Australian Government
Department of Foreign Affairs and Trade

Joint DFAT/Austrade Submission to the Senate References Committee Inquiry into the Foreign Investment Review Framework

Australian Government
Australian Trade Commission

CONTENTS

TERMS OF REFERENCE

An examination of the foreign investment review framework, including powers and processes of the Foreign Investment Review Board, in relation to Australian assets of strategic or national significance being subject to lease or purchase by foreign owned interests, and whether there ought to be any legislative or regulatory changes to that framework to ensure Australia's national interest is being adequately considered, with particular reference to:

a. the decision by the Northern Territory Government to grant a 99-year-lease over the Port of Darwin to Landbridge Group;

b. the planned lease by the New South Wales Government of TransGrid;

c. the decision by the Treasurer to block the sale of S Kidman and Co on national interest grounds; and

d. any other related matters.

KEY POINTS

1. It is in our interests for Australia to remain a competitive destination for foreign investment.
   - Predictability and certainty are critical to supporting foreign investment.
2. The foreign investment framework has three distinguishing features that support Australia's standing as an attractive investment destination while safeguarding the national interest: the application of a negative test; a case-by-case approach; and a 30-day statutory deadline.
3. DFAT and Austrade believe the framework must continue to adapt so it strikes the right balance between encouraging foreign investment while allowing for effective scrutiny to ensure individual investments are in the national interest, particularly from foreign government investors.
   - It is imperative the Foreign Investment Review Board (FIRB) Framework provides a structured and systematic opportunity to consider all risks to the national interest and assess options for mitigating risks where necessary.
4. Where possible, and when national interest will not be compromised, consideration should be given to reducing or further streamlining FIRB screening.
5. In recent years the number of FIRB applications Australia has received has increased significantly, most notably from Chinese applicants. Given the increase in volume and complexity of foreign investment applications, we support strong, whole-of-government consultation throughout the FIRB process.

OVERVIEW

Foreign investment is critical to the Australian economy and will play an important role in supporting the transition of the economy following the end of the mining investment boom. To ensure Australia remains competitive in attracting foreign investment it is important we maintain our reputation and credibility as an open and welcoming place to invest.

FIRB plays an important role in ensuring Australia achieves the right balance between encouraging foreign investment and safeguarding the national interest. In recent years the number of FIRB applications Australia has received has increased significantly, most notably from Chinese applicants. The number of applications is expected to remain higher than in the past, including because of the Free Trade Agreements that have been concluded and the Government's "Open for Business" agenda.

The Foreign Affairs and Trade portfolio has a central role in: investment promotion and facilitation; trade negotiations and policy and international obligations; and in advancing national security and strategic interests. As such the portfolio is well placed to contribute to a whole of government assessment of the balance between attracting investment and safeguarding wider national interests. DFAT and Austrade provide input to FIRB assessments on investor character and strategic intent and risks to the national interest, and ensure the operation of the FIRB review is consistent with Australia's legal obligations (including in FTAs and sanctions).

DFAT and Austrade consider that stability, certainty and consistency should characterise the regulation of the Australia's foreign investment policy. We consider the FIRB framework must continue to adapt so it remains effective in balancing the objectives of encouraging productive investment, addressing national security concerns, and ensuring consistency with Australia's international trade and investment commitments; while maintaining public support for foreign investment. Continued strong, whole-of-government consultation will be vital to ensuring this balance is met.

IMPORTANCE OF FOREIGN INVESTMENT TO AUSTRALIA

Foreign investment has been critical for the development of the Australian economy for over 200 years

As a large, resource-rich country with high demand for capital, Australia relies on foreign investment to support the development of our economy. Australia's mining, manufacturing, agriculture and financial services sectors have all been developed on the back of foreign investment. Foreign investment has provided the capital necessary to take maximum advantage of Australia's mineral and other natural resources.

Australia needs foreign investment to supplement domestic savings

Foreign investment provides access to capital to help meet the shortfall between domestic savings and domestic investment opportunities. In 2014, around 89 per cent ($383 billion) of Australia's capital needs were sourced from domestic savings while 11 per cent ($45 billion) came from overseas[1]. Foreign capital has enabled Australians to enjoy higher rates of economic growth, employment and standards of living than we could achieve from domestic capital alone and Australia will continue to rely on foreign capital to grow our economy.

Foreign investment stimulates economic activity and creates jobs

Foreign investment generates employment by increasing Australia's total capital stock which in turn increases income and demand for labour. It has been estimated that European Union and United States direct investment in Australia contributed to employing over 700,000 Australians in 2012[2].

