



23 April 2020

Committee Secretariat
Joint Standing Committee on Trade and Investment Growth
PO Box 6021
Parliament House
Canberra ACT 2600

Sent via website

RE: Inquiry into Diversifying Australia's Trade and Investment Profile

The Australian Sugar Milling Council (ASMC) is the peak industry organisation for raw sugar manufacturing (the sector). We represent five sugar manufacturing companies which collectively produce 90 percent of Australia's raw sugar at 17 sugar mills in Queensland.

The sector has been a clear beneficiary of foreign investment, with \$7 billion invested to purchase and operate, maintain and run these mills since 2006.

A focus on trade policy and market access improvements is emphasised by the fact the sector derives more than 75% of its \$2 billion in annual revenues from export sales of raw sugar, the majority of which comes from three main trading partners.

The matters being investigated by the Committee are of high relevance to us and we offer comment in the submission on the:

- Strong benefits of foreign investment.
- Significant barriers to foreign investment associated with recent changes to the federal government's FATFA and RFOAL legislation.
- Sugar sector's growing export market concentration and the significance of bi-lateral trade agreements.
- Sector's future trade direction and government's role.

In summary, it is crucial in the face of growing trade protectionism and increasingly mobile global capital that Australia continues to diversify its trade markets and encourage foreign direct investment (FDI). To that end, ASMC has identified a number of significant regulatory imposts in the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Cwth) (FATFA) and *Register of Foreign Ownership of Agricultural Land Act 2015* (Cwth) (RFOAL Act) that should be removed or improved to promote FDI.

Please don't hesitate to contact David Rynne, Director Policy, Economics & Trade on [REDACTED] or [REDACTED] for further clarification on the issues raised in the attached submission.

Yours sincerely

[REDACTED]

David Pietsch
Chief Executive Officer



ASMC Submission

Foreign capital has brought certainty and significant community benefits to sugar communities

The ownership structure of the sector has changed significantly over the past 14 years with a significant injection of ownership (\$2.35 billion) and operating capital (~\$4.76 billion). Starting with the purchase of Bundaberg Sugar in 2000 by Finasucre (Belgium), currently 19 of Australia's 24 operating sugar mills are fully or majority foreign-owned (Table 1).

Table 1: Foreign ownership in the QLD sugar manufacturing sector

Year	Foreign acquirer	Nationality	Ownership capital* (A\$)
2000	Finasucre	Belgian	Bundaberg Sugar (undisclosed)
2006 de-regulation of the Australian sugar industry (Sugar Industry Amendment Act 2005 (Qld))			
2010	Wilmar	Singaporean	Seven mills from CSR for \$1.75 billion (plus other refining and distilling assets) (eventually eight mills)
2011	COFCO	Chinese	One mill - Tully Sugar Limited for \$136m
2012	Mitr Phol	Thai	Four mills - MSF Sugar for \$313m
2019	Nordzucker	German	70% equity in three mills - Mackay Sugar for \$120m
2020	Almoiz	Pakistani	(Pending) Majority interest in one mill - Isis Central Sugar Mill for \$35m
TOTAL (since 2006)			\$2.35 billion

Source: ASMC company information

Note - in addition to this ownership capital is the approximate/average \$20 million each mill spends per annum on operating, maintenance and overheads. It is estimated that 17 mills would have therefore spent approximately \$340 million per year or \$4.76 billion over the last 14 years.

Of note is that the majority of this capital was injected following the 2006 deregulation of Australia's sugar marketing arrangements and came after a long period of significant under-investment in Australian sugar mill operations.

This foreign investment has ensured:

- Sufficient operating capital to undertake the essential ~\$200 million in annual mill maintenance (thereby promoting confidence to growers in the capacity of the factories they supply);
- Continued diversification (co-generation mainly) and regional development opportunities given global expertise (e.g. bio refineries, biochemicals and bioproducts); and
- Significant socio-economic benefits. An independent analysis commissioned by ASMC in early 2019 identified the total contribution to the economy from the raw sugar manufacturing sector to be in excess of \$4 billion in 2017/18, underpinning more than 22,600 jobs.



The barriers to foreign investment including high FIRB related costs

In 2015, the Commonwealth Government introduced the following package of legislation with the stated policy objective of strengthening the integrity of the foreign investment framework in Australia.

- *Foreign Acquisitions and Takeovers Legislation Amendment Act 2015* (Cwth) (FATAA);
- *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Cwth) (FATFA); and
- *Register of Foreign Ownership of Agricultural Land Act 2015* (Cwth) (RFOAL Act).

