



National Farmers' Federation

Submission to the Strengthening Australia's Foreign Investment Framework – Options Paper

MARCH 2015

NFF Member Organisations



Australian Chicken Growers' Council Ltd



Animal Medicines Australia



Australian Livestock Exporters' Council



20 March 2015

Manager
International Investment & Trade Unit
Foreign Investment & Trade Policy Division
Markets Group
The Treasury
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By email: foreigninvestmentconsultation@treasury.gov.au

Dear Manager

Re: Strengthening Australia’s Foreign Investment Framework – Options Paper

The National Farmers’ Federation (NFF) welcomes the opportunity to respond to the Strengthening Australia’s Foreign Investment Framework – Options Paper.

The NFF is the peak national body representing farmers and the broader agriculture sector. The NFF's membership comprises all of Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF supports foreign investment in Australian agriculture and recognises the important role it has and will continue to play in a vibrant agriculture supply chain. To date, foreign investment has proven to be overwhelmingly positive for Australian farmers and regional communities. It has delivered significant amounts of capital into our production systems, at a time when finance from the banks has been harder to access. This capital has improved our efficiency and ensured that our farmers can continue to compete in a highly distorted global marketplace for agricultural commodities. The NFF supports a streamlined case-by-case approach to the consideration of foreign investment proposals to ensure that they are not contrary to the national interest. This case-by-case foreign investment framework, and associated legislation, must be underpinned by principles of transparency, equity and efficiency, and be designed to maximise investment inflows while serving to constructively grow and develop Australian agricultural industry and protect Australia’s national interest.

Competition and foreign investment

The Strengthening Australia’s Foreign Investment Framework options paper seeks, among other things, feedback and advice on proposed changes to the foreign investment framework in relation to residential real estate and agriculture. The NFF provides this submission on the basis that the issue the government is seeking to address is focused on strengthening the foreign investment framework process and not competition policy.

The NFF recognises that there is a separate process (the Harper Review) that will review competition legislation. Competition policy and the associated legislative framework is an issue of importance to the farm sector, and the NFF has articulated industry views into that process. There are clear areas of concern around control and consolidation across the supply

chain, including the negative impacts this can have on farm returns due to reduced competition in the market place, however this paper seeks to focus on foreign investment.

Notwithstanding the distinction in the issues, there is a propensity to view the two issues as the same, or at the very least directly related. The NFF is of the view that there is a risk with this approach and believes that the two issues must be addressed separately but not in complete isolation from one another. Clearly there is a link between potential foreign investment in the agriculture industry resulting in consolidation and possible negative impacts on the supply chain flowing from reduced competition. However, concerns focussed on competition in the market place must be addressed as stand-alone concerns in the first instance and should not be spontaneously linked to foreign investment or vice versa.

The policy focus for government should be the protection of constructive competition in the market place.

Foreign investment framework

Ensuring the right mix of certainty, flexibility and transparency in the investment framework will be the key to continuing to attract foreign investment to supplement domestic capital markets. The assessment processes, including the criteria that underpins them, must be administered in a consistent and transparent manner that provides confidence and certainty to investors. Strong compliance measures must also be in place to ensure that investment is in the best interests of the Australian agricultural sector. It is important that processes are well-resourced to undertake clear monitoring of, reporting on and compliance with, any FIRB or Government conditions of any investment.

The NFF's view is that a national foreign ownership register for land and water is a critical step in responding to the community concerns around investment in Australian agriculture. The register should provide a robust and accurate database that can be used to monitor and report on trends and developments that are likely to have an impact on the agricultural supply chain in Australia and should include land and water.

The register will provide beneficial and transparent information to the wider community regarding the current foreign investment process. It is anticipated that this information will help clarify what is actually happening in terms of investment, who is investing and where, and also look at the impact any investment might be having. The register will assist in understanding the flow-on benefits from foreign investment to Australian agriculture and will reduce anecdotal misconceptions surrounding the level of investment and any fears associated with the process.

