or national significance it is curious that nowhere in the interim report is there clear reference to the Treasurer’s public statements making clear his intention to introduce further amendments to the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 to ensure proper federal government oversight of foreign investment proposals in critical national infrastructure. For example, at his 10 December 2015 press conference Treasurer Morrison said:

[T]he Government will be proceeding with our regulatory change to ensure that strategic critical infrastructure assets at a state and territory level will be subject to FIRB processes regardless of whether it's a state owned enterprise, foreign investor or otherwise. This is a process we put in place some months ago and have been consulting with the states and territories. ... This will mean, of course, that we will seek to work very promptly with the states and territories where there are acquisitions that relate to those types of assets and there needs to be, I think, a very professional and efficient and high-priority response from FIRB to those requests and some preparatory work done with states and territories also to ensure that the process moves as smoothly as possible. We welcome foreign investment in this country, but it must be consistent with the national interest and state and territory Treasurers certainly support those principles and I think there was very good consensus on having a very workable system.

1.4 The Treasurer went on to note the appointments to the FIRB board in early December, in particular, David Irvine and David Peever, both of whom, the Treasurer noted, bring great experience in the area of security and the strategic national interest and add to the existing very strong commercial expertise on the board. Mr Morrison stated that:

When you have a strong FIRB doing its job, applying the rules, protecting the national interest, that can only build confidence in foreign investment in this country and that's what the Government is doing.¹

1.5 This oversight notwithstanding, the claims by the committee (6.8-10) about the changes introduced via the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 highlight a lack of appreciation of the rigorous and extensive policy development processes underpinning the recent changes, which included widespread public consultation and consideration of a range of views from stakeholders.

1.6 For example, the lowering of the threshold for foreign investment in agribusiness — from \$252 million (as at 1 January 2015, indexed) to \$55 million (as at 1 January 2016, indexed) — is based on a commonsense definition of agribusiness that captures primary production businesses and first stage processors (including meat, poultry, seafood, dairy, fruit & vegetable processing, and sugar, grains and oils & fat manufacturing). This change, along with the other changes to Australia's foreign investment regime were developed and examined through a number of mechanisms including:

- the development of the Coalition policy discussion paper on foreign investment in 2011-2012;
- the Senate Rural Regional Affairs and Transport References Committee inquiry which endorsed the key elements of the current policy in its June 2013 report Foreign Investment and the National Interest;
- the Senate Economics Legislation Committee inquiry and report of October 2015, Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015; and
- a Regulation Impact Statement (RIS) was prepared and certified by the Treasury under the Australian Government's best practice regulation requirements. As part of this process, extensive additional public consultation was undertaken with a broad range of stakeholders on all elements, the details of which are set out in the RIS. The RIS was assessed as compliant and consistent with best practice by the Office of Best Practice Regulation.

1.7 In June 2011, in response to growing community expressions of unease about the apparent increase in foreign investment in agricultural land and agribusinesses, the Coalition Opposition formed a Coalition Working Group to investigate options to strengthen the rules governing the sale of agricultural land and agribusinesses to foreign entities. This led to the Coalition Opposition put out a public discussion paper in August 2012, "Foreign Investment in Australian agricultural land and agribusiness".

1.8 The paper looked at examples of Australian agricultural land values, which made it clear that the then \$244 million threshold that applied was far too high. The

1 Morrison 2015, <http://sjm.ministers.treasury.gov.au/transcript/067-2015/>

paper also looked at foreign investment rules in a range of other countries - for example, that in NZ any proposed acquisition of agricultural land over 5 hectares had to be approved. The Coalition WG discussed a range of possible new scrutiny threshold levels for agricultural land, and settled on \$15 million (cumulative) as a more realistic but also reasonable level. The \$53 million threshold recommended for agribusinesses was chosen to correlate with the then \$53 million level used for FIRB scrutiny of proposed foreign purchases of commercial real estate. With annual indexation, this \$53 million has been adjusted to \$55 million (as at 1 January 2015).

1.9 The exceptions to the new thresholds for agricultural and agribusiness are those related to foreign investment thresholds included in FTAs (or the specific investment agreement with NZ) already in existence before the September 2013 election of the Coalition Government with:

- USA, NZ and Chile: \$1,094 million (as at 1 January 2015, indexed annually)
- Singapore and Thailand: \$50 million (fixed minimum level).

1.10 Given that any change to these thresholds in these pre-existing FTAs would require renegotiation of each agreement and possible request for compensation in case of changing the thresholds, it was recognised that this could be a time-consuming and possibly expensive exercise. However, in all the FTAs concluded by the Coalition government, the lower thresholds for agricultural land and agribusiness have been included, namely in KAFTA, JAEPA and ChAFTA, and are also expected to apply to TPP partners who do not already have pre-existing FTAs with Australia which allow higher thresholds. (The 12 countries party to the Trans-Pacific Partnership Agreement are: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, the United States and Vietnam.)

1.11 In addition, it is surprising that the Committee interim report appears to find credible the claims by some that the lower FIRB scrutiny thresholds for agricultural land and agribusiness will deter genuine foreign investors in Australian agricultural assets. Over the past decade, agricultural assets have become increasingly attractive to global investors as an asset class, and Australia remains one of the most attractive destinations for such foreign investment. In today's twenty-first century world, the story of agriculture has changed dramatically, with global food and fibre demand projected to almost double by 2050 to feed and clothe a world population of almost 10 billion. Good quality agricultural and water assets in stable geographical locations will become increasingly scarce resources, and foreign investors and many foreign governments can see this.

1.12 The Opposition, and some vested interests, have made the assertion that these new measures by the government would deter foreign investment in Australian agriculture. Anyone who follows trends in investment in Australian agriculture would know that there has been no diminution of foreign investor interest which continues apace. Finally it should be noted that it was not the purpose of the Coalition changes to deter foreign investment — rather the purpose was to provide greater clarity and certainty about foreign investment trends to reassure the Australian community, and as noted above, represents the Coalition Government delivering on its September 2013 election commitments.

1.13 In conclusion, given the extensive, rigorous and transparent public policy development and assessments processes associated with the Coalition's broader foreign investment changes highlighted above, the only realistic conclusion that can be drawn from the majority committee's stated intention to re-examine the recent changes to Australia's Foreign Investment Review Framework is unlikely to be an effective use of scarce committee resources.

Senator Matthew Canavan
Committee Member

Senator Sean Edwards
Deputy Chair