The primary changes related to the FATAA, which sought to modernise the foreign investment rules and strengthen the enforcement of the foreign investment system, included:

- (1) Introducing civil penalties and additional stricter criminal penalties for non-compliance;
- (2) The transfer of responsibility for regulating foreign investment in residential real estate to the Australian Taxation Office (ATO); and
- (3) The lowering of screening thresholds for investments in Australian agricultural land and agribusiness to ensure significant investments in this sector are scrutinised vis:
 - The approval threshold for private foreign investment in agricultural land (whether by acquiring interests in the land or in a share or unit in an agricultural land corporation or trust) decreased from \$252m to \$15m (cumulative)¹, and
 - The approval threshold for private foreign investment in agribusinesses is now \$58m.

The changes at (3) significantly increased the number of transactions (and application and legal fees) involving sugarcane farms and sugar mills requiring FIRB approval. Coupled with the strengthening of penalties, introduction of the agricultural land register and new advertising requirements (discussed below), the 2015 changes serve as a disincentive for the foreign-owned sugar mills to continue to invest in regional development.

Higher application fees

The FATFAA also introduced fees on all foreign investment applications, including:

- Fees for applications relating to exemption certificates;
- Fees for giving notice of notifiable actions;
- Fees where more than one action is taken; and
- Fees for internal reorganisations.

These FIRB application fees are payable for any application or notice given relating to foreign investment in agricultural land or agribusinesses. The applicable fees range from \$5,000 to \$100,000 depending on the consideration for the proposed acquisition. The application fee must be paid before an application is processed, subject to the Treasurer's

¹ Calculated by adding the consideration to the value of agricultural land the acquirer (and its associates) already holds.



statutory power to waive and remit fees.

There is broad concern that the fees incorporate the costs of administrative activities that are unrelated to the processing of the applications for foreign investment. Activities such as data collection, monitoring, compliance and enforcement activities currently covered by the fees provide benefits to the Australian Government rather than the foreign investor. ASMC argues that these fees are more consistent with a tax on foreign investment in agriculture than a means of full cost recovery.

Higher legal and advisory fees

The introduction of fees further increased the already substantial legal and advisory costs associated with engaging advisors to guide a foreign investor through the approval application process.

Before 2015, there were no fees for applications and their administration was funded through consolidated government revenue. Tables 2 and 3 demonstrate that for sugar mill acquisitions over \$1 billion and agricultural land over \$10 million, market rates for legal assistance are a considerable \$105,200.

Table 2: Indicative legal fees for commercial land and entities and business acquisitions

Category	Consideration for the acquisition is \$10 million or less	Consideration for the acquisition is above \$10 million and not more than \$1	Consideration for the acquisition is above \$1 billion
Acquisition of a direct interest in an Australian entity or Australian business that is an agribusiness (i.e. sugar mill)	\$2,000	\$26,200	\$105,200

Table 3: Indicative legal fees for agricultural land acquisitions

Category	Consideration for the acquisition is \$2 million or less	Consideration for the acquisition is above \$2 million and not more than \$10 million	Consideration for the acquisition is above \$10 million
Agricultural land	\$2,000	\$26,200	\$105,200

Source: *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Fees Act) and *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015* (Fees Regulation)

Introduction of agricultural land register

The RFOAL Act was designed to complement changes introduced under FATAA and FATFA by establishing an Australian Tax Office register of foreign ownership of agricultural land. Broadly, the RFOAL Act requires foreign persons to register information about their existing holdings and subsequent acquisitions and disposals of interests in Australian



agricultural land, providing greater transparency in relation to the level of foreign ownership of agricultural land.

Advertising requirements

Following the 2015 amendments, foreign investment regulation has been modified by a number of policy measures set out in Guidance Notes released by FIRB. Guidance Notes are not legislated and therefore not binding on foreign investors. However, they provide an indication of how FIRB will interpret the law in particular circumstances.

Most notably for the sugar industry, Guidance Note 17 introduced the 'Australian opportunity - an open and transparent sale process' requirement. This 'advertising requirement' provides that FIRB approval will not be granted for acquisitions of interests in agricultural land in circumstances where the relevant agricultural property has not been offered for sale publicly and, marketed widely for a minimum of 30 days. The intent of the policy is to provide an opportunity for Australian individuals and entities to bid for the assets.

Definition of what constitutes 'marketed widely' is given in the Guidance Note. An open and transparent sale process means advertising on real estate listing sites or large regional and national newspapers. Various exemptions are provided in this process, including where an Australian entity is retaining a 50% or greater interest; undertaking internal reorganisations or where the acquiring entity is an ASX-listed company.

