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To: The Hon J. Frydenberg MP (Treasurer) and Mr M. Fitt (Committee Secretary)
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RE: Inquiry into Foreign Investment Proposals

I, Shumi Akhtar (Associate Professor at the University of Sydney Business School), would like to express my gratitude to the Senate Standing Committees on Economics for the opportunity to make this submission.

Having regard to the various submissions being made for this nationally critical inquiry, Treasury's submission was the most objective and informative and I thoroughly endorse their approach taken to consider overseas investment proposals. Nonetheless, I would like to suggest some improvements that can be made to the current process, which I discuss in my submission below. My discussion and evidence below will address the following terms of references into the inquiry:

Terms of Reference

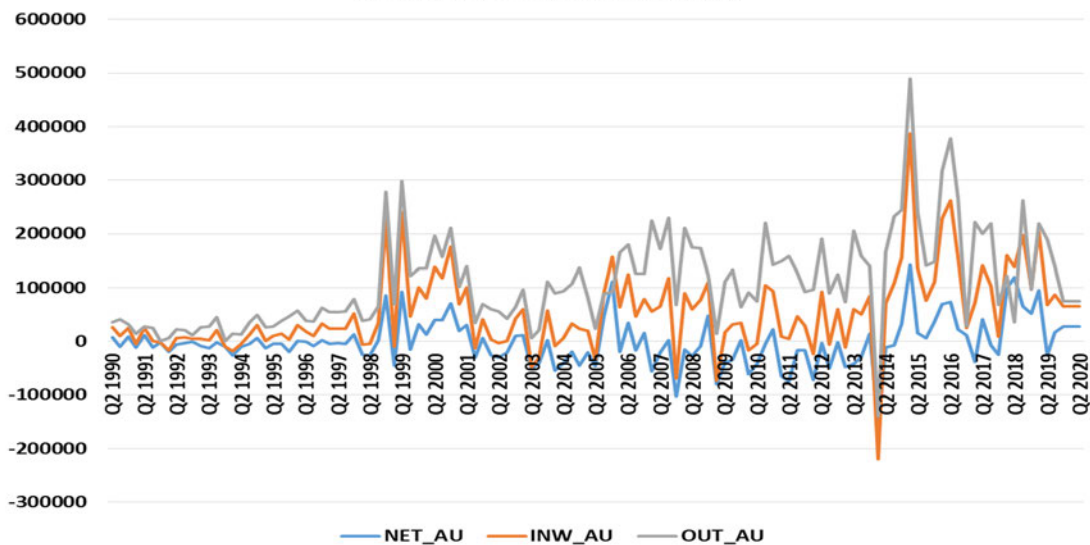
- a. the protection of Australia's market-based system from manipulation that would benefit proposed foreign investment;*
- b. the assessment of the impact of proposed foreign investment on market concentration and competition;*
- c. the imposition of conditions on foreign investors;*
- d. the extent to which the risk that foreign investment proposals are being used for money laundering is examined;*
- e. the role of the Foreign Investment Review Board; and*
- f. any other related matters.*





Firstly, it is important to examine data-driven evidence to determine where Australia stands in terms of its foreign investment outflows, inflows and net position. Figure 1 shows that Australia’s inbound, outbound and net investment position is similar to the 1990s. This lack of progress is certainly concerning, and signals that we should take this opportunity to revise our foreign investment framework to maintain its robustness and sustainability as well as grow our net investment inflow.

Figure 1
FDI: Inflows, Outflows & Net (\$M)



Secondly, our lack of foreign investment relative to the 1990s is concerning given our corporate tax rate in the 21st century is far more favourable than the previous century as depicted in Figure 2. Nonetheless, this may be explained by the fact that Australia’s corporate tax rate is still much higher than our closest foreign competitors such as Hong Kong and Singapore. More recently, the US also revised its corporate tax rate, making it much more competitive as an investment destination for foreign investors and multinational corporations.