Foreign investment promotes competition, fosters productivity, encourages innovation and supports participation in Global Value Chains (GVCs)

Foreign investment promotes competition and exposes local businesses to international standards and best practices. This benefits consumers and the economy as a whole and is crucial to maintaining the competitiveness of our businesses. Greater foreign investment provides our exporters with access to capital to grow and the expertise and technology of overseas partners.

It also fosters productivity and encourages employment generation through the establishment of new businesses or the modernisation of established ones.

Foreign investment encourages local businesses to innovate and keep in step with global best practice, through increased competition and the introduction of new technologies and business practices. Australia's world class research and development organisations have a strong tradition of partnering with foreign investors to develop new technologies and solutions for business.

Foreign investment also connects Australian businesses to world markets boosting their income growth. A 2013 UNCTAD report found countries with high foreign direct investment stocks relative to GDP had greater participation in GVCs. Involvement in GVCs brings many benefits to Australian companies including through the lowering of production and transport costs, increased information technology capabilities, and the capacity to take advantage of niche markets. Over a period of high foreign investment from 2000-2009 the rate of Australia's participation in GVCs rose from 40 per cent to 44 per cent[3].

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1 ABS Catalogue 5206.0

2 US Bureau of Economic Analysis and Eurostat

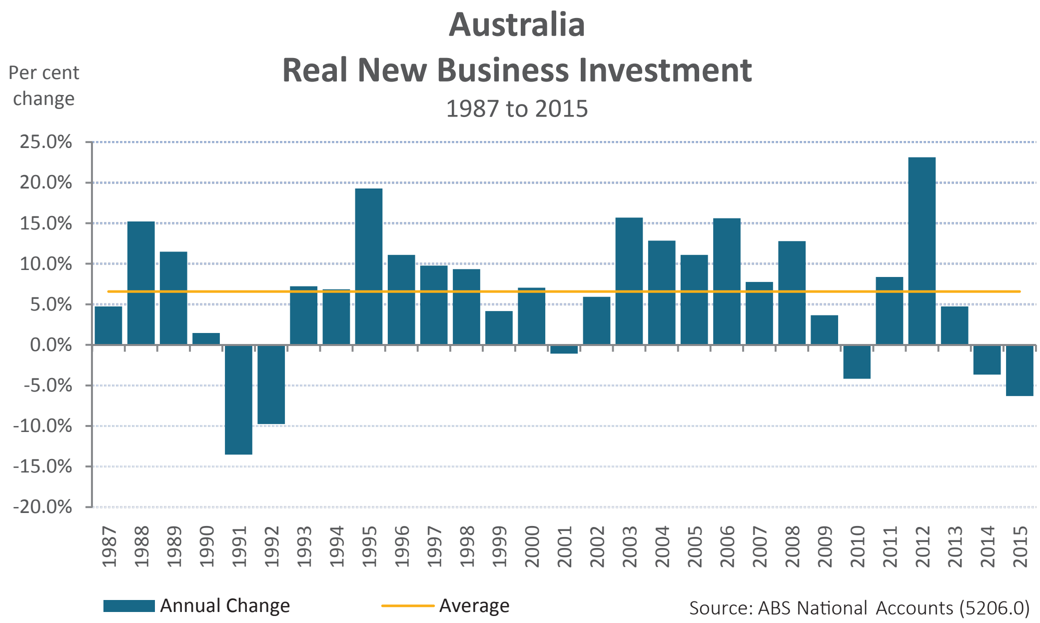
3 The GVC participation measure/index shows the combined share of foreign inputs and domestically produced inputs used in third countries' exports relative to total exports

Foreign investment will be critical in supporting the transition of the Australian economy

The peak of the mining investment boom in Australia has now passed. While the export volumes this investment underpinned are now positively influencing trade data, Australia needs to transition to non-mining sources of growth and achieve sustained increases in productivity to continue to compete effectively in global markets. More investment is needed, including from foreign sources.

Foreign investment has traditionally been an important contributor to Australia's capital formation, accounting for 18.3 per cent of new capital formation between 2001 and 2010. However, in 2014, these levels dropped to 10.5 per cent[4] and Australia's investment level (in the form of new business investment *from all sources — domestic plus foreign*) has contracted for two consecutive years (figure 1). The last time new business investment contracted for two consecutive years was during Australia's last recession — 25 years ago[5].

