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ARE FREE TRADE AGREEMENTS MAKING SWISS CHEESE OF AUSTRALIA'S FOREIGN INVESTMENT REGIME?

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Abstract

Australia's foreign investment regime plays an important role in Australia maintaining an open investment environment while providing the Australian community confidence that new investment projects are in the interest of the community. Until 2005, the foreign investment regime treated all investment sources on a non-discriminatory basis but since then some important preferential exemptions to screening have been introduced. Bilateral deals with the United States and New Zealand more than quadrupled the threshold to A$1.078 billion for investments that must be screened by the Foreign Investment Review Board (FIRB), and deals with South Korea and Japan promise the same treatment. There is expectation that a free trade agreement with China will also lift the threshold for Chinese investment. This represents a major liberalisation towards investment from those countries, given that a vast majority of investment is below the A$1 billion threshold. Some new rules regarding investment have also been introduced in those bilateral agreements which only apply to the signatories of those bilateral deals, however, the differential treatment is not at this stage too different or complex and there is scope for them to be unified and made consistent to all sources of investment. The piecemeal changes to the foreign investment regime through bilateral trade and economic agreements have occurred without a clear strategy set forth and further piecemeal changes threaten to impact the operation and function of the regime with implications for confidence in Australia maintaining an open investment environment.

JEL Codes: F21, F23

Background

Foreign investment has been important for Australian industry and economic expansion. By the end of 2014 the stock of foreign direct investment (FDI) in Australia was estimated to be A$630 billion[1]. Australia's persistent current account deficits are a reflection of the relative shortage of domestic savings and the need for overseas capital to finance investment opportunities in a range of sectors, and especially in natural resources. The mining and natural resource sectors attract the most FDI in Australia — and the capital, technology, know-how and market links that FDI delivers make Australia one of the most technologically advanced and efficient mining producers globally.

The regulation of the inflow of FDI into Australia seeks to attract FDI and maintain an open investment environment while it protects against foreign investment that is not in the interest of the country as a whole. FDI proposals are screened by the Foreign Investment Review Board (FIRB) before they are permitted in Australia[2]. Once established, they are given equal treatment to other firms operating domestically and are governed by the domestic regulatory framework and institutions[3]. Those include the tax and competition regimes as well as equal access to the domestic court system.

FDI proposals above certain monetary thresholds and in certain sectors are screened by FIRB, which makes recommendations to the Treasurer, an elected representative, whose decisions are informed by a 'national interest' test. All FDI below the relevant thresholds are allowed without FIRB screening.

The underlying purpose of FIRB and the national interest test has been to reassure the Australian public that foreign investment is being monitored and that it is beneficial to the Australian community (Drysdale, 2011). The national interest test applied by FIRB is not clearly defined — by design — and there is therefore some opacity in the regime. The FIRB appears to be restrictive to foreign investment according to the *OECD FDI regulatory restrictiveness index* — where Australia ranks as more restrictive than the global average and much more restrictive than the OECD average — as well as to some observers (see, for example, Stoeckel, 2008). Yet in the six year period 2007–08 to 2012-13, only 76 FDI proposals were rejected – all but two of those being in real estate where the applicant usually does not meet the residency requirement — while 51,321 were approved[4] and there is evidence that Australia is more open to FDI than any other OECD country, given the size, structure and location of its economy (Armstrong, 2011).

The monitoring and screening of pre-establishment FDI by FIRB has been conducted on an essentially non-discriminatory basis with FIRB originally designed to treat FDI from all countries equally. That non-preferential or non-discriminatory treatment is important for maintaining confidence in Australia's investment environment and not increasing perceived barriers.

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[1] Source: ABS Cat. No. 5352.0, International Investment Position, Australia, 2014

[2] There are often conditions imposed on projects as part of the approvals process. In some cases this is just a reminder/requirement to meet Australian regulation; in other cases it is more specific – for example to engageme with the tax office in relation to off-take agreements.

[3] It can be argued that some foreign firms have greater recourse than domestic firms to challenge government decisions if they have access to investor-state dispute settlement (ISDS) arbitration, for example.

[4] Source: FIRB Annual Report 2012-13, page 20.