The NFF is of the view that the implementation of the foreign investment register has taken too long. To help with the issue of foreign investment in agriculture the register should be established as soon as possible. In order for it to work effectively, the register must not stifle genuine, commercially motivated foreign investment through excessive or intrusive reporting requirements. It must be effective in delivering a clear picture of the current level of foreign investment, the impact that investment is having, and provide a basis for any future amendments to government policy, ultimately preventing negative impacts on Australian farm businesses and, more broadly, the Australian economy.

The foreign ownership register should be linked directly to the Foreign Investment Review Board (FIRB) process to help inform the national interest test and be used to inform future policies surrounding foreign investment. Once the register is implemented and we have data as to what is occurring, the community will be better placed to consider any potential

requirement to improve the FIRB process. The FIRB must assess applications to ensure that the national interest is protected, and it should provide a level of transparency around the national interest test which will deliver a level of certainty and confidence for the community and potential investors.

The FIRB must have a transparent process to assess the national interest and balance potential sensitivities against the benefits of foreign investment. The NFF supports the process to determine whether an application is within the national interest, using a number of factors, including:

- National security
- Competition
- Other Australian Government Policies (incl. Tax)
- Impact on the Economy and the Community
- Character of the Investor

To complement the existing process the NFF is of the view that the FIRB requires a specific understanding and representation from the agricultural sector. This will ensure that investment decisions are reviewed specifically in relation to their impact on the farm sector. Relevant and appropriate agriculture industry representation on the FIRB will improve the function and understanding of the review process and the NFF is of the view that relevant industry representatives should be engaged as a priority.

In addition to the establishment of a register, the NFF seeks a stronger commitment from government which goes beyond the Foreign Investment Framework. The agricultural industry in Australia requires a firm commitment to examine regulatory settings and implement appropriate measures that will attract the types of investment that the Australian community and farmers would like to see. The government must take more proactive steps and work more closely with industry to ensure business structures and commercial models are developed to provide the landscape that shifts from talking about the significant opportunities that are available to actually implementing the initiatives and actions. The right steps will deliver the desires of Australian farmers, the broader community, but also the foreign investors.

The NFF is of the view that there is enough evidence and reporting of the opportunities. The steps must be taken to act on those opportunities, and this must be a collaborative approach between industry and government. The NFF looks forward to the release of the government's Agricultural Competitiveness White Paper in this regard.

The NFF's *Policy Principles on Foreign Investment* has been included in this submission at [Attachment A](#).

NFF response to Option Paper questions

Question 4 – Broadening the penalty regime

The NFF supports a consistent and transparent approach to the regulation of foreign investment into Australia. If broadening and strengthening the penalty regime helps improve the enforcement of penalties where breaches of Australian law occur, and ultimately discourage practices that are not in Australia's best interest, the NFF would support such action.

Question 5 – Fees on foreign investment applications

The NFF supports a cost-sharing model whereby the costs of foreign investment assessments are shared reasonably between industry and Government. When considering the application of full cost recovery i.e. industry application fees cover the entire cost of assessment, some key consideration must be taken into account. Foreign investment provides benefit not only to the agricultural sector, but also to the wider public community. Investment spurs economic activity, driving jobs and spending growth throughout regional and metropolitan Australia. It is only equitable that where the public benefits, the costs are not solely met by the private investors.

Additionally, the application of a full cost recovery model may adversely affect the government's broader policy goal of attracting foreign capital into Australia. In a capital hungry global economy, placing the full cost burden on investors may act as a deterrent to investing in Australia. This would be inconsistent with Australia's Foreign Investment Policy¹, which seeks to facilitate, not hamper, foreign investment.

The NFF is of the view that if fees are going to be charged to screen foreign investment applications, it must be in accordance with the Federal government Cost Recovery Guidelines². The NFF supports the Federal cost recovery framework that is currently in place and underpinned by the following principles that can be applied across all stages of the cost recovery process:

- **Efficiency and effectiveness**

The NFF supports a model where a combination of resources and processes required to achieve government policy outcomes are linked to cost recovery charges and recovered in an efficient and effective manner. The FIRB is effectively a monopoly service provider where there is little capacity for other entities to provide a similar service, or for that matter provide benchmarking of the costs recovered to determine whether these are efficient.