The Australian economy, having been sheltered by surging investment in the mining industry over an extended period, will now require others sources of growth. Broader foreign investment will be needed to lift business investment and to ensure Australia's long unbroken run of economic growth and its recent strong job creation continues.



International competition for investment is increasing

According to the OECD FDI Regulatory Restrictiveness Index, Australia is actually below the OECD average in openness to FDI mainly due to our screening regime. Australia faces increasing global competition for investment, particularly in Asia. This means Australia must ensure its regulatory environment remains internationally competitive so that it is effective in promoting new — and retaining existing — investment.

Research commissioned by Austrade in 2015 from the Economist Intelligence Unit found that while Australia's reputation as a low risk investment destination after the global financial crisis provided us with an advantage, this is expected to erode over time as competitor countries liberalise their investment regimes. The new focus on bolstering financial market resilience, as well as commitments made in Free Trade Agreements and investment agreements, will improve the investment climate in our region and increase competition for global capital.

4 International Investment 2014, DFAT
5 ABS Catalogue 5206.0 and 7127.0

PORTFOLIO APPROACH TO FOREIGN INVESTMENT POLICY

The Foreign Affairs and Trade portfolio leads the government's efforts to: promote a stable and prosperous regional and global environment through effective bilateral, regional and multilateral engagement; improve market access for Australian goods and services; attract foreign investment to Australia; support Australian businesses seeking to enter overseas markets; and provide a central role in maintaining integrity of Australia's security interests, including leading international engagement on national security issues.

Foreign investment supports Australia's foreign policy objectives.

Strong two-way investment flows add ballast to our political government-to-government relationships. Investing in a country, including through consortiums involving local partners, signals a long-term commitment to, and demonstrates confidence in, the bilateral relationship. This in turn gives foreign investors (and their governments) an economic stake in Australia's continued prosperity and security — in the same way Australia has a vested interest in the political and economic stability of our main trade and investment destinations. Investors with a positive experience of Australia and its investment regime can be helpful advocates within their home countries.

Ensuring Australia is "Open for Business"

The portfolio leads the Government's "Open for Business" and Economic Diplomacy agendas. Investment is an important part of this agenda, as reflected in the inclusion of investment for the first time in the role of Minster for Trade and Investment. DFAT and Austrade jointly assist the Minister in discharging this aspect of his portfolio responsibilities, including in preparing his annual investment statement to the Parliament which outlines the quantum of new investment in Australia and the number of new jobs created.

With respect to inward investment, DFAT and Austrade have a number of roles and responsibilities: the promotion and facilitation of greater foreign investment, including through supporting an attractive investment environment in Australia for foreign investors; international advocacy and the negotiation of investment commitments as part of our FTAs; and providing a central role in maintaining the integrity of Australia's security interests. The Minister for Trade and Investment has chaired over 70 investment roundtables in 30 countries since commencing in his role. These roundtables provide a crucial interface between significant potential foreign investors and the Government's key investment priorities in support of economic growth and development.

DFAT and Austrade have partnered to facilitate increasing foreign investment in the Trade and Investment Minister's five priority sectors: infrastructure; tourism; agribusiness and food; advanced services, manufacturing and technology; and energy and resources.

As part of our contribution to sustaining an attractive environment for foreign investment, DFAT and Austrade have played an active role in discussions relating to domestic policy reforms. We used the reviews of competition policy, the FIRB framework, and the energy, agriculture and finance sectors to prioritise reducing barriers to greater foreign investment in the Australian economy. Both agencies were also closely involved in the Industry, Innovation and Competitiveness Agenda, which aims to set the incentives for new business investment including from abroad.

On promoting and protecting investment across the region and beyond, we have delivered, or are negotiating, FTAs with many key investment partners, including China, Japan, Korea and India. Australia is also participating in mega-regional FTAs in the Indo-Pacific: the recently-concluded Trans Pacific Partnership Agreement (TPP) and the ongoing negotiations for a Regional Comprehensive Economic Partnership.

Australia also has 21 bilateral investment treaties (BITs) and Investment Promotion and Protection Agreements (IPPAs) across the globe, although our key instrument for investment protection and promotion in recent years has been FTAs where trade and investment can be addressed comprehensively.

A key aspect of the recently-concluded FTAs with north Asian partners and the TPP is that Australia has liberalised our foreign investment screening threshold for private investors in non-sensitive sectors. This is an important contribution to sustaining investor interest in Australia, and was a key demand from these countries in the negotiations. This treatment also applies to United States, Chilean and New Zealand investors.