Over time, however, some important preferential exemptions to FIRB screening have been introduced. Until the end of 2013, investment from New Zealand and the United States had a higher threshold and investments below A$1.078 billion did not have to be screened by FIRB while FDI above A$248 million from all other countries required FIRB screening. The threshold was lifted for investment from the United States as a result of the Australia–United States Free Trade Agreement (AUSFTA) that came into force in 2005. The threshold was then lifted for investment from New Zealand in 2013 with the introduction of an Investment Protocol added to the Australia–New Zealand Closer Economic Relations (CER) agreement. More recently, Australia has agreed to lift the threshold for South Korean and Japanese investment into Australia to the same level as that for New Zealand and the United States, as a result of the bilateral trade agreements with both countries. The Australia–Chile FTA which was signed in 2009 includes a most-favoured nation clause which may raise the threshold for investments from Chile once the South Korean or Japanese FTAs are in force.

Those four bilateral trade or economic agreements have resulted in an investment regime that is relatively more restrictive to FDI from all other countries. The investment chapters of those four agreements also have exemptions or rules, which apply specifically to FDI from that country , as shown on Tables A1 and A2, potentially complicating the screening of investment. This trend of according preferential treatment to FDI from certain FTA partner countries looks likely to continue with a lifting of the threshold for Chinese investment a major condition of an Australia–China FTA. China is one of the largest new sources of FDI into Australia.

This paper looks at some of the implications of the bilateral deals on FIRB. The next section briefly reviews of the structure of FDI in Australia. Then the special exemptions and rules for the preferential investment partnerships will be reviewed alongside other general changes in the regulatory regime and some implications drawn about the resulting complications. The paper then looks at the impact of these piecemeal reforms on the FIRB investment regime and suggests a different approach to reforms. Finally, the paper concludes with some implications and questions for Australia's investment regime.

Foreign direct investment in Australia

Over time the Australian foreign investment regime has evolved with a mixture of liberalisation in some areas and greater scrutiny in other areas. This has in part been driven by greater liberalisation in the economy more broadly, with opening of markets to trade and reductions in tariff and non-tariff barriers. This is particularly true of our growing trade relationships within the region.

In addition to this, with each new wave of investment there has generally and predictably been nervousness within the community about the implications for Australia and in some cases this has led to more restrictive treatment of some sectors.

The FIRB was first established in the 1970s in response to concerns in the Australian community about a new wave of investment from the United States. A wave of investment from Japan in the 1980s also brought some public, and therefore political, uncertainties and more recently the major growth in Chinese investment has led to some anxieties among the public. It is the investment from new sources which comes with a degree of uncertainty. The new waves of investment are small in comparison to the established sources of investment. For example, at the end of 2013 Chinese investment accounted for only 3.3 per cent of foreign investment stock (see Table 1) despite being one of the largest sources of investment in the last half a decade, and Australia being the largest destination for Chinese investment globally for much of that time.

Table 1: Stock of foreign investment in Australia by source country, A$ billion, 2008-13

	Economy	2008	2009	2010	2011	2012	2013	% Share	% Change 2012-13
1	USA*	99.9	98.2	112.0	117.8	131.9	149.5	23.7	13.3
2	UK	59.6	61.0	53.7	68.8	78.9	86.7	13.8	9.9
3	Japan*	36.7	45.6	51.1	54.1	62.0	63.3	10.0	2.0
4	Netherlands	19.2	31.4	27.7	29.7	29.7	29.4	4.7	-0.9
5	Singapore	10.4	16.7	18.8	20.0	23.9	25.2	4.0	5.3
6	China	3.6	9.1	12.9	14.4	16.1	20.8	3.3	29.0
7	Switzerland	19.5	17.8	20.9	22.9	22.5	19.1	3.0	-15.3
8	Canada	7.3	12.2	14.9	19.0	21.0	16.6	2.6	-21.1
9	Germany	15.5	18.1	16.8	14.1	13.6	13.8	2.2	1.3
10	Bermuda	5.8	9.5	7.5	5.8	6.3	9.6	1.5	52.5
11	Malaysia	NP	4.5	3.7	NP	5.7	7.7	1.2	36.1
12	Hong Kong	9.1	5.4	6.6	7.6	7.3	7.4	1.2	1.3
13	France	12.9	13.0	13.0	7.2	6.9	5.5	0.9	-20.0
14	Belgium	5.2	5.6	6.2	5.7	4.8	5.4	0.8	11.5
15	New Zealand*	5.6	6.2	6.4	5.3	4.3	5.1	0.8	18.3
16	Thailand	NP	NP	NP	NP	NP	4.6	0.7	NA
17	Luxembourg	NP	3.2	1.5	3.4	4.2	2.4	0.4	-43.4
18	South Korea*	1.0	1.3	2.1	NP	2.1	2.0	0.3	-4.5
19	Sweden	1.7	1.3	1.7	1.5	1.6	1.5	0.2	-7.7
20	India	0.1	NP	NP	NP	1.3	1.2	0.2	-13.3
	Total (all countries)	444.2	489.9	519.7	549.4	591.3	629.9	100.0	6.5