Efficiency and effectiveness must involve making the proper use of available resources (people, money and other supplies) to achieve policy outcomes. The FIRB approval process should meet quantity, quality and other targets, be undertaken at minimum cost, and be conducted in accordance with applicable policy and legislative requirements.

- **Transparency and accountability**

¹ Treasurer, Australia's Foreign Investment Policy, 2010, available at <http://www.firb.gov.au/content/policy.asp>

² Australian Government Cost Recovery Guidelines July 2014.

In terms of charging fees for service, transparency means documenting key information about the activity, such as the policy approval and cost recovery model, in an accessible way for those stakeholders who pay charges. It should also include reporting on performance of the activity on an ongoing basis. Transparency is closely linked to accountability and relates to clear roles and responsibilities for key stakeholders throughout all stages of the cost recovery process, and having in place appropriate governance structures. In the cost recovery context, accountability involves ensuring that entities are responsible for their actions and decisions.

- **Stakeholder engagement.**

Stakeholder engagement will result in better design, planning and implementation of government activities. Stakeholders should be provided with an opportunity to give feedback throughout all stages of the cost recovery process, from policy development through to implementation and review.

In addition to the Federal Cost Recovery Guidelines, which provide high level principle approach that should be adhered to, the NFF believes the Victorian Department of Treasury and Finance Cost Recovery Guidelines (2013)³ also provides additional and appropriate principles in this regard.

These include measures that ensure that fees are:

- **Set according to an ‘efficient’ cost base:**
The NFF supports the collection of application fees for the purposes of meeting the appropriate cost of efficiently assessing the investment application. We also support the use of collected application fees for reinvestment into the FIRB to increase its overall efficiency and effectiveness.
- **Not to be used to finance/achieve unrelated activities/objectives:**
The NFF would not support the collection of fees for purposes other than those mentioned above, such as for Commonwealth consolidated revenue. Not only would such an approach be inconsistent with the principles of cost recovery, it would be viewed as a simple tax on investment, and act as a disincentive to attracting overseas capital.
- **Decided in consultation with relevant parties:**
The NFF would recommend that Government engage with industry beyond this Options Paper as to the appropriate fee rate.
- **Monitored and regularly reviewed:**
It is crucial that the fee rates are monitored and regularly reviewed. Importantly, the extent to which the fees charged are acting as a deterrent to investment must be clearly understood and responded to accordingly.

In regards to the proposed fee rates outlined in the Options paper, the NFF believes that these are too high and would act as a deterrent to foreign investment. Noting that whilst industry does not know the exact cost breakdown associated with assessing FIRB applications, the rate currently suggested in the Options Paper would see a \$100 million investment having to pay \$1 million in application fees. This seems excessively high against any measure.

³ Victorian Department of Treasury and Finance, Cost Recovery Guidelines, 2013, available at: <http://www.dtf.vic.gov.au/Publications/Victoria-Economy-publications/Cost-recovery-guidelines>

With regard to the principles of cost recovery, the NFF is of the view that the Government should clearly reveal the costs and processes associated with assessing investment applications, and then consult with industry as to a reasonable division of costs. Doing this will provide industry with confidence that the selected fee rate is appropriate to recover the actual cost burden of assessing the application and running the FIRB, and not simply a revenue generation scheme, as well as recognising the public good derived by the nation from foreign investment.

Proposal for fast-track approval process

In terms of principles, the NFF supports a foreign investment framework that delivers flexibility, transparency, certainty and equity for the agricultural sector and also potential investors. The Australian farm sector must have confidence in the framework and the framework must be streamlined, efficient and equitable for investors across the board.

In terms of proposed approaches for a framework and fee structure for foreign investment applications, the NFF would request the consideration and further development of a system that provides a level of in principle “pre-approval” or “vetting” that streamlines the investment process. An appropriate process, if implemented, would allow an investor to outline the investment objectives to the FIRB via an investment plan that identifies at a high level, the ownership, intentions, and goals of the investment agenda.