We are also active in investment policy discussions in the G20, APEC and OECD. Under Australia's leadership as G20 Chair in 2014, many countries committed to improve their investment environment. The G20 has an established investment and infrastructure working group, which seeks to foster private investment in infrastructure and strengthen the role of multilateral banks in supporting infrastructure investment. China has signalled that it intends to pursue outcomes on investment in its trade-related track during its 2016 terms as G20 chair.

In APEC, Australia is currently working with partner economies on ways to improve the investment climate with a view to creating global value chains that are better integrated, more accessible to small to medium enterprises and stronger sources of employment prospects and growth in the Asia Pacific region. In the OECD, DFAT chairs an Investment Policy Network aimed at improving the investment environment in ASEAN countries using the OECD's Investment Policy Framework.

Through the aid program, DFAT works with developing country partners to build an enabling environment for business and investment; strengthen key markets and sectors by improving business to business connections and information flows to market players; and help maximise the development impact of individual businesses.

Austrade as the Australian Government's international investment and trade promotion agency provides information, advice and services to advance Australian interests. It focusses on a nationally-agreed, whole-of-government strategy for promotion and facilitation of foreign investment into Australia. Austrade has a mandate to work in partnership with Australian Government departments, and State and Territory governments, to promote, attract and facilitate productive foreign investment into Australia with a particular focus on the five national priority sector areas. To achieve its objective, Austrade focuses on the following:

- Identifies, develops and maintains relationships with existing and potential investors, including introducing them to State and Territory governments;
- Promotes Australia's economic credentials and capabilities;
- Promotes specific investment opportunities that have been appropriately qualified in partnership with States and Territories;
- Explains the market and regulatory environment, including foreign investment approval processes, and helps alert potential investors to and connect them with, for example, FIRB, as appropriate;
- Cooperates with State and Territory governments to facilitate investment into Australia; and
- Maintains relationships with investors to encourage reinvestment, which is a significant proportion of new investment flows.

In the area of FDI attraction, Austrade's international network works with its onshore network, and State and Territory governments to contribute to Australia's economic prosperity through its investment promotion, attraction and facilitation activities.

Importantly, in Austrade's engagement with investors, including both in our wider "Why Australia?" messaging and engagement with investors on specific opportunities, and as standard practice, Austrade advises investors that foreign investment takes place within a legal framework with applicable rules, and investors are encouraged as appropriate to engage with the FIRB.

Investment promotion and attraction

There are clear and robust protocols and mechanisms in place, agreed by Government and States and Territories, to endorse investment priorities and qualify and facilitate investment opportunities in Australia.

These protocols are overseen by a governance structure comprising State and Territory Trade and Investment Ministers and chaired by the Australian Government Minister for Trade and Investment. Known as TIMM, this group meets twice-yearly and is supported by a Senior Officials Trade and Investment Group (SOTIG) (refer diagram below).

Trade and Investment Ministers' Meeting (TIMM) Chair: Federal Minister for Trade and Investment	Ministerial & Political Level
Senior Officials Trade and Investment Working Group (SOTIG) Chair: Austrade	Strategic Implementational Level
National Investment Advisory Board (NIAB) Chair: Austrade	Operational Level

TIMM and SOTIG set priorities and monitor progress for the National Investment Advisory Board (NIAB), which has a more operational focus. NIAB comprises heads and officials from State and Territory investment promotion agencies or departments, and is chaired by Austrade, and meets twice-yearly.

Investment promotion and facilitation protocols agreed through TIMM, SOTIG and NIAB are aimed at maximising value through a clear set of working relationships with the State and Territory governments that cover the following:

- Investment project workflows;
- Managing relationships and sharing potential investor information;
- Investment aftercare;
- Offshore collaboration; and
- Reporting.

Onshore investment opportunities in the national priority sectors are qualified by State and Territory governments before being actively promoted by Austrade. Each agency has established protocols which guide the investment qualification process.

DFAT and Austrade also gather insights and feedback from their offshore and onshore networks on Australia's attractiveness as an investment destination and on perceived advantages and challenges. Austrade uses this feedback to refine its own promotion policies and to provide policy agencies with feedback to inform policy design and implementation.

