

Executive Summary

Foreign investment has long been an important feature of Australian agriculture. It has provided a key source of capital for Australian farmers and has promoted the growth of the Australian agricultural sector. Foreign investment has improved agricultural productivity, has generated many opportunities for Australian agricultural businesses, and assisted job creation and economic sustainability for many rural communities.

Foreign investment will also be essential to further development of Australian agriculture and will greatly assist Australian businesses to make the most of opportunities in the Asia Pacific region in the coming century.

However, future foreign investment in Australia also presents challenges for the agricultural industry and Australia's national interest. While genuinely commercial foreign investment should always be welcomed, the growing global food task appears to be leading to an increasing trend of foreign governments and associated entities considering investment in Australia for food security purposes. The committee notes that non-commercial foreign investments, motivated by factors such as food security rather than commercial returns, have a great potential to distort the capital market and the trade in agricultural products to the detriment of Australian farmers and Australia's economy. In addition, as noted in the committee's interim report, foreign government-owned companies and foreign multinational businesses can use complex corporate structures and mechanisms such as transfer pricing to minimise their tax liabilities in Australia and, as a consequence, erode Australia's revenue base. The committee is acutely aware that the future global food task, driven by world-wide population growth and combined with shrinking areas of prime agricultural land, will require dramatic increases in agricultural productivity in the next few decades.

Fortunately, as a net exporter of food, the future global food task also provides significant opportunities for Australia. The committee believes that with the right agricultural policy settings—including appropriate and clear foreign investment policies—the agricultural sector and the whole Australian economy can benefit greatly.

Australia is not alone as a country that has had to manage significant foreign investment in agricultural land and businesses. Nor is Australia the only country facing challenges from the global food task. The committee believes that Australia needs to be mindful of international trends and as such the committee considered the regulatory framework in countries facing similar issues to Australia. To this end this report outlines (in chapter two) the regulation of foreign investment in agriculture in countries including the United States, New Zealand, Brazil, Argentina, China and India. It also notes possible impacts of international free trade agreements on Australia's foreign investment regulations.

Being mindful of international developments and the context of the growing global food task, the committee was able to more fully examine Australia's current regulatory framework. In short, the committee found that Australia's current framework for

foreign investment (as per the *Foreign Acquisitions and Takeovers Act 1975* (FATA) and related regulations and policy)¹ was significantly deficient in effectively managing a number of key challenges facing Australian agriculture. Therefore, the committee recommends that the government make a comprehensive update of the FATA and related policies to address the key findings of this report.

Key Findings

Information Gaps

The first key finding of the committee's inquiry is that there is a significant lack of detailed and accurate information regarding foreign investment in the Australian agricultural sector (discussed in chapter three). This issue was widely identified by submitters and witnesses and acknowledged by the government as it took actions to address these gaps. The committee examined these steps by the government (notably the ABS agriculture survey and the subsequent ABARES report about foreign investment in Australian agriculture) and found they did little to genuinely improve knowledge of the issue. However, the committee also noted the government's progress to date towards a register for foreign investment in agricultural land. The committee strongly supports the register and urges that the government adopt the committee's recommendations in this regard. The committee believes that the register must provide consistent and transparent information about the current and future trends of foreign ownership of Australian agricultural assets. The committee also hopes that the publication of the register will provide a more informed debate, and that this will dispel some of the myths that currently surround this subject.

The transparency and scrutiny of the national interest test

The second key finding (discussed in chapter four) is that while some submitters and witnesses supported the current FIRB arrangements, there were significant shortcomings in the transparency of the FIRB process and in the scrutiny of the national interest test. In addition, the committee found that the compliance mechanisms for appropriately dealing with any conditions placed on foreign acquisitions need strengthening. The committee also examined these issues through two short case studies—the recent acquisitions by Hassad Australia and the sale of Cubbie Station. In these cases, the committee found that it was the actions and initiatives of the companies themselves, rather than the FIRB oversight process, that helped determine how rigorously the national interest test was applied to proposed foreign investments.

The FIRB review investment threshold

The third key finding (discussed in chapter five) is that the current investment threshold that triggers a FIRB review of proposed private foreign investments in the agriculture industry is far too high. The current threshold rate of \$248 million only covers a very small number of agricultural acquisitions. This was exacerbated by the limitations of FIRB to monitor cumulative purchasing strategies which may result in

1 The regulations and policy are Foreign Acquisitions and Takeovers Regulation 1989 and Australia's Foreign Investment Policy (AFIP), respectively.

large aggregate holdings of agricultural land. Furthermore, committee found that the high threshold level means that potentially large impacts on local economies may often also fall outside of the FIRB review process.

Definitional issues – rural land, urban land, and direct investment

The fourth key finding (also discussed in chapter five) is that the definitions of key terms in the FATA and the AFIP were inappropriate or inadequate for managing current foreign investment challenges in agriculture. In particular, the committee considered that the definitions of 'rural land' and 'urban land' in the FATA do not match with commonly understood meanings of the terms and that this has led to the inappropriate classification of land that may be considered for FIRB review. The committee considers that this potentially undermines confidence in the current regulatory framework. Furthermore, the committee found that the term 'direct investment' as defined in the AFIP did not appropriately cover certain cases of foreign government investors. The committee is pleased that the government has amended the AFIP in March 2013 to address this issue.

Foreign Investment and future agricultural developments

Finally, the committee examined the role of foreign investment in major agricultural developments in Australia's northern regions through the case study of the Ord irrigation development (see chapter six). The committee considers that foreign investment can make a major contribution to future agricultural developments in Australia, including the Ord irrigation area. This in turn can lead to significant benefits for Australia's economy and future food security. However, the committee also considers that to maximise the benefits of such developments there are challenges to be overcome such as: limited access to long-term capital investment; restrictions from land tenure arrangements; and the trade and transparency of water entitlements. These issues need to be addressed by encouraging and properly regulating both domestic and foreign investment in the national interest.