The regime could work where a potential foreign investor would voluntarily lodge their investment plan for approval with FIRB. The investment plan would be required to identify sectors of interests that the investor would be focussed on and target. It would include a specific narrative on critical issues such as the identification of the ultimate shareholder(s), tax structures, marketing plans, proposed development plans, labour considerations, local and regional impact analysis and capital investment plans.

Once the foreign investor’s investment plan has been approved in-principle by FIRB, they would be able to make an application for approval from FIRB for specific transaction under a “fast-track” system which would provide a maximum 10 working day turnaround so long as the target acquisition was consistent with the strategy outlined in the investment plan. This fast-track approval process will allow foreign investors to compete with domestic investors for assets that are presented for auction or require fast resolution resulting in a more efficient market. Acquisitions under \$250,000 which are incidental to the investment plan should be exempt from the approval process.

In essence the investor could be subject to a fee to register the investment plan, and a per transaction fee for a particular investment. The NFF would be cautious about nominating a specific level of fee in the first instance, but the fee structure should be at an appropriate level recognising that the majority of the work for FIRB would be around the approval of the investment plan, not the individual transactions. It should align with the cost recovery guidelines principles but also incorporate a level of incentive and proactive business activity which facilitates flexibility.

The investor would be required to submit a revised investment plan for approval to FIRB should circumstances changes such as a change in ultimate shareholders, investment thesis or management. The investment plan would be reviewed and monitored by the FIRB and investors would be required to regularly report against the strategic plan to ensure that they and their respective activities are adhering to the aims and objectives incorporated as approved.

The system would require relevant government organisations to undertake, and be provided with, appropriate compliance and enforcement powers that would give structure and security to the arrangements. The regime would recognise the commercial practicalities and limitations of investors in the market place. It would underpin the need for flexibility, but also adhere to the principles of efficiency, transparency, accountability and equity that is required by the farm sector. Obviously investment plans would need to be kept confidential to prevent any commercial sensitivities flowing into the market place and undermining potential investment opportunities. Should an investor find an acquisition target that is outside the approved investment plan, they would be able to apply to the FIRB in the usual manner. There should also be appropriate levels of penalties that seek to prevent illegal activity outside the approval process.

This approach could work for investors and also be of value to the FIRB to provide a level of visibility as to what is in the pipeline and what foreign investment will do to enhance Australian agriculture.

The NFF would like to discuss and develop the concept further in consultation with government.

An example using nominal figures of a suggested pre-approval approach could include:

Step 1 – Investor develops and submits investment plan to FIRB outlining the level of investment proposed including relevant aspects such as ultimate shareholders, tax structures, marketing, labour, and development objectives.

Step 2 - An upfront fee of (say) \$15,000 is incurred to have the investment plan registered with FIRB.

Step 3 – Once the plan is registered the investor pays a transaction fee of (say) \$1,000 per transaction over \$250,000.

For example, a potential investor lodged an investment plan and would pay a \$15,000 up front fee.

Should an appropriate investment opportunity arise that is consistent with the investment plan, the investor would be required to lodge an application to FIRB under the proposed fast-track approval system with the knowledge that there is a maximum 10 working day turnaround time. The transaction would incur a fee of \$1,000 as long as the acquisition was consistent with the investment plan.

Questions 7, 8 & 9 – The definition of ‘agribusiness’ investments

The NFF is of the view that it is difficult to define exactly what an agribusiness is, and importantly, what it is not. Accordingly, the NFF policy is that to ensure the framework and any associated legislation is most effective, a suite of criteria should be used to help determine what an agribusiness might be.

Clearly farm businesses are agribusiness however the nature of farms is changing as is the relationship with stakeholders along the supply chain. There are a range of businesses that deal with agricultural commodities that are beyond the farm gate production cycle, however drawing a definitive and exclusive characterisation is difficult and possibly counter-productive in the context of the FIRB review thresholds.