At 30 June 2015, Austrade had 79 overseas offices in 47 markets. Within Australia, Austrade has 10 offices, complemented by a further 27 offices managed through Austrade's TradeStart network. This network supports Australian entities develop international markets, promote international education, win productive foreign direct investment, strengthen Australia's tourism industry, and seek consular and passport services in certain locations overseas.

DFAT AND AUSTRADE'S APPROACH TO THE FIRB FRAMEWORK

As part of the assessment process, agencies, including DFAT and Austrade, are consulted by FIRB. This includes providing assessments on: the impact of the investment to the growth and competitiveness of the relevant sector; investor character and strategic intent as well as risks to the national interest; ensuring FIRB's review is consistent with Australia's legal obligations (in relation to FTAs and sanctions); and consideration of the impact of the FIRB process on current and future FTA negotiations.

Investor character, strategic intent and risk

The challenge for the Foreign Affairs and Trade portfolio — and the Australian Government as a whole — is to maintain our reputation as an open and welcoming investment destination while minimising exposure to strategic risk, including the potential for the proceeds of crime and corruption and other illicit funds to be laundered through investment activities or for investments to be in breach of our sanctions regime. To achieve this balance, we need to clearly and systematically identify risks to national security arising from foreign investment and to put in place measures, where necessary, to mitigate those risks.

The portfolio is uniquely placed to provide assessments on character and strategic intent. In commenting on FIRB applications, DFAT considers a range of factors including the character and strategic intent of the investor. The portfolio is uniquely placed to provide such assessments drawing on the extensive expertise of our overseas networks.

The Australian Government has the authority to reject foreign investment applications and impose conditions on approvals where such actions are judged necessary to safeguard the national (including national security) interest. Historically, such decisions are rare, but when taken they have the potential to generate friction in our government-level relationships, particularly where decisions are perceived as discriminatory, arbitrary or motivated by non-economic factors. But it is important to note that safeguarding our national security interest does not always mean rejecting a foreign investment application. Instead, where possible, our preference is to allow the investment to proceed but with conditions designed to ensure that any national security concerns are effectively safeguarded.

Australia is one of many countries that consider the impact of foreign investment on matters such as national security. Key benchmark countries[6] have regulatory, policy and operational regimes in place to manage the risks arising from foreign ownership or control of key industries or domestic companies. While the foreign investment policies of these countries differ in terms of procedure and scope, each has in place provisions that allow agencies to review proposed investments which may raise national security concerns. For example, Canada has powers to scrutinise new (and reverse existing) investment but uses pre-screening to limit cases requiring review. The US has divestment powers, partly to offset the absence of compulsory investment screening. The UK system relies on referrals from agencies responsible for the sectors receiving investment. Like Australia, foreign investment policies in benchmark countries are underpinned by the principle that foreign investment is encouraged, balanced against the need to protect national security and broader national interests.

Consistency with international obligations

Australia's FTAs generally include legal obligations with respect to the treatment of foreign investment at both the pre-establishment stage (i.e. commitments with respect to access for foreign investors to the Australian market) and post-establishment stage (i.e. protections for investments once established). For pre-establishment, Australia's FTAs retain policy space to enable the continued operation of our

[6] Canada, New Zealand, the United Kingdom and the United States.

foreign investment screening regime, with specific undertakings on the screening process. This defines the thresholds at which certain investments can be reviewed in certain sectors. In return, we seek similar commitments from our partners to benefit our investors overseas.

It is a well-established principle of international trade that trade and investment liberalisation should not preclude governments from taking measures necessary to protect life and health, national security and public order. For this reason, Australia's international trade and investment obligations contain a variety of safeguards, general exceptions and national security-specific exceptions which allow the Australian government to take measures to protect Australia's interests.

Austrade contribution to the FIRB process

Austrade assists FIRB by providing relevant information on specific FIRB applications. FIRB will seek information on specific FIRB applications where Austrade may have promoted an investment and/or had engagement with the parties relevant to the investment.

Austrade and FIRB have agreed a set of consultation parameters, based on the five nationally agreed investment priority sectors, to guide FIRB on which applications are referred to Austrade.

Austrade contributes insights from our overseas network and contact with investors, and our knowledge of the investment landscape onshore and offshore, particularly in the national investment priority areas, through a standard review procedure which involves:

- Initial assessment of the application to determine if it aligns with the consultation parameters and if Austrade can provide useful information;
- Consultation with relevant Austrade staff onshore and offshore;
- Consolidation of input received from Austrade sources and quality assurance of input by senior onshore officials prior to forwarding back to Treasury.

