Senate Rural & Regional Affairs &Transport References Committee

Questions on Notice – Thursday, 9 February 2012 CANBERRA

Inquiry into examination of the Foreign Investment Review Board National Interest Test

Question Number	Page No's.	Witness	Question asked by	Answered
1	4	FIRB	Chair	16/8/12
1	5	FIRB	Senator Nash	16/8/12
3	11	FIRB	Chair	16/8/12
4	14	FIRB	Chair	16/8/12
5	16	FIRB	Chair	16/8/12
6	17	FIRB	Chair	16/8/12
7	20-21	FIRB	Chair	16/8/12
8	21	FIRB	Chair	16/8/12
9	23	FIRB	Chair	16/8/12

SENATE RURAL & REGIONAL AFFAIRS & TRANSPORT REFERENCES COMMITTEE

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Public Hearing Thursday, 9 February 2012

Questions Taken on Notice – Foreign Investment Review Board, Treasury

1. HANSARD, PG 4

CHAIR: Just stay with where we are: don't get too excited. For the purposes of the 231, now 240-whatever trigger, they obviously do not meet that. They have not gone anywhere near that, but for the purposes of the business of Cargill, which is many hundreds of millions—and we will come to the Agrium and the AWB thing in due course—would they have triggered the FIRB alarm?

Mr Phillips: If they were an associate of a foreign company they would have triggered it.

CHAIR: Can you provide to this committee whether recent purchases by BFB have been reviewed by the Foreign Investment Review Board?

2. HANSARD, PG 5

Senator NASH: Don't we all! Mr Phillips, how many rural parcels of land would have come before you for consideration at that value of $231 million or more?

Mr Phillips: I am not sure that I can answer that off the top of my head. I can think of half-a-dozen or so, but there are undoubtedly more.

CHAIR: It would have been consolidated.

Senator NASH: If you would not mind taking that on notice, that would be quite useful, and perhaps as a percentage—but I suppose the others do not come to you. My question is: if there are only a few and there are only half-a-dozen—going back to the consideration you have been having of this issue—how is it going to come to the attention of FIRB, with what is an extremely high threshold, when in reality most parcels of land change hands at a much lower value than that?

3(a-j). HANSARD, PG 11

CHAIR: I note that there are requirements for foreign persons to notify the government if they want to buy different types of residential real estate. Could you inform us of how many vacant blocks have been referred to you in the last 12 months? You can take that on notice if you want to.

Mr Phillips: We will have to take it on notice.

CHAIR: How many of these requests have been rejected?

Mr Di Giorgio: We will take that on notice.

CHAIR: How many residential rural blocks or hobby farms have been referred to you in the past 12 months? It is peculiar you have got to refer a hobby farm, which is a house and five acres, but not 500,000 acres. Is that bizarre or just a quirk?

Mr Di Giorgio: We will take that on notice and get the numbers.

CHAIR: And how many of those requests have been rejected.

Mr Di Giorgio: Yes.

CHAIR: How many commercial real estate properties valued at $53 million or more have been referred to you in the last 12 months?

Mr Di Giorgio: Again, we will take that on notice.

Mr Phillips: Do you have these questions all typed out so we can get a copy?

CHAIR: I just want to go through them for the record. I am chairing the meeting and you are not.

Mr Phillips: I know, but I did read the bit about the proper treatment of witnesses.

CHAIR: Like minds think alike. How many heritage listed properties valued at $5 million or more have been referred in the last 12 months? Can you think of one.

Mr Phillips: I have a vague suspicion there may have been one, but I cannot remember whether there was. My recollection may be wrong on that. I do not recall more than one.

CHAIR: Have you had any hobby farms referred to you in the last 12 months?

Mr Di Giorgio: We will have to check.

CHAIR: How many of the requests on heritage listed properties valued at $5 million or more have been rejected? How many new forestry plantations have been referred to you in the last 12 months?

Mr Di Giorgio: Again, we will have to check.

CHAIR: I can think of one very spectacular one. How many of those have been rejected?

Mr Di Giorgio: Likewise.

CHAIR: How many one-bedroom units have been referred to you in the last 12 months?

Mr Di Giorgio: There would be quite a number.

Mr Phillips: We get a very large number of those from students.

CHAIR: I am well acquainted with the lurk in that system. How many of those have been rejected?

Mr Di Giorgio: Again, I would have to check.

CHAIR: Some?

Mr Di Giorgio: We have got a compliance regime—

CHAIR: You can get me the answer.