The NFF recognises that drawing a line anywhere in the food and fibre supply chain to define an ‘agribusiness’ will be difficult to get agreement on and in practice difficult to effectively implement, since businesses in various forms, scales and structures operate across all parts of the food and fibre supply chain. Many of these businesses have multiple enterprises and divisions that include both farming in the true or traditional sense of producing commodities but also a level of processing, some of which would occur on farm or “inside the farm gate”. In this sense it is extremely difficult to classify agribusiness as simply pre or post farm gate as a general statement or definition.

Acknowledging that there is an existing FIRB threshold for agricultural land of \$15m and that the government intends to impose a \$53m threshold for all companies defined as ‘agribusiness’, the NFF is of the view that an agribusiness comprises at least of those businesses involved directly with the production of food and/or natural fibre.

Beyond this definition there are potentially unintended consequences of referring investment proposals for Australian businesses that fall within the ‘first stage’ and even ‘second stage’ supply chain business category beyond the farm gate to the FIRB. These consequences include but are not limited to a lack of liquidity, lack of access to capital and ultimately a decline in competitiveness. Reducing competitiveness in the food and fibre supply chain will also impact farmer profitability and competitiveness. The objective should be to encourage investment in the supply chain that will contribute to the growth and efficiency and ultimately the competitiveness of the sector.

The NFF considers ‘first stage’ supply chain businesses those businesses within the supply chain involved with the purchase of products from primary producing businesses.

Such first stage businesses may include, but are not limited to the ANZIC Codes:

- Meat processors (1111)
- Sugar manufacturing (1181)
- Grain wholesaling, storage and milling (3319, 5301, 1161)
- Wool wholesalers and/or storage (3311, 5309)
- Cotton Gins, wholesalers and/or storage (0521)
- Dairy wholesalers and/or storage (1133, 3603)
- Fruit wholesalers and/or storage (1140, 3605)

Depending on aspects such as the commodity and the nature of the business, second stage agricultural supply chain businesses could potentially include a number of those first stage businesses but also encompass logistics owners/operators (including rail, road, shipping, air freight, sea and airports) whose operation may have significant interaction and influence on primary producers and/or commodity markets. This is the nature of progressive and vertically integrated farm or agribusinesses in the modern day.

Simply including ‘first and second stage’ agricultural supply chain businesses in the definition of ‘Agribusiness’ exclusively and without some further criteria and case by case assessment could result in a FIRB threshold of \$53m applying to these businesses. For example, a \$53m threshold will trigger a FIRB review for what amounts to a relatively insignificant stake in some processors or manufacturers servicing and supplying farmers. It is also likely to result in increased government costs, administration and red tape, whilst not providing any real value to industry and creating a barrier to much needed capital investment, particularly for listed companies.

NFF is of the view that the issue of control or influence over the market should be an additional consideration incorporated into the criteria used to determine agribusiness. Existing guidelines or definitions in legislation may be reviewed and referenced to assist with this particular consideration.

For the purpose of applying the \$53m FIRB threshold, the NFF is of the view that ‘first and second stage’ agricultural supply chain businesses should not automatically be included in the definition of ‘Agribusiness’. Any definition of agribusiness should also include consideration of businesses pre-farm gate incorporating inputs into production such as fertiliser and chemical suppliers whose core business has to do with agricultural production.

The NFF holds the view that the government needs to recognise that foreign (or any significant) investment in these businesses can potentially have a large influence on the entire supply chain. Importantly, it is in the national interest to ensure the ownership of these businesses facilitates an open, transparent and competitive agricultural supply chain.

While the NFF policy is to maintain a high level of transparency, equity and competitive tension in the market place, these issues can be largely addressed through a foreign investment register, improved resourcing and agricultural representation within the FIRB and importantly more consultation and cooperation on the issue with the ACCC.