Figure 2
Corporate Tax Rate Comparisons: 1985 to 2019

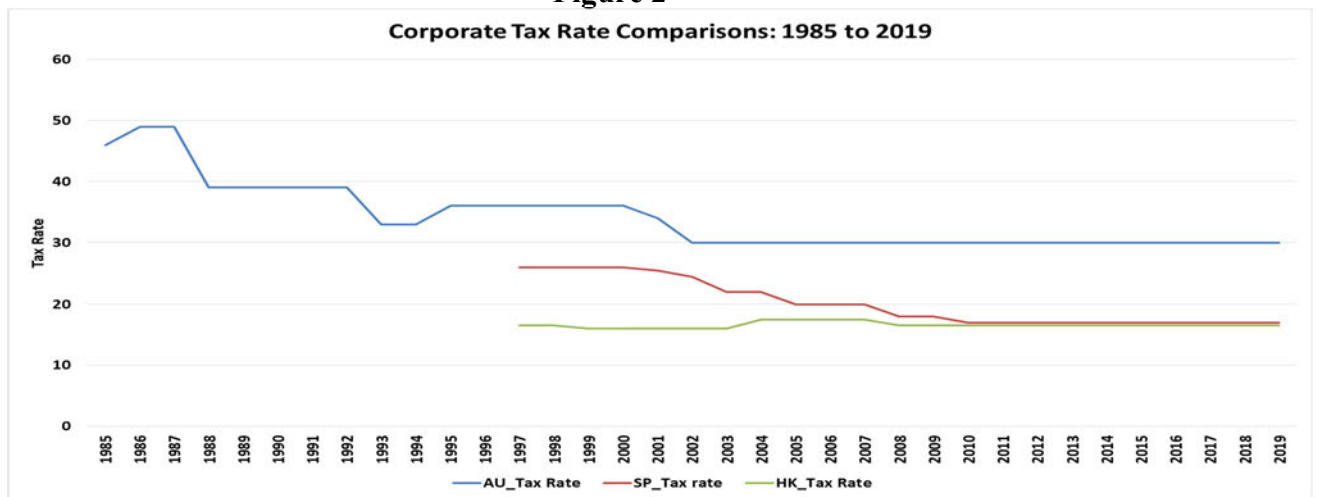




Figure 3a and 3b provides a further comparison of net Foreign Direct Investment (FDI) activities in Australia versus Singapore (SP) and Hong Kong (HK). Again, Australia is consistently lagging behind in both metrics against its competitors (inbound and outbound FDI activities).