TRENDS IN DFAT ASSESSMENTS OF FIRB APPLICATIONS

The volume of FIRB applications is growing

In the decade to 2013-14, the number of non-residential real estate FIRB applications increased by 75 per cent. Analysis of the quarterly applications DFAT receives[7] indicates this growth accelerated through 2015. Applications increased by 25 per cent year-on-year in 2015, and are growing on average by almost 10 per cent a quarter.

And so is the sensitivity and complexity

Applications for investment in sectors where there may be community sensitivities, or where there is the potential for public concern, are increasing. Investment applications in finance, infrastructure and health assets, which DFAT received in 2015, were double the number received the previous year. Notably, a decade ago, agriculture applications accounted for 3 per cent of all FIRB non-residential applications — by 2013-14, this sector accounted for 10 per cent.

Well-functioning infrastructure and utilities and other services are essential to national security. If our services, utilities and major infrastructure are not well maintained or are disrupted, or if their integrity could be compromised, there would be the potential for significant impacts on Australia's economic wellbeing and potentially our ability to conduct defence and ensure national security.

But Australian governments cannot meet the full cost of building and maintaining such infrastructure. So they often look to investors — including overseas investors — to meet the shortfall. Without foreign investment, Australia's ability to sustain competitive services and infrastructure over time would be compromised.

The pipeline is growing

The Government's infrastructure and asset recycling agenda is contributing to the increase in FIRB applications, and this agenda together with the Northern Australia initiative, will ensure a continuing pipeline of foreign investment proposals. We understand there are a number of large infrastructure applications likely to come before the FIRB in coming months. Treasury received 1000 FIRB applications for non-residential assets immediately preceding the 1 December 2015 commencement of the new framework.

The source countries for FIRB applications is different from the profile of major investors in Australia

In 2014 the US, Singapore and UK were the largest sources of new investment (figure 2). In the same year, the US, the UK, and Japan accounted for nearly half (46 per cent) of the total FDI stocks in Australia (figure 3)[8].

The profile of source countries for FIRB applications is quite different, reflecting the differing thresholds for countries and company ownership (zero threshold for foreign government investors).

Of the FIRB applications of which DFAT has visibility, Chinese investors dominate. Since the 4th quarter of 2013, applications from China and Hong Kong have increased threefold. The number of applications from these sources is almost four times larger than Singapore, the second largest source of applications. However, it is important to note that while China is the largest source of FIRB applications, in 2014 it accounted for just 6.7 per cent[9] of all new investment in Australia.

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7 Note: DFAT does not see all non-residential FIRB applications.
8 ABS Catalogue 5325.0
9 ABS Catalogue 5352.0

Given FIRB will screen all direct investments, new business proposals and acquisitions of interests in land (including agricultural land), by Chinese state-owned enterprises (SOEs), regardless of transaction size and that private Chinese investors were until 20 December (entry into force of the China Australia FTA) subject to the lower screening threshold, it is not surprising China figures so prominently. In addition, because of excess capacity and low rates of return, and with significant capital available, the Chinese Government is supporting SOE investment abroad.