Question 10 – The definition of ‘agricultural land’

The NFF supports the proposed definition of agricultural land – ‘land that during the past five years has been used for carrying on a business of primary production’. In the NFF’s view, this provides a level of clarity as to what constitutes ‘agricultural land’. However, if issues arise in the future with the ability of this definition to clearly distinguish agricultural land for other land types, then it should be reviewed and changed accordingly. Any definition of ‘agricultural land’ must allow for land that has the capacity of agricultural functions, but may currently be (or proposed to be) utilised for other activities such as mining, tourism, or recreational purposes. To maintain the integrity of the system, situations such as land-banking and selling formerly productive land for purposes other than agriculture must be captured through both the lower screening threshold and the foreign ownership register to the extent possible.

Question 13 – Implementation issues of a foreign ownership register

In the NFF’s view, a national foreign ownership register of agricultural land is an important step in responding to the community concerns around investment in Australian agriculture. It is important that the data collected is clear, consistent, and non-discriminatory. The register should provide a robust and accurate database that can be used to monitor and report on trends and developments that are likely to have an impact on the agricultural supply chain in Australia.

The register should not stifle genuine, commercially motivated foreign investment through excessive or intrusive reporting requirements. However, it must be effective in delivering a clear picture of the current level of foreign investment, the impact that investment is having, and provide a basis for any future amendments to government policy that can prevent negative impacts on Australia’s agriculture sector or the economy more broadly.

The register should be linked directly to the Foreign Investment Review Board (FIRB) process to help inform the national interest test. The register should be used to inform and

guide policy in the area of foreign investment in Australia to prevent or correct negative impacts on Australia's agricultural sector or the economy more broadly.

It is important that the register is expanded beyond just land ownership to include the acquisition of water titles by foreign entities and/or nationals. Water is the single most important input into the majority of agricultural production systems. It is in the agricultural sector and national interest to have a clear register of who owns water in Australia. As with land ownership, the inclusion of water in the register should not stifle genuine, commercially motivated foreign investment through excessive or intrusive reporting requirements. It is however important to have accessible and complete data to identify any emerging trends and to facilitate appropriate future action in response to such developments.

The NFF supports the proposed obligation requiring lawyers or registered conveyancers in a property or business ownership transaction to verify whether their client is either a foreign person or entity and include this as part of the conveyancing land title register. In the NFF's view, the existing definitions of foreign companies and persons contained in the *Foreign Acquisitions and Takeover Act 1975* are appropriate for the legal fraternity to provide advice in this instance.

Question 16 – Enforcement of FIRB approval conditions

The FIRB should be empowered to execute clear monitoring of, reporting on, and compliance with any FIRB or Government conditions of any investment including cumulative purchases and the impacts on local economies and communities. Importantly, the FIRB must be resourced appropriately to respond to noncompliance with conditions that formed part of the approval process, particularly in relation to post-approval reporting or actions. The NFF is of the firm view that the FIRB structure must encompass relevant and direct agricultural sector representation to ensure an understanding and appreciation of what can be a unique business environment.

Question 17 – Regulatory guidance by the FIRB

The NFF supports the provision of guidelines on approaches and difficult interpretation issues. Ensuring clarity in the application and assessment process is an important step in reducing any unnecessary barriers to investment.

Summary

The key recommendation from the NFF in response to the Options Paper are:

- The NFF is of the view that foreign investment has and will continue to be beneficial for Australian agriculture, and that it should be encouraged and facilitated by a transparent, flexible, equitable and efficient framework;
- The NFF supports in principle a cost-sharing model whereby the assessment costs are shared reasonably between industry and Government;
- The determination of any cost recovery fee rate to be applied to industry must be consistent with the principles enshrined in federal and state government cost recovery guidelines;
- The proposed fees in the Options Paper are too high, inconsistent, and will act as a deterrent to attracting foreign capital into Australia;
- The NFF supports the consideration and further development of a streamlined approval process that includes appropriate charges and facilitates a flexible business friendly approach to foreign investment, but maintains a system to ensure monitoring and reporting;
- The NFF supports a suite of criteria and assessments to assist in defining agribusinesses in addition to all primary production businesses;
- The NFF maintains its support for a national land and water ownership register that seeks not only to compile data, but to identify emerging trends in the ownership of Australian land and water; and
- The FIRB must be appropriately resourced to respond to instances of noncompliance with conditions that formed part of an approval process, particularly in relation to post-approval reporting or actions.