Figure 3a

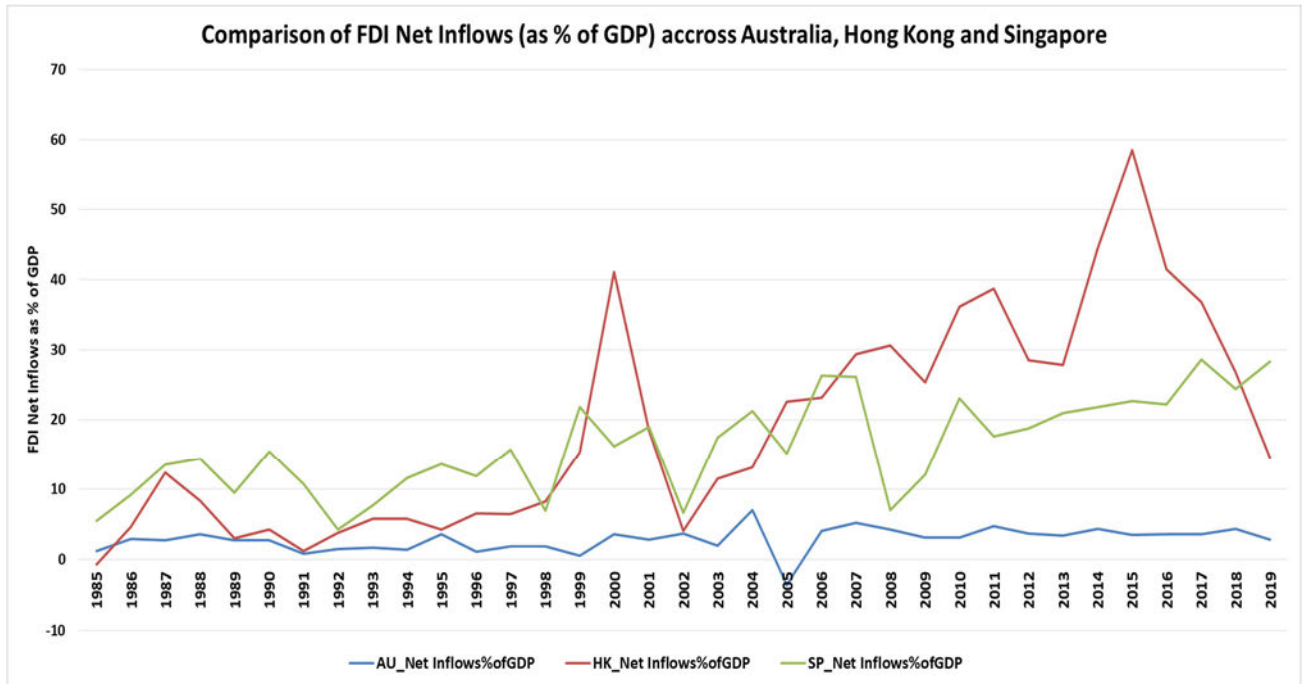
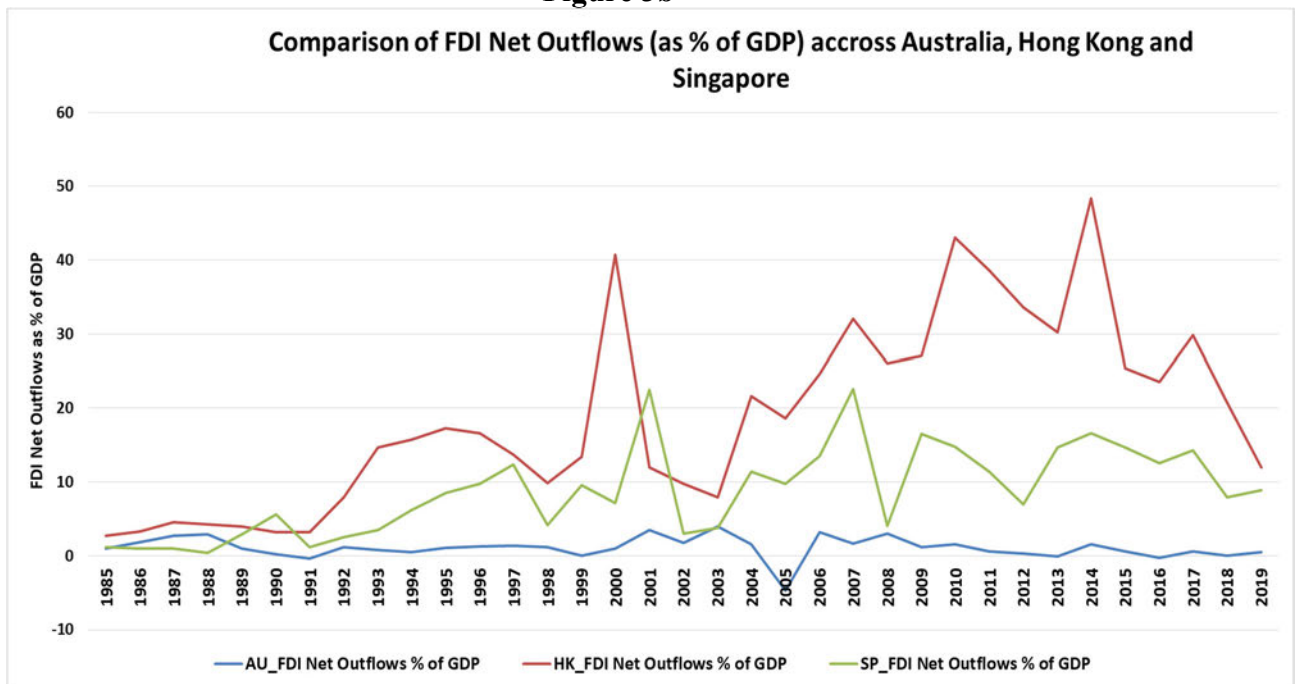


Figure 3b





Of further concern is also evidence that Australia’s export and imports relative to its GDP is one seventh of Hong Kong and Singapore. Figure 4a and 4b provide some insights as to the gap between Australia and its competitors in terms of exports and imports, both of whose geographical landscape is significantly smaller than ours.

