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HD **GrainCorp veto was 'political'**
BY Anne Hyland
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Foreign Investment Review **Board** chairman Brian Wilson has conceded Archer Daniels Midland's \$3.4 billion takeover of GrainCorp was blocked for political reasons but insists it was a legitimate decision.

In his first interview since the veto of the agreed takeover last November, Mr Wilson acknowledged the government realised it needed to explain its openness to foreign investment following the decision, which was criticised as pandering to xenophobic farming interests and unfair to the US.

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He said the ruling was a one-off decision that did not hurt FIRB's credibility because there was a heavy public pressure on the government to protect GrainCorp, Australia's largest listed agribusiness, from the Americans.

"The government has worked to promote its open-for-business regime since then. I think most people would respect that it has done that very successfully," he said.

"It was a one-off outcome of a particular set of timing and circumstances, which I don't believe has been seen as creating any long-term concern or precedent.

"Most people understand occasionally politics – and I don't mean party or partisan, I mean in the concept of the Australian government's relationship with the Australian people – from time to time politics intrudes into all areas of our lives."

The decision, which was made two months after the Abbott government was elected, was expected to shed light on its approach to foreign investment.

Instead it raised more questions, particularly as in his victory speech, Prime Minister Tony Abbott had declared Australia "open for business".

Mr Wilson confirmed the Foreign Investment Review **Board** was split.

Treasurer Joe Hockey has previously said the six-member **board** did not reach a consensus.

The government's decision to reject ADM's bid was quickly followed by FIRB and Mr Hockey approving a \$7.5 billion investment by State Grid Corporation of **China**. State Grid bought a stake in power assets from Singapore Power, which included parts of Australia's east coast electricity and gas transmission.

Mr Wilson likened the ADM deal's rejection to Canada's rejection of BHP Billiton's contentious \$39 billion bid for Potash Corporation, the world's largest fertiliser maker in 2010. "It was seen as a sensible, logical acquisition by BHP. For various domestic, Canadian reasons at the time, the **transaction** was not allowed by their foreign investment authorities. It simply reflected a particular set of circumstances and particularly unsolicited timing of that **transaction** for Canada. ADM-GrainCorp was our BHP-Potash."

Mr Hockey and Mr Abbott said the United States-based ADM's bid for GrainCorp was not in Australia's national interest. This once again sparked debate about the opaque nature of the national interest test applied by FIRB and the Treasurer.

"It's really important that the various stakeholders that exist in this foreign investment space both foreign and domestic all have their needs satisfied to the extent possible, which is not always easy because their needs are diametrically opposed," said Mr Wilson.

The ADM deal was the third significant **commercial transaction** that had been rejected in FIRB's history following the nixing of Royal Dutch Shell's proposed takeover of Woodside Petroleum and SGX's \$8.4 billion bid for the ASX.

Malcolm Brennan, special counsel for King & Wood Mallesons, who advises foreign companies investing in Australia, said the rejection of the ADM deal didn't hurt Australia's foreign investment regime. "That prohibition did not have an adverse impact on investment flow which has continued with approvals issuing in the usual way," he said.

Mr Wilson was last week on his third tour of **China** as FIRB chairman to promote a greater understanding there of Australia's foreign investment rules.

He was appointed chairman in April 2012 – having served on the FIRB **board** since 2009 – after a three-decade career in investment banking. Mr Wilson's **China** visit comes amid increasing public anxiety about **Chinese** investment in Australian **residential property** and the potential effect on house prices. The Abbott government has established an inquiry to determine if Australia's foreign investment rules for **residential property** are adequate. There is also rising public concern about foreign investment in agricultural land and businesses, particularly as some land has been bought for coal seam gas investments.

FIRB had not been required to look at agricultural land **purchases** unless they were over \$248 million. The exception was if a foreign government was buying such land.

"The only farm that was able to beat the FIRB threshold was Cubbie Station," said Mr Brennan. "What the public wants to know is that FIRB is scrutinising what's happening in agricultural land **purchases**. There is a belief that FIRB isn't seeing all things in the sector and that's true, they aren't with the current thresholds."

However, recent free-trade agreements with Japan and South Korea introduced an investment threshold in agricultural land investment at \$15 million. Mr Wilson said that public fears about foreign ownership of agricultural land might be misplaced. "While obviously there are particular pockets that might give rise to community concern the overall position is not as material as some of the commentators feel anecdotally," he said.

There has been bipartisan political support for the establishment of a national register of foreign-owned agricultural land.

"Starting with high thresholds, then growing with coal seam gas investment, the ADM-GrainCorp proposal arrived at the pinnacle of public concern with foreign investment in the rural space and a Senate committee combined with the election process really put the spotlight on the issue," said Mr Brennan.

Mr Wilson said while the ADM **transaction** was the biggest challenge of his chairmanship so far, there are increasingly other areas such as profit shifting by foreign companies and cyber espionage threats to national security that foreign investment regimes globally are having to address.

CO arch : Archer Daniels Midland Company | grncrp : GrainCorp Ltd

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