



AUSTRALIAN
**FOOD &
GROCERY**
COUNCIL

AFGC SUBMISSION

TREASURY CONSULTATIONS ON
IMPLEMENTING FOREIGN INVESTMENT
CHANGES

Sustaining Australia

PREFACE

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, drink and grocery manufacturing industry.

The membership of AFGC comprises more than 178 companies, subsidiaries and associates which constitutes in the order of 80 per cent of the gross dollar value of the processed food, beverage and grocery products sectors.

With an annual turnover in the 2013-14 financial year of \$114 billion, Australia's food and grocery manufacturing industry makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity.

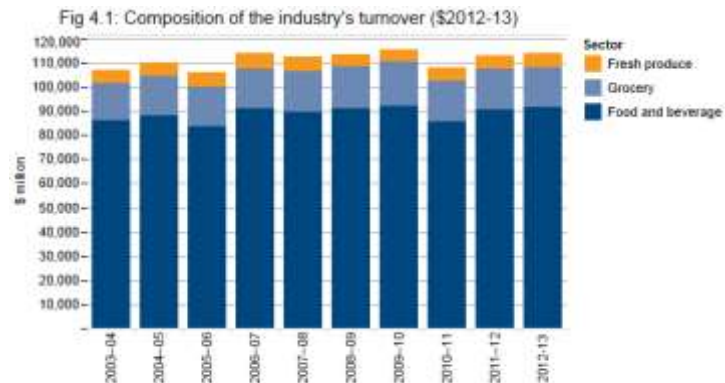
Manufacturing of food, beverages and groceries in the fast moving consumer goods sector is Australia's largest manufacturing industry. Representing 27.5 per cent of total manufacturing turnover, the sector accounts for over one quarter of the total manufacturing industry in Australia.

The diverse and sustainable industry is made up of over 27,469 businesses and accounts for over \$55.9 billion of the nation's international trade in 2013-14. These businesses range from some of the largest globally significant multinational companies to small and medium enterprises. Industry spends \$541.8 million in 2011-12 on research and development.

The food and grocery manufacturing sector employs more than 299,731 Australians, representing about 3 per cent of all employed people in Australia, paying around \$12.1 billion a year in salaries and wages.

Many food manufacturing plants are located outside the metropolitan regions. The industry makes a large contribution to rural and regional Australia economies, with almost half of the total persons employed being in rural and regional Australia. It is essential for the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry is recognised and factored into the Government's economic, industrial and trade policies.

Australians and our political leaders overwhelmingly want a local, value-adding food and grocery manufacturing sector.



Source: Based on ABS, catalogue number 8221.0, 8158.0 and 6155.0
 Note: As outlined in chapter 3 of the State of the Industry 2014 report, caution should be applied when comparing data before and after the 2006 ANZSIC code changes.

SUMMARY

Foreign investment is crucial to the future growth and competitiveness of the Australian agri-food sector. The Australian Food and Grocery Council strongly supports an investment framework that provides Australian industry with the flexibility to choose the type of investment capital that matches their needs and risk/reward profile, regardless of whether that capital is from domestic or foreign sources.

The AFGC welcomes the opportunity to comment on the draft legislation imposing changes to arrangements for foreign investment in 'agribusiness'/food manufacturing. Given the lack of a clear public policy objective, the significant increase in red tape and regulatory cost, and its application to more than half of Australia's food manufacturing sector, the AFGC opposes the imposition of these changes on food processing.

The use of ANZSIC codes to identify 'agribusiness' captures more than half of food manufacturing as previously identified. But more specifically, the ANZSIC codes used include the manufacturing of (through the inclusion of 1140 Fruit and Vegetable Processing):

- Baby food
- Baked beans
- Chutney and relish
- Jam
- Sauce
- Canned spaghetti

The AFGC is unaware of any policy basis for, or any groundswell of support for, the inclusion of manufactured and processed foods in the definition of 'agribusiness'.

RECOMMENDATIONS

1. The changes to foreign investment in 'agribusiness' should apply to activities covered by Division A of the ANZSIC Codes only.

Notwithstanding the AFGC's request that food processing sectors be removed from the definition of 'agribusiness' there are a number of improvements that can be made to the draft legislation.

2. The definition of an 'agribusiness' should require that at least 50 per cent of the business be 'agribusiness' (up from 25 per cent).

3. The definition of a 'direct interest' in a business requiring FIRB approval should be 10 per cent ownership or interest unless an investor can exert control.