There should be no doubt that Australian agriculture requires an increase in investment if it is to continue to be globally competitive. Whether this investment comes from domestic sources or foreign, or a mix of the two, will depend on a number of factors including government policy on not only investment arrangements but also broader economic settings. If there is not additional and strategic investment in agriculture to maintain and build the competitiveness, improve infrastructure and increase the capacity to supply export markets, Australian agriculture will fall behind competitors and the returns to farmers will suffer. The foreign investment framework must reflect this.

The NFF seeks a clear commitment from government to ensure the commercial and regulatory landscape on foreign investment in the agricultural sector is such that appropriate measures and programs are in place to monitor, report on and drive investment that will deliver the much talked about opportunities available to the sector but also the broader economy.

The future framework must be equitable, flexible, transparent and efficient. It should not act as a barrier to investment but should be a gateway through which investment is reviewed and monitored to ensure it contributes to the profitability and competitiveness of the agricultural sector in Australia.

For further information on this issue please contact:

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Attachment A

NFF Policy Principles on Foreign Investment

The NFF has developed a series of principles that guide its policy on foreign investment in Australian agriculture - including land, water and critical infrastructure. The principles are focussed on building confidence and transparency around the importance of foreign investment in Australian agriculture, and ensuring that there is no negative implications for the farm sector.

The NFF supports foreign investment into Australian agriculture and recognises the important role it has and will continue to play in a vibrant agriculture supply chain.

The NFF supports foreign investment in Australian agriculture provided that it:

- Requires adherence to all Australian laws, especially tax and competition laws.
- Does not create negative distortions in resource allocation or output returns.
- Does not undermine the existing marketing mechanism, storage or handling facilities, critical infrastructure and logistics or pricing transparency where these underpin farm gate price determination.
- Is not undertaken with the intent or outcome of reducing competition within the marketplace to the detriment of the Australian agriculture sector.
- Allows for legislated time frames for assessing foreign investment to be equitable with the regulatory times frames for consideration of domestic investors.
- Ensures compliance with existing and new industry production and/or transaction levies.
- Does not compromise existing trade agreements and is flexible enough to acknowledge the importance of future comprehensive trade agreements to the Australian farm sector.

The NFF does not oppose the lowering of the threshold for automatic referral to the FIRB to an appropriate level (\$15 m for example) on the basis that:

- There is sound rationale underpinning the establishment of any revised level;
- The FIRB process includes careful consideration of the key principles included in the NFF policy; and
- The National Foreign Ownership Register be used to assist in monitoring and revising the trigger level as appropriate.

The Foreign Investment Review Board National Interest Test must adhere to the following principles:

- Foreign investment in Australian agriculture is made on a genuinely commercial basis and does not distort trade in agricultural products or negatively impact on the capital market.
- The investment complies and adheres to all federal and state legislation and requirements.
- Clear monitoring of, reporting on and compliance with any FIRB or government conditions of any investment including the level of cumulative purchases and the impacts on local economies and communities.
- There should be no adverse impact on rural and regional food and fibre producers particularly in relation to natural resources, productivity and capacity to remain a reliable supplier of agricultural production.
- Clear and adequate measures are in place to adequately respond to noncompliance with conditions that formed part of the approval process particularly in relation to post approval reporting or actions.
- The investment complies with existing and new industry R&D arrangements and market functions.
- The tax arrangements applying to foreign investments and acquisitions in the agricultural sector are reviewed and transparent.
- Adequate measures are in place to limit the scope for foreign investors to use business structures and other possible loopholes, not available to domestic competitors in order to reduce their tax burden.
- Company structures (including joint Australian/foreign ventures) the relationship between a foreign government's acquisitions strategy (such as food security) and the commercial operation of any subsidiary businesses in Australia are closely examined.
- The community is aware of and has a level of confidence that the national interest test will rigorously examine all relevant factors including impacts on rural communities and the agriculture industry.