4. HANSARD, PG 14

CHAIR: Thank you very much. Coming back to regional hubbing, or double spoking as a financial hub, I am told—and I talk to people—that a growing proportion of our commodity brokers and traders find they have to move to Singapore to further their careers. Singapore has become a regional hub for commodity trading. Have you looked at this issue in Treasury?

Mr Phillips: Has Treasury looked at the issue?

Mr Di Giorgio: I am sure Treasury has.

CHAIR: So what are your considerations of the issues surrounding that? You are aware that things are moving. Do you think it is against the national interest to lose that? These young fellows have to go over there to get a career.

Ms Reinhardt: That is not something that our division has considered. We would have to find the appropriate Treasury representatives to talk through that.

CHAIR: Could you please do that and come back to us?

Mr Di Giorgio: Yes.

5. HANSARD, PG 16

CHAIR: Fear not. Is a hobby farm rural land?

Ms Reinhardt: If it is 12 months of the year, my understanding is yes.

Mr Hill: *[inaudible]*

CHAIR: Careful.

Ms Reinhardt: We might have to take that on notice.

Mr Phillips: Yes.

6. HANSARD, PG 17

Mr Phillips: I have no idea how many farms of that size were actually in the sample. You would have to ask the ABS that question.

CHAIR: Neither do I, but it is just the fact that they are in, and the weighting in the process for a farm with $5,000 was exactly the same as one with $200 million.

Mr Hill: I do not believe that the weighting was the same. In my discussions with the ABS, they have made it clear that they have taken a proportional weighting approach such that there is an even—

CHAIR: You might take that on notice and give us an explanation.

7(a-c).HANSARD, PG 20-21

CHAIR: Does FIRB have access to land title registries, company records and immigration records?

Mr Di Giorgio: We do have access to immigration records and we can make inquiries.

CHAIR: Do you?

Mr Di Giorgio: We have done, yes.

CHAIR: Can you give us some instances of that, if necessary in camera?

Senator STERLE: You can take that on notice.

CHAIR: Take it on notice.

Mr Phillips: I think it should be on notice. The disclosure of things from the department of immigration—

CHAIR: We understand the sensitivity. Can you provide the committee—obviously on notice, unless you are Einstein—with the number of foreign investors in the last three years who have been prosecuted for failing to obtain foreign investment approval?

Mr Di Giorgio: We will take it on notice.

CHAIR: And the numbers who have been prosecuted for failing to comply with approval conditions and been the subject of disinvestment orders?

Mr Di Giorgio: Yes.

8. HANSARD, PG 21

CHAIR: This is the Cargill acquisition of AWB?

Mr Phillips: Yes

CHAIR: Cargill's purchase AWB from Agrium. Were there conditions put on Agrium that allowed them to sell without redress, so they hardly had time to have the signature—

Mr Phillips: I believe we knew about that at the time but—

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Ms Reinhardt: We might, in a case where we were concerned about the sale of a commodity at a commercial rate, impose that as a condition or undertaking. We certainly would take action.

CHAIR: But have you ever done that?

Ms Reinhardt: Yes.

Mr Phillips: Yes; oh yes.

CHAIR: In agriculture.

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CHAIR: You might give us a list of where you have done that. I would be interested. How many reviews have done of agriculture? You were going to give us a list of that anyhow.

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Mr Phillips: If they were an associate of a foreign company they would have triggered it.

CHAIR: Can you provide to this committee whether recent purchases by BFB have been reviewed by the Foreign Investment Review Board?

Answer:

Cargill issued media releases on 16 August 2011 and 4 May 2011 in relation to certain recent acquisitions subject to Foreign Investment Review Board examination.

The Foreign Investment Review Board does not comment on individual cases due to confidentiality.

2. HANSARD, PG 5

Senator NASH: Don't we all! Mr Phillips, how many rural parcels of land would have come before you for consideration at that value of $231 million or more?

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Answer

Under the Government's foreign investment screening arrangements, all proposed direct investments, new businesses and land acquisitions by foreign government related entities (such as state-owned enterprises and sovereign wealth funds), including in agriculture, must be notified for review. This means that there is a $0 threshold for foreign government entity acquisitions of rural land. Proposed investments by private investors in agribusinesses (including those involving agricultural land) are subject to the same thresholds that apply to other foreign acquisitions of Australian companies or business assets (currently $244 million or $1,062 million for US investors).

Between 2008-09 and 2010-11, there were 46 proposals (valued at around $6.5 billion) in the agriculture, forestry and fishing sector that received foreign investment approval. None were rejected.

It is important to note that some proposals to acquire rural land may be incidental to mining (for example, the rural land is required for a buffer zone or there is a mining tenement that encompasses some rural land) so would be captured under other categories such as mineral exploration and development.