INTRODUCTION

Foreign investment is crucial to the future growth and competitiveness of the Australian agri-food sector. The Australian Food and Grocery Council strongly supports an investment framework that provides Australian industry with the flexibility to choose the type of investment capital that matches their needs and risk/reward profile, regardless of whether that capital is from domestic or foreign sources.

Australia's exports of processed food products have recorded more than 17 per cent growth from 2012-13 to 2013-14¹, the second highest growth area after the minerals sector (21.6 per cent). The Australian agri-food sector is at a turning point with the opportunity to meet a share of the growing food demand in Asia. In the same way that the mining investment boom is supporting the current increase in mineral and energy production, the agri-food sector needs a substantial increase in investment to meet growing food demand across Asia.

KEY POINTS

The AFGC welcomes the opportunity to comment on the draft legislation imposing changes to arrangements for foreign investment in 'agribusiness'/food manufacturing. Given the lack of a clear public policy objective, the significant increase in red tape and regulatory cost, and its application to more than half of Australia's food manufacturing sector, the AFGC opposes the imposition of these changes on food processing.

Prior to the 2013 election, the Coalition made a commitment to lower the threshold for Foreign Investment Review Board scrutiny to \$55 million for agribusiness. This commitment was made in the context of the Coalition's agricultural policy ('corporate farming') without reference to the food manufacturing sector. The expansion of the definition of 'agribusiness' beyond the agricultural sector (Division A of the ANZSIC Code) to include 'first stage processing' represents a departure from this election commitment. Given the integrated nature of food processing companies, who undertake both first stage and advanced manufacturing processes in the food sector, this 'scope creep' is of serious concern for the food sector.

In the absence of a clearly articulated public policy objective the additional regulatory burden on food processing has not been justified. Furthermore, if the proposed changes are about transparency in relation to sensitive sectors then alternative approaches should first be considered rather than the blunt instrument of applying these legislated changes to more than half of Australia's food manufacturing sector.

The AFGC welcomes the new trade agreements with China, Japan and Korea as well as ongoing trade negotiations with India, Indonesia, and countries in the Regional

¹ Austrade 2015

Comprehensive Economic Partnership (RCEP) and the Trans Pacific Partnership (TPP) negotiations. These agreements will provide new opportunities for Australian companies and support greater economic integration. Similarly the AFGC welcomed the Government's funding for, and focus on, attracting foreign investment into Australia.

If Australia is to significantly increase agri-food exports to Asia, and to compete in the global climate of free trade agreements, it will only have a realistic prospect of doing so through greater scale of investment and production. Given the ongoing absence of domestic investment in the agri-food sector, this will only be achievable with a significant injection of capital through direct foreign investment and ownership. Access to such capital is crucial as there are many countries that think they will be the food bowl of Asia (Chile, United States, Mexico, Peru, New Zealand and South Africa) and have significant advantages with respect to the costs of production.

The OECD report 'Going for Growth 2014' rated Australia as 'less competition friendly' on foreign investment and recommends 'Australia further promote foreign direct investment by easing the stringency of screening procedures' while it rates Australia as more competition friendly on free trade.

This highlights a serious issue for the agribusiness sector: as Australia embraces free trade, we at the same time leave in place barriers to foreign investment capital inflow that would enable agribusinesses to capitalize on the benefits of free trade. Worse, the draft legislation imposes additional barriers that will have a chilling effect on foreign investment. This is particularly relevant to high growth, often mid-tier food manufacturers seeking access to foreign investment to fund rapid expansion, including to meet export growth potential.

The AFGC opposes the proposed foreign investment legislation and regulations on the basis that the changes:

- will discourage investment in Australia's food manufacturing sector
 - o by affecting more than half of the \$97 billion sector, especially medium sized enterprises who rely on foreign capital to expand and grow,
- are not based on a clear public policy objective
- are not an appropriate response to competition concerns – which have not yet been fully considered and even if found to be justified, are being addressed through additional resourcing of the ACCC
- are inconsistent with the Government's efforts to attract foreign investment
- undermine the efforts to build stronger economic relationships through trade agreements

- impact on Australia's international standing as a destination for investment, and being open to business.

GENERAL COMMENTS

In addition to the issues identified above, there are a range of more detailed issues relating to the proposed changes including interaction between FIRB and ACCC processes, a reduction in competition for assets, and the inclusion of processed foods.