Figure 2: Sources of new foreign direct investment in Australia, 2014

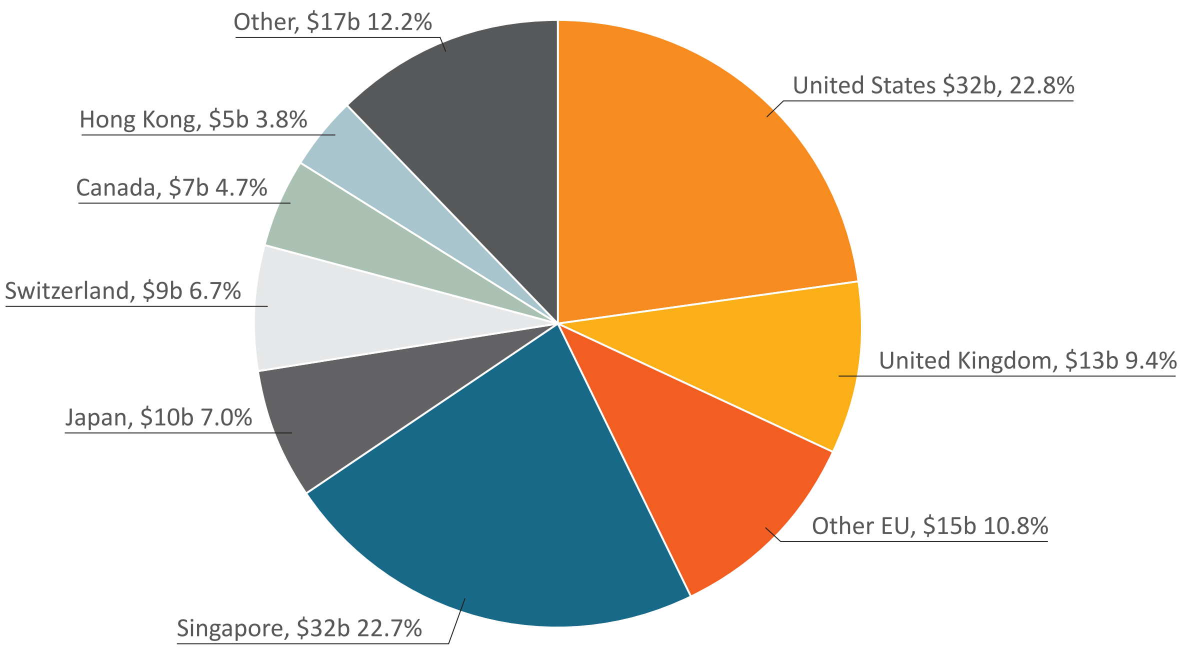
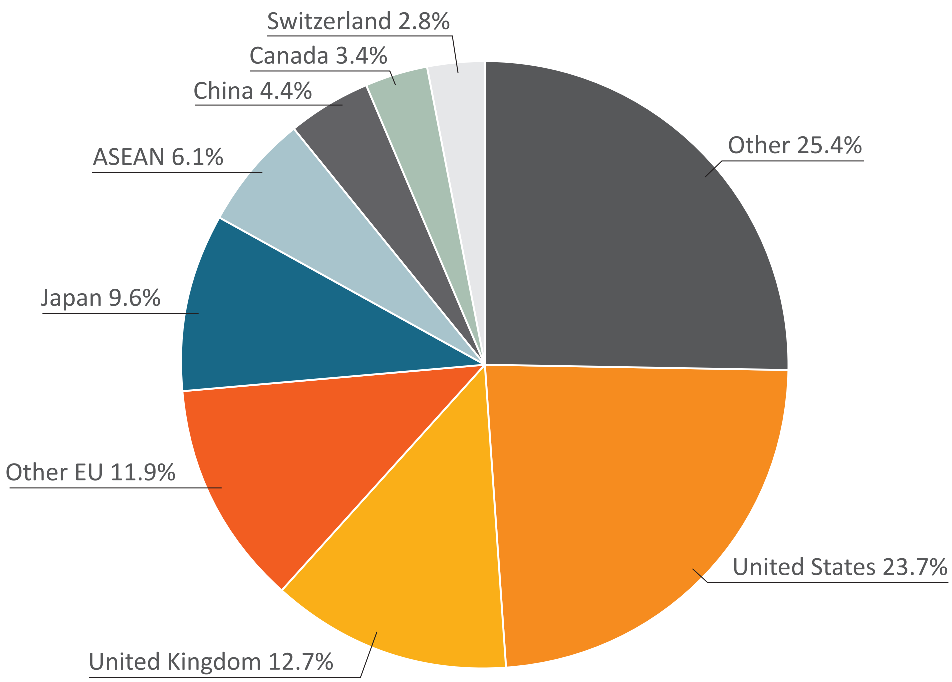


Figure 3: Stock of foreign direct investment in Australia, by partner, 2014



THE FOREIGN INVESTMENT FRAMEWORK

A modern framework

Foreign investment is regulated by the *Foreign Acquisitions and Takeovers Act (FATA) 1975* and accompanying regulations, and guided by the Foreign Investment Policy (together referred to as the "Framework"). The general presumption under the Framework is that foreign investment is beneficial, given the important role it plays in the Australian economy. The Framework allows the Australian Government to balance welcoming investment with providing appropriate safeguards to ensure foreign investment is in the national interest. The national interest test includes assessment of the possible impact of the proposed investment on Australia's economy, national security, and the community.

In 2015 the Australian Government undertook a range of reforms to strengthen the integrity of the foreign investment framework. These reforms have modernised and streamlined the foreign investment framework, reducing compliance costs and complexity, and providing greater certainty for investors. The new Framework now offers more transparency to ensure foreign investment proposals are not contrary to the national interest and penalises those investors who do not adhere to the rules.

