

Senate Rural and Regional Affairs and Transport References Committee

**Written Questions on Notice – Thursday, 12 July 2012
from Public Hearing Wednesday, 16 November 2011**

Inquiry into the Foreign Investment Review Board National Interest Test

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**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
REFERENCES COMMITTEE**

Inquiry into the Foreign Investment Review Board National Interest Test

Public Hearing Wednesday, 16 November 2011

Questions on Notice – Foreign Investment Review Board

On 16 November 2011, FIRB officials touched briefly on the Great Southern land sale.
Hansard, Pg 19:

CHAIR: In the case of Great Southern Plantations, where people like Elders and the VFF in Victoria wanted to disaggregate the asset—are you aware of that?

Mr Di Giorgio: Yes.

Written Questions on Notice – Senator Heffernan

1. At or around the time of preparing its recommendation to the Federal Treasurer to allow the Great Southern land sale to proceed, was the FIRB aware that Australian farmers had submitted a competitive bid proposal to the Receivers?
2. Could FIRB provide reasons why it recommended the land sale proceed, that is, the sale to an overseas investor, ie the Canadian pension fund manager AimCo when Australian farmers also sought to bid for the land satisfied the national interest test?
3. Why was the sale not considered ‘contrary to the national interest’?
4. Did FIRB contact any farmer representative bodies, the Administrators of Great Southern (Ferrier Hodgson) or any other relevant body as part of due diligence before assessing that the land sale would not be contrary to the interests of Australian farmers or of other stakeholders (such as shareholders)? If so, please provide details.
5. What tests did the FIRB actually apply before it concluded that the land sale was not contrary to the national interest?
6. Was FIRB aware that the land represented 650 individually titled farm lots, even though it was presented as an aggregate land sale involving one transaction totalling over 250,000 hectares?

7. Did FIRB realise that in purchasing the asset, AimCo Pty Ltd bought quality rural land in highly sought after farming regions in Australia and not a 'portfolio of forestry assets' (ie, the blue gum plantations that were growing on the land belonged to existing investors and as such AimCo Pty Ltd had no entitlement to the trees or the harvest proceeds)? Did the FIRB make any assessment or place conditions on the sale to ensure AimCo Pty Ltd would maintain and further develop forestry assets for the benefit of Australia and were not merely acquiring land at a discount to resell at a profit at some future point in time? Under the sale terms could AimCo on-sell the land to other foreign interests in smaller portions (ie under the minimum threshold) without approval from the FIRB?

8. Does FIRB accept that Australian farmers ought to have the same commercial opportunity to compete with foreign investors for rural land sales and if so, can it explain why this was not considered feasible in the case of the Great Southern land sale, given the proposal put forward by the VFF to the receivers on 27 September 2010?

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ANSWER

Consistent with previously advised concerns, the Foreign Investment Review Board remains reluctant to engage with the Committee in relation to specific foreign investment cases.

Under Australia's long-standing welcoming approach to foreign investment, the *Foreign Acquisitions and Takeovers Act 1975* requires the Treasurer or his delegate to review investment proposals to decide if they are contrary to Australia's national interest.

The Treasurer may 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 legislation does not provide a basis for the Treasurer to weigh-up the merits of potentially competing investment proposals or to promote particular proposals relative to others. Accordingly, under Australia's legislative framework it is not uncommon for more than one foreign investment proposal to be approved to purchase the same target on the basis that neither proposal was contrary to the national interest. This is not to suggest that both proposals may offer the same benefits to Australia's national interest or that foreign investors were approved only in circumstances where domestic bidders for a particular target were absent.

The Foreign Investment Review Board has no legal basis upon which to facilitate the process by which corporations, businesses or assets are sold, administered or liquidated. Prudential oversight of certain of these activities falls to the responsibility of other agencies such as the Australian Securities and Investment Commission.

The foreign investment national interest consideration looks at a broad range of factors relevant to a proposed investment. The Government's 18 January 2012 Policy Statement on Foreign Investment in Agriculture provides detailed guidance on specific factors typically considered in relation to proposed acquisitions in the agricultural sector.

When assessing an agricultural application under the Government's foreign investment screening framework, the Foreign Investment Review Board seeks to ensure that investments do not adversely affect the sustainability of Australia's national agricultural resources, including their economic, social or environmental contribution to Australia.

In seeking to do this, the Board considers factors such as: the quality and availability of Australia's agricultural resources, including water; land access and use; agricultural production and productivity; Australia's capacity to remain a reliable supplier of agricultural production; biodiversity; and employment and prosperity in Australia's local and regional communities.