The Government recently announced additional funding, and appointment of an Agricultural Commissioner, for the Australian Competition and Consumer Commission (ACCC). In the past, FIRB's role in assessing competition issues has been unclear. The ACCC is the government regulator charged with overseeing competition issues in the supply chain. The lack of clarity relating to the role of FIRB in relation to competition issues adds to business and regulatory uncertainty. Competition issues should be left to the government's competition regulator, the ACCC, particularly when the ACCC has been given additional resources to fulfil its mandate.

The proposed policy changes for foreign investment in 'agribusiness' make it harder for foreign investors to engage and invest in Australia. This reduces buyer competition for assets thereby reducing asking prices for sellers. At a time of reported high rural indebtedness and difficult trading conditions for agribusiness, sellers are seeking to maximise their asset sale price. Excluding, or creating difficulty for foreign investors undermines this business objective.

The use of ANZSIC codes to identify 'agribusiness' captures more than half of food manufacturing as previously identified. But more specifically, the ANZSIC codes used include the manufacturing of (through the inclusion of 1140 Fruit and Vegetable Processing):

- Baby food, canned or bottled, (except milk based)
- Baked beans
- Chutney and relish
- Jam (including conserves, jellies or fruit spreads)
- Sauce
- Canned spaghetti

The AFGC is unaware of any policy basis for, or any groundswell of support for, the inclusion of manufactured and processed foods in the definition of 'agribusiness'. At a time when industry and government is focussed on enhancing Australia's production of high value added food exports, restrictions on investment in processed foods is counter-productive. Work done by the AFGC and Austrade identified double digit export growth in some of the

product categories listed above for greater regulation of foreign investment. The AFGC has previously identified concerns on the use of ANZSIC codes due to a lack of precision and maintains its view that the proposed changes should apply to activities covered by Division A of the ANZSIC Codes only.

Notwithstanding the AFGC's request that food processing sectors be removed from the definition of 'agribusiness' there are a number of improvements that can be made to the draft legislation.

SPECIFIC COMMENTS

The AFGC has been strongly supportive of the Government's deregulation agenda. Consistent with this the AFGC has been closely engaged on the proposed changes to foreign investment policy in an attempt to understand the objective and how that might be achieved while limiting unintended consequences.

The AFGC welcomed the clarification that reinvestment by foreign owned companies would not necessarily require a FIRB approval (if wholly owned and/or no change in ownership arrangements). Similarly, the AFGC welcomed the clarification that, generally, the \$55 million threshold must also be greater than a 10 per cent interest in the business or company to require a FIRB approval. Despite this a number of implementation issues remain which need to be resolved in order to limit unintended consequences.

THRESHOLD FOR 'AGRIBUSINESS'

As currently drafted the changes will not only negatively affect investment in food manufacturing but also a range of other sectors. The current definition of 'agribusiness' captures relevant businesses by ANZSIC codes and then applies a percentage test - 'subsection 8(2) and paragraphs 8(3)(a) and (b) of the Act' provide that if 25 per cent (bound in regulation) or more of the business is 'agribusiness' then the whole business is considered 'agribusiness'.

Consistent with an understanding that agribusiness should be a significant portion of the business - the threshold should be at least 50 per cent. Any investment in 'non-agribusiness' should be quarantined from the changes to avoid policy spill over into the broader sectors of the economy.

For example if a business includes agribusiness and biscuit manufacturing, the biscuit manufacturing operation should not be disadvantaged. Similarly, for diversified companies with 'agribusiness' and other operations such as transport, distribution, and retail, the other sectors should not be disadvantaged by the threshold rule and/or not being quarantined from the policy.

‘DIRECT INTEREST’

Broadly speaking, the legislation and regulations identify that if a foreign investor takes a ‘direct interest’ in a business that the direct interest will require a FIRB application. The direct interest is defined by a series of ‘or’ statements with the primary definition being a 10 per cent interest in a company or business. Other statements/tests/definitions include if a foreign investor has an ability to influence or exert control over the business.

However 8(c) of the regulations states that if a foreign investor has a stake of 5 per cent stake and adds to it by even 1 per cent that this action requires a FIRB approval. At a time when a range of Australian businesses both listed and unlisted are seeking additional capital this provision is particularly onerous.

If this provision is designed to respond to ‘creeping acquisitions’ surely passive investments between 5-10 per cent are somewhat arbitrary/low. The remaining provisions ensure that any foreign investor with an interest which exerts control, will require FIRB approval. 8(c) of the regulations is redundant and should be removed - if not removed, the threshold in 8(c)(ii) should be raised to 10 per cent.



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