Figure 4a

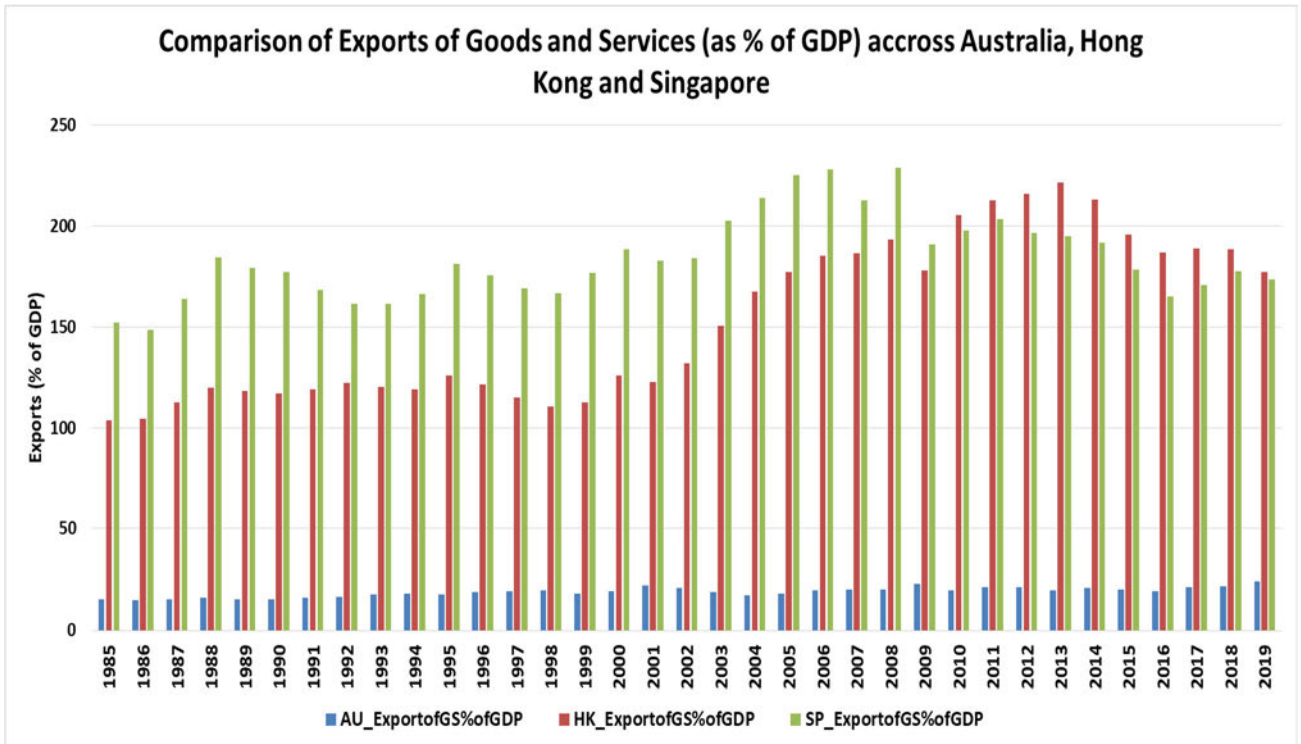
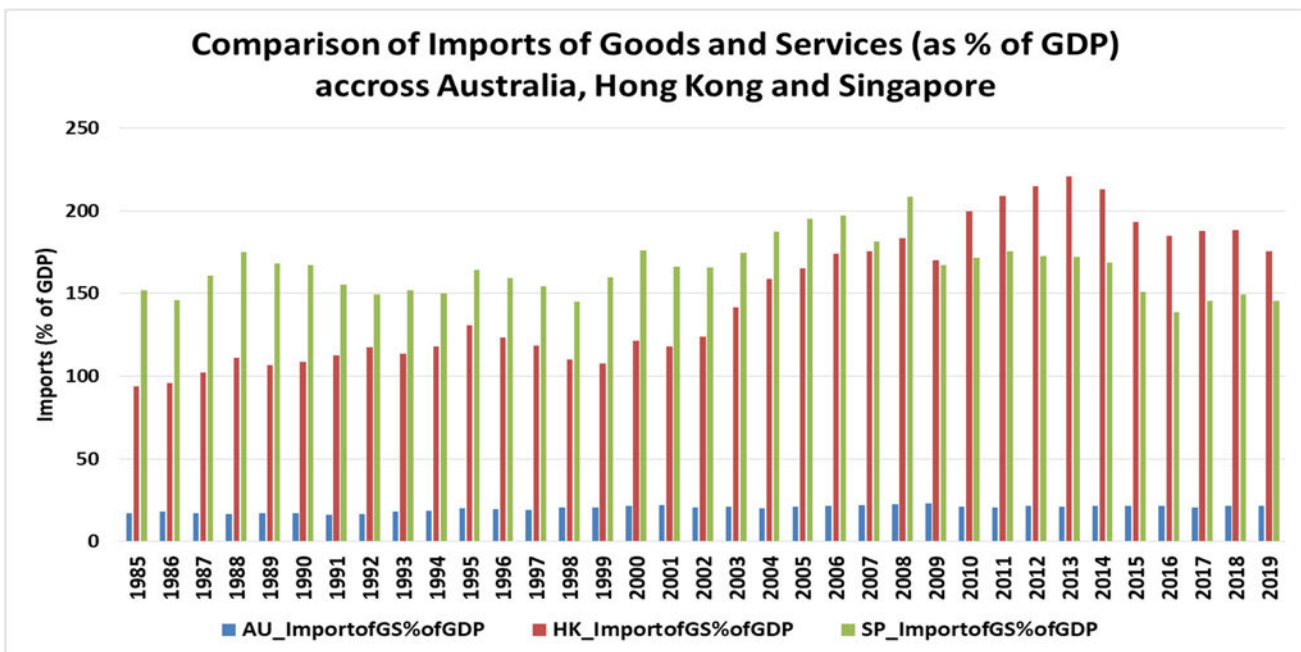