The introduction of the land register and advertising requirements has further increased administrative and compliance costs for foreign investors and are considered further deterrents to investment in Australian agriculture, and particularly, the sugar industry.

The sector's growing export market concentration and impact of bi-lateral trade agreements

The export patterns of the sector has also changed significantly in recent years with fewer markets (8 in 2020 and 19 in 1998) and significant concentration around the top 3 export destinations (i.e. the top 3 markets consisted of 84% of the sector's exports in 2020 and 49% in 1998) (Table 4).



Table 4: Australian raw sugar exports countries of destination (tonnes)

1998				2018				
1	Korea, Rep. of	821,485	49%	1	Korea, Rep. of	1,096,098	84%	
2	Malaysia	791,832		2	Japan	730,693		
3	Canada	634,989		3	Indonesia	680,571		
4	Japan	634,883	51%	4	China	182,830	16%	
5	Iran	295,043		5	Malaysia	138,674		
6	Saudi Arabia	225,999		6	USA	61,088		
7	Indonesia	223,594		7	New Zealand	48,922		
8	China (Taiwan)	199,527		8	China (Taiwan)	42,053		
9	New Zealand	196,755		Totals		2,982,538		100%
10	USA	125,296						
11	Philippines	110,376						
12	Viet Nam	83,157						
13	Russian Fed.	57,879						
14	China	53,141						
15	Egypt, Arab Rep.	46,764						
16	Singapore	42,514						
17	Unknown	37,536						
18	Slovenia	28,696						
19	Bulgaria	26,192						
Totals		4,635,658	100%					

Source: International Sugar Organisation 1998 and 2018 Yearbooks

This increasing concentration is in response to a number of developments over the past 20 years:

- (1) The Asian markets have become less oversupplied over time and physical premiums and returns have increased relative to other non-Asian markets.
- (2) The signing of bilateral trade agreements between Australia and S. Korea², Indonesia³ and Japan⁴ provided preferential (Tariff Rate Quota or TRQ) market access which in turn improved Australia’s competitiveness, allowed development of niche product opportunities (e.g. the “JB1” hi-polarisation brand) and higher returns to Australian suppliers and foreign refinery customers.
- (3) Australian sugar marketers gave preference to high-volume, reliable refinery customers with low counter-party risk.

² The Korea-Australia Free Trade Agreement (KAFTA) (2014) provides for unlimited quota from Australia to S. Korea at 0% duty.

³ The Australia-Indonesia Comprehensive Economic Partnership Agreement (AICEPA) (2019) provides for limited quota from Australia to Indonesia at 5% duty (consistent with Thailand under ASEAN).

⁴ The Japanese-Australia Economic Partnership Agreement (JAPEPA) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) provided for a number of reductions in the fixed tariffs and variable levies payable on high-polarisation and low-polarisation raw sugar to the lowest levels on any exporter.



The sector's future trade direction and how government can assist

There are no known near-term risks to Australia's ongoing access to the S. Korean, Indonesian and Japanese raw sugar markets (e.g., preferential trade deals with competitors). Further, these markets are likely to continue to maximise the sector's export returns under current global commercial and trade policy settings.

However, in the medium to longer term there are risks in these markets associated with sugar consumption falling in line with increases in GDP and incomes, the introduction of dietary controls, and greater competition from Thailand should it expand its supply and negotiate improved TRQs.

To this end, the Australian sugar industry is conducting detailed assessments of future sugar demand globally with a view to defray market access risk and understand prospective new markets and the required commercial and trade policy changes that would be required to access these markets.

Assessments on the viability of addressing various non-tariff barriers are also occurring. To be completed in the 2nd half of 2020, the Industry's 5-Year Trade Strategy will identify those markets that will maximise the sector's returns and provide a blueprint for industry and government to work towards. It is likely that the actions will extend beyond the need for more bilateral trade agreements and include actions such as:

- Ongoing assessments of the long-term demand and supply trends in major markets / potential markets.
- Addressing increasing government interventions (subsidies etc.) in exporting countries by working with like-minded international groups of sugar exporters (e.g. Global Sugar Alliance) to widen the base of support for certain trade policy and market access (TP&MA) actions.
- Engagement with key in-market influencers to secure support for TP&MA improvements e.g. business groups & think tanks in prospective markets like the US.
- Reducing in-country opposition from those opposing TP&MA reforms (e.g. beet growers in the EU and UK).
- Maintaining regular contact with Australian overseas embassies.
- Securing strong support from the Australian Government for priority sugar TP&MA issues & coordinated support in overseas countries.

End.