The screening thresholds

The FIRB's screening thresholds can be found at https://firb.gov.au/exemption-thresholds/monetary-thresholds/. These thresholds reflect in part the outcome of FTA negotiations. The FTA agenda has played a major role in liberalising Australia's investment regime. It was through the Australia United States FTA that the upper threshold was negotiated (originally $800 million, but now $1,094 million through indexation). This outcome was also agreed in Australia's FTAs with New Zealand, Japan, Korea, China and the TPP (the latter not yet in force). It was also extended to Chile through Most Favoured Nation provisions in the Australia-Chile FTA.

Only foreign investment proposals that are captured by the Framework are assessed. For example, all business applications from a private investor from the United States New Zealand or Chile relating to a non-sensitive sector worth less than $1,094 billion are not screened.[10]

All proposals involving foreign government entities investing in Australia or starting a new business are captured by the Framework regardless of value. And all proposals from foreign investors to acquire an interest greater than five per cent in an Australian media business must be approved, regardless of the value of the investment. One change made during the 2015 reform process was to lower the threshold for agricultural land and agribusiness, except for FTA partners with which we have committed to the higher threshold (US, Chile, New Zealand). This will enable the Framework to assess additional investment applications against the national interest. The Government also established a register of land ownership to increase transparency. Currently, according to the Australian Bureau of Statistics "*just under 90 per cent of farmland is fully Australian owned*."

The FIRB maximises investment flows, while protecting Australia's national interest

DFAT and Austrade have identified three distinguishing features of the framework that support Australia's standing as an attractive investment destination while safeguarding the national interest: the application of a negative test, a case-by-case approach and a 30-day statutory deadline.

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[10] The sensitive sectors are media; telecommunications; transport (including airports, port facilities, and rail infrastructure); defence; supply of goods, equipment or technologies able to be used for a military purpose; encryption and securities technologies and communication; and the extraction of uranium or plutonium or the operation of nuclear facilities.

- First, consistent with the Government's approach that foreign investment is beneficial to the economy, the framework works on the basis of a negative test. An investment proposal is assumed to be in the national interest unless it is demonstrated otherwise and will only be rejected if concerns identified cannot be mitigated.
- Second, the Government's flexible case-by-case assessment approach, as opposed to maintaining rigid rules, ensures Australia's foreign investment regime does not inadvertently stop valuable investments. The Government works with applicants to address any concerns that are identified, to ensure the national interest is protected.
- Third, timely and efficient operation of the framework is supported by a 30-day statutory deadline for decision-making by the Treasurer. This provides investors with a level of confidence that decision-making will not unduly add to commercial pressures or delays.

Individual cases

In relation to individual assessments, where risks are identified that require mitigating conditions to be applied, DFAT works to ensure these are consistent with our existing international commitments, including FTAs. In addition, DFAT works with Treasury and other agencies to ensure any conditions applied to specific approvals to mitigate risk are commensurate with the risk posed and consistent with Australia's economic diplomacy agenda.

DFAT and Austrade each contributed to FIRB's assessments of the proposed sale of S. Kidman & Co, the sales of TransGrid and the Port of Darwin. Our input was based on the confidential applications FIRB shared as part of its usual consultation process.

PORTFOLIO ASSESSMENT OF PROCESSES AND RECOMMENDATIONS

Given the critical importance of foreign investment to Australia's long term economic growth prospects, global economic uncertainty, current low levels of new capital formation and improving investment regulation abroad, it is clearly in our interests for Australia to remain a competitive destination for foreign investment.

Predictability and certainty are critical to supporting foreign investment and to positive investor perceptions. DFAT and Austrade believe the FIRB framework must continue to adapt so that it strikes the right balance between encouraging foreign investment while allowing for effective scrutiny that ensures that individual investments are in the national interest particularly in the case of applicants from foreign government investors. It is imperative that the FIRB Framework provides a structured and systematic opportunity to consider all risks to the national interest and assess options for mitigating risks where that is necessary.

DFAT and Austrade encourage a framework that projects stability, certainty and consistency in the regulation of foreign investment. Where possible, and when national interest will not be compromised, consideration should be given to reducing or further streamlining FIRB screening. The FIRB process should not be made more onerous or burdensome for foreign investors.

Given the increase in the number and complexity of foreign investment applications which in some sectors may present risks, we support a strong, whole-of-government consultation throughout the FIRB process. This includes consideration of conditions to mitigate risk (relating to issues from competition policy to national security).