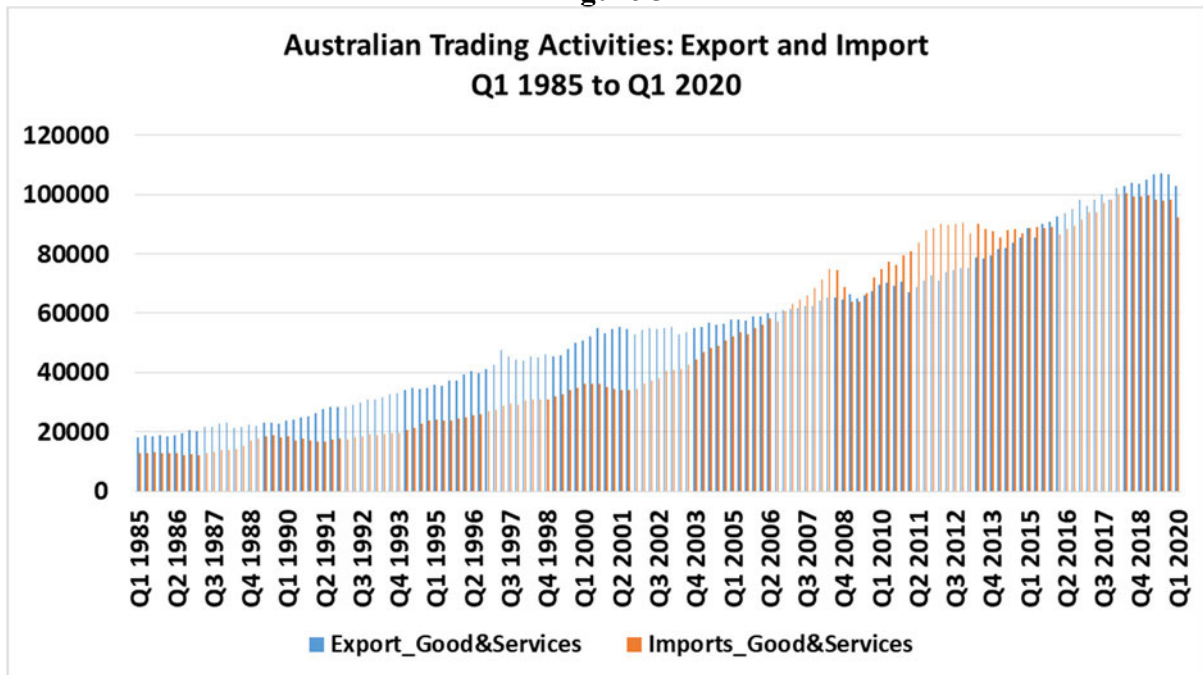
Figure 4b





A closer look at the trade data is promising, with both exports and imports showing an upward trajectory over time (as presented in Figure 5); although a sharp decline was recorded in Q1 2020 due to the outbreak of COVID-19. Figure 5 also shows that Australia was consistently a net exporter until 2006, with the trend reversing until 2016. Over the last five years, Australia has reverted to being a net exporter.

Figure 5



Over the last five years, we have seen increasing incidences of highly educated, middle-income professionals such as healthcare professionals, lawyers and academics struggling to afford a property to live in, let alone any investment properties. This phenomenon was created by allowing wealthy, foreign investors to enter our real-estate markets (residential, commercial, agricultural, farming and mining) – both as suppliers and consumers. The real estate market was left unregulated for too long, leaving prices to sky-rocket due to a flood of demand from wealthy overseas investors, pushing out local first home buyers and senior citizens. It is baffling how the situation has flown under the government policy radar for so long. It is not only time to address and review foreign investment activities by individuals and corporations, but it would be almost a crime itself if our foreign investment policies and regulations were not revised and tightened. Financial crime expert Simon Norton reminds us that:

“A large portion of suspicious transfers between China and Australia go into real estate is a reminder of the need to harden Australia's anti-money laundering and counter-terrorism-financing system.”

All proposed acquisitions in real estate by foreign parties (whether it is commercial, residential, agricultural or mining) should be heavily screened by the Foreign Investment Review Board (FIRB). It is no secret that there are many incidences of overseas investors using Australian real-estate purchases for tax evasion purposes.



Irrespective of the risk to our national interest, there needs to be appropriate screening of all foreign investment, with particular scrutiny paid to the source of money and income etc. The magnitude of an investment amount should not be the sole risk factor. There may be risks arising from how an investment is funded and who are the ultimate beneficial owners. It is important not to have a defined definition of ‘*national interest*’ for a number of reasons: Firstly, ‘national interest’ is dynamic in nature and it is best not to define this in the public domain. Any investment proposal that compromises competition, poses a national security and cyber security risk or might be a threat to the Australian consumer, community, economy or environment would need to be handled very carefully. While a measure of transparency is essential to instil confidence in investors, it would not be appropriate for the Australian government to publicly release intricate details relating to the screening process as it might serve as ammunition for hostile parties or criminals to design sophisticated avenues to dismantle our system. The Australian government via the Treasurer should take an appropriate length of time to assess and perform due diligence on investment proposals to protect Australia, which should not be mistaken for discrimination or non-responsiveness.

We need to stop foreign investment being heavily dominated by one overseas country or/a single investor. Market concentration is minimised by including a variety of investors from various locations. This also promotes competitiveness among investors. It is shocking that many large corporations that were incorporated in Australia are now largely owned (more than 50%) by overseas investors. This goes to show how vulnerable we remain to foreign influences and how the laws of other countries will intimately dictate these corporations’ core activities. Such corporations include BHP, Rio Tinto and our four major banks to name a few.

The Treasurer and FIRB understandably require proposals to be vetted on a case-by-case basis as the motivation of each investment varies by investor. A ‘one-size fits all’ policy is not suitable due to the heterogeneity across investment proposals. The Australian government should also seriously consider allocating adequate resources and setting up appropriate infrastructure to perform the necessary due diligence and timely correspondence with potential overseas investors. I have a number of suggestions / recommendations below to improve our trade and investment policies:

1. The case assessor of the investment proposal should not be from the same country to limit any natural human bias. Every foreign investment proposal should be subject to robust controls during screening to rectify any coercion and/or conflict of interest.
2. Many Australian migrant citizens here in Australia are unable to bring in capital/investments from their country of origin. This is an untapped area where Treasury, ASIC and ATO should look into to assist repatriation of this capital into Australia. The current tax law requires all migrants that are tax residents to disclose investment assets held outside of Australia to ensure Australian income tax is paid on any income earned outside of Australia. Yet, the irony is that many of these migrants are unable to bring this capital into Australia, where it could be better deployed to making valuable investments in Australia. Often time, migrants may face severe difficulties disposing of assets held in their country of origin due to foreign outflow



restrictions and/or local corruption. This is particularly true for many South Asian countries such as India, Bangladesh, Sri Lanka, Pakistan etc. There is a significant population of migrants that are facing severe financial difficulties here in Australia due to having their lifetime savings/assets stuck in their country of origin. This is compounded by the fact that often, senior citizen migrants often need to wait (e.g. 10 years) a certain period to be eligible for pension/social welfare benefits after they receive their permanent residency in Australia. Most of these migrants are unable to return to their country of origin to dispose of these assets due to various reasons e.g. safety issues. As a result, these migrants either rely on the Australian pension or Centrelink. Treasury, ASIC, ATO and FIRB should explore ways to assist (for example, having a mechanism that safely facilitates buy/sell transactions for migrants in conjunction with their respective embassies/consulates). This may be implemented by way of amending bilateral investment agreements. This will demonstrably alleviate pressure on the Australian pension/social welfare system as well as our medical system and enable migrants to be self-sufficient and financially independent.

3. Every proposed foreign investment into Australia in the form of purchases of land, water rights, agriculture or mining assets, residential and commercial properties or ownership of small, medium and large businesses or any kind of access to our national resources (irrespective of whether it is in the form of tangible or financial ownership) should be thoroughly screened before any approval is made. A detailed explanation for rejection may not be warranted, depending on the circumstances.
4. Treasury and FIRB should be allowed adequate time to investigate each foreign interest in our country. Potential foreign investment should not be at the cost of our national interest or sovereignty. This rule and policy should be bilateral in nature e.g., if Australia allows Country X to acquire 2 hectares of land then Country X should also be agreeable for Australians to buy 2 hectares of land in X.
5. Unchecked foreign investment in the Australian residential property market has led to inflated prices and many first home buyers locked out of the market. This is a serious issue. Allowing foreign investors over the last decades to invest in our housing without appropriate screening has wreaked havoc on our land/property pricing system as well as the forces of demand and supply for residential and commercial properties.
6. The Australian government should continue to monitor and redesign tax policies and rules for international investors with property investments where there is significant tax leakage. The recent changes to the taxation of stapled structures and the introduction of capital gains taxes withholding in relation to sales of property to foreign investors are a step in the right direction.



7. Foreign investment limits should be capped not just at the individual level but extended to the family level. It is also important to obtain detailed information on the citizenship of the investor, as well as any details of multiple citizenships (and in the case of a business, the ultimate beneficial ownership). The cap should apply at the individual investment level and not be based on the aggregate investment per person or organisation. This will alleviate having particular sectors of investment dominated by clusters from one particular country. A quota of investment per country should be introduced to reduce investor concentration.
8. Overseas investors should be required to disclose details of their assets in their home country so that recourse may be sought in the event of losses suffered through non-compliance in Australia.
9. International investors should be required to provide robust evidence of the source of their income or capital. Money laundering by individuals, banks and corporations has been an important issue in Australia as well as overseas.
10. Foreign investment should be regulated and a greater degree of transparency available for the general public. A public domain should be set up for anyone interested to contribute ideas and communicate opinions to protect our national interest.
11. Foreign investment in the technology and innovation sector should be designated as highly sensitive and scrutinised in greater detail to ensure no national security risks exist or would be present in the future.
12. More incentives to encourage domestic manufacturing and production should be developed as Australia critically needs to develop its base and foundation to become a manufacturer rather than a raw resource supplier.
13. Guidance provided to international investors should be as clear as possible. Of course, it is impossible to foretell and design rules/policies for unforeseen circumstances. As such, certain exclusion clauses should be added to reserve Australia's right for further investigation or amendments as arise/necessary.
14. Regulatory bodies such as Treasury, DFAT, ACCC, ASIC, AUSTRADE, AUSTRAC, the AFP and the ATO should work closely to ensure a balance of market share concentration/saturation across Australia's foreign investor base. This would help prevent the misuse of power and controlling authority by a single party.