3(a-j). HANSARD, PG 11

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Answers

In 2010-11 the Foreign Investment Review Board (FIRB) considered 1,514 proposed acquisitions for vacant land (FIRB Annual Report 2010-11 table 2.8, page 28). Of the applications considered in 2010-11, FIRB rejected 43 applications (FIRB Annual Report 2010-11 table 2.1, page 20). Of the 43 applications rejected, all except one related to real estate purchases.

In 2010-11 the FIRB considered 114 proposed acquisitions which related to developed commercial real estate (FIRB Annual Report 2010-11, table 2.9, page 29).

The FIRB does not record statistics for the number of proposed acquisitions related to hobby farms or heritage listed properties. The FIRB also does not classify proposed acquisitions of real estate by the number of bedrooms.

The FIRB has access to land titles records, company records and immigration records. The FIRB liaises with the Department of Immigration & Citizenship to confirm the migration status of proponents to ensure that proponents meet the policy criteria to acquire an interest in urban land.

For the 2010-11 financial year there were no prosecutions initiated for failing to obtain foreign investment approval or for failing to comply with approval conditions. There were also no divestment orders were issued.

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CHAIR: Thank you very much. Coming back to regional hubbing, or double spoking as a financial hub, I am told—and I talk to people—that a growing proportion of our commodity brokers and traders find they have to move to Singapore to further their careers. Singapore has become a regional hub for commodity trading. Have you looked at this issue in Treasury?

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Ms Reinhardt: That is not something that our division has considered. We would have to find the appropriate Treasury representatives to talk through that.

CHAIR: Could you please do that and come back to us?

Mr Di Giorgio: Yes.

Answer

Following the release of the Johnson Report, the Government established The Australian Financial Centre Task Force to monitor implementation of the Report's recommendations and to look at other current issues affecting Australia as a financial centre. The Task Force is aware of this issue. The responsible area within Treasury on this matter is the Retail Investor Division of Markets Group.

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CHAIR: Careful.

Ms Reinhardt: We might have to take that on notice.

Mr Phillips: Yes.

Answer

Under Australia's foreign investment policy, rural land is land used wholly and exclusively for the carrying on of a primary production business.

The definition of primary production business is taken from the *Income Tax Assessment Act 1997* and refers to production resulting from the cultivation of land; animal husbandry/farming; horticulture; fishing; forestry; viticulture or dairy farming.

Primary production for the purpose of the rural land definition does not include hobby farms.

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CHAIR: Neither do I, but it is just the fact that they are in, and the weighting in the process for a farm with $5,000 was exactly the same as one with $200 million.

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CHAIR: You might take that on notice and give us an explanation.

Answer

The Treasury has conferred with the Australian Bureau of Statistics (ABS) and information relating to the broad methodology used for the Agricultural Land and Water Ownership Survey (ALWOS) can be found in the Explanatory Notes provided with the ALWOS data released on the ABS website on 9 September 2011 (ABS cat. no.7127.0).

Further relevant information was submitted to the Committee by the ABS in response to the questions taken on notice on 21 September 2011 and 16 November 2011.

7(a-c).HANSARD, PG 20-21

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CHAIR: And the numbers who have been prosecuted for failing to comply with approval conditions and been the subject of disinvestment orders?

Mr Di Giorgio: Yes.

Answer

Please see response to questions 3(a-j) above.

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Mr Phillips: Yes

CHAIR: Cargill's purchase AWB from Agrium. Were there conditions put on Agrium that allowed them to sell without redress, so they hardly had time to have the signature—

Mr Phillips: I believe we knew about that at the time but—

CHAIR: Can you confirm that?

Mr Phillips: I am sure my colleagues will—

CHAIR: Can you take that on notice?

Mr Phillips: Yes.

Answer:

The Foreign Investment Review Board was aware of Agrium's intentions to review the business activities of AWB Limited at the time of its proposed acquisition.

9. HANSARD, PG 23

Ms Reinhardt: We might, in a case where we were concerned about the sale of a commodity at a commercial rate, impose that as a condition or undertaking. We certainly would take action.

CHAIR: But have you ever done that?

Ms Reinhardt: Yes.

Mr Phillips: Yes; oh yes.

CHAIR: In agriculture.

Mr Phillips: Yes.

CHAIR: You might give us a list of where you have done that. I would be interested. How many reviews have done of agriculture? You were going to give us a list of that anyhow.

Answer:

The Foreign Investment Review Board does not comment on individual cases due to confidentiality. Where the circumstances of an individual application gives rise to concerns, conditions or undertakings may be appropriate to resolve concerns around the sale of commodities on commercial terms.