15. The ATO should continue to closely monitor tax compliance by overseas investors (individuals/businesses) with particular scrutiny given to the type and quantum of tax deductions claimed.
16. The FATA requires certain revisions. Eg. there are currently no requirements for the target firm to provide information in the event of a potential takeover/ or merger and acquisition.
17. Rules and policies for foreign investors should be designed as clearly as possible such that no clause or terms remain vague or open for interpretation to Australia's disadvantage. On the other hand, ambiguous and contradictory rules should be avoided to reduce uncertainty.
18. Due to COVID, many businesses are now cash strapped and may be vulnerable to foreign takeovers. We should not allow overseas investors to pour into our economy now as a 'quick fix' if it should come at a cost to our future national interest. Treasury and FIRB should continue to carefully assess the term and duration of investment proposals for during this period of economic uncertainty.
19. Money laundering and tax evasion impact a country's economy, financial and non-financial sectors, government, and social well-being negatively. In particular, money laundering undermines the integrity of the private sector, policymakers and financial markets; results in a loss of tax revenue; loss of control of economic policy implementation and enforcement of regulations; creates economic distortion and financial instability; risks of privatization phenomena; and is a serious threat to a country's governance and reputational risk. Therefore, it is paramount that we establish new mechanisms to strengthen our existing anti-money laundering (AML) rules/policies for revision of past investments and to provide adequate scrutiny to new ones.
20. As a resource-rich nation, we should promote greater on shoring of manufacturing activities and foreign investment in our domestic manufacturing sector. Additionally, priority should be given to investment in the technology and innovation sector given the likelihood of geopolitical uncertainty in the near to medium term. We must remain flexible and agile and prepare ourselves to embrace digitalisation and globalisation to remain competitive as a country.
21. The recent congress investigations in the US into multinational technology giants (Facebook, Apple, Amazon and Google) should be a wakeup call for us as to how these large corporations CEO's are misusing their power to dominate the market.



22. Detecting COVID-19 money laundering through mergers and acquisitions and the intensity of fraud, cyber-attacks, theft/misappropriation, bribery, corruption, human exploitation and property crime feature heavily in COVID-19-related crimes will be increasing as crisis deteriorates. A deeper insight through priority research is warranted in tax relief, fraudulent sale of medical supplies related investments, deceitful investment scams, and fraudulent claims on government stimulus measures through establishments of shell companies by foreign investors, increasing insider trading, organised property crime driven by empty corporate buildings, phishing attacks and secret deals in M&A type foreign investments. A better insight and through understanding on the likely economic and financial damage these can cause to Australia would be irreversible

23. Lending/borrowing by corporations has increased exponentially through corporate bond issuance. Extra care should be given to interest creation out of nothing for tax deductions by multinational and transitional corporations (e.g., inter-company loan).

To conclude, the Australian government, regulators and policymakers should balance the need for encouraging foreign investment with the long term economic and financial prosperity of its citizens, retirees and future generations. Further discussion with the private sector as well as researchers should be sought to contribute towards designing revised rules and policies. I would be delighted to engage in any further discussions/clarification and in providing data driven evidence to the Committee if needed.

Sincerely,
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Bibliography

1. <https://www.canberratimes.com.au/story/6314184/growing-relationship-with-china-creates-opportunities-for-criminals/>
2. UNTCAD Report 2020.
3. OECD Report 2020.
4. DFAT Web.
5. Production of Graphs Databases: Bloomberg, Eikon, Thomson Reuters, DataStream, Morningstar, Capital IQ, WRDS, BvD and World Bank.
6. Akhtar, S., Akhtar, F., John, K., Wong, S. (2019). Multinationals' tax evasion: A financial and governance perspective. *Journal of Corporate Finance*, 57, 35-62.
7. Akhtar, S. (2018). Dividend payout determinants for Australian Multinational and Domestic Corporations. *Accounting and Finance*, 58(1), 11-55.
8. Akhtar, S. (2018). Dividend Policies across Multinational and Domestic Corporations - An international study. *Accounting and Finance*, 58(3), 669-695.
9. Akhtar, S. (2017). Capital Structure of Multinational and Domestic corporations - A Cross Country comparison. *Accounting and Finance*, 57(2), 319-349.