Notes: * denotes higher threshold for FIRB due to FTA

Source: Source: ABS Cat. No. 5352.0, International Investment Position, Australia, 2014

Table 1 shows that the United States holds the largest investment position in Australia followed by the United Kingdom and Japan. Japan accounts for 10 per cent of FDI stock and after Japan, all other investment sources account for less than 5 per cent. The growth of Chinese FDI stock has been remarkable, starting with less than A$3.6 billion in 2008, which ranked it as the 14th largest source, to becoming the 6th largest at the end of 2013, with 29 per cent growth in investment stock (which includes divestment and depreciation) from 2012. Annual FDI flow data is less reliable for making annual comparisons as disinvestment by foreigners in domestic assets can dominate new FDI and gross annual FDI can appear negative.

Of the four countries that have bilateral agreements with Australia, only two (the United States and Japan) have been among the top investment sources historically. New Zealand accounts for only 0.8 per cent of Australian FDI stock, with the size of its investment stock falling over time, and South Korea with 0.3 per cent of FDI stock, or A$2 billion.

Is Australia over-complicating the screening of FDI?

In the 1980s, the growing economic strength of Japan resulted in both increased trade between Australia and Japan, but also an influx of Japanese investment, including into the housing sector. Concern over this led to changes in types of residential investment that non-residents could purchase — in particular, to allow only the purchase of new dwellings and not existing dwellings. The general argument was that this would be less likely to reduce housing supply and drive up house prices. While there was little justification for the argument that the previous investment would reduce housing supply for Australians, the arguments around price increases — at least for a period — was possibly more justified, if only temporarily, as supply adjusted.

Similarly, more recent growth in investment from China has seen changes to the foreign investment regime's treatment of state-owned enterprises (SOEs) and investments by entities which are large SOE investors. Changes to sensitive sectors under the foreign investment regime have also evolved over time. In addition, reactions to an increasing (though still reasonably limited) interest by overseas investors in the agricultural sector have also seen public momentum for changes to foreign investment approvals processes in this area.

The arrangements that have developed for screening and purchase of land in different circumstances provide an example of the inconsistencies in treatment that can result from piecemeal changes. As Table A1 in the Appendix shows, depending on the zoning of the land — agricultural, residential, or commercial — and depending on whether the land is to be purchased as a single asset, or as part of a company where the total value of land-holdings makes up less that 50 per cent of the value of the company, the threshold will be different and the rules relating to foreign ownership will be different. In addition to this, the country of origin will be a further consideration as will any government investment or control in the entity making the investment.

While these arrangements are provided as an example to highlight the differences in treatment, this does not necessarily argue for the single treatment of land while ignoring interactions with other areas of the economy. Indeed, such an approach may result in further differences in treatment across different types of commercial investments depending on the degree to which they require the use and purchase of land, further complicating the investment process and potentially dissuading investors from investing in Australia. The example serves to highlight that piecemeal changes result in complexity and lack of clarity over approach and intent.

At the same time as these changes occurred, broader trade liberalisation in Australia over the past three decades have seen foreign investment thresholds gradually increasing over time as a result of both large step-up increases — especially the introduction of a unified higher threshold in 2009, which replaced several lower thresholds for various types of foreign investments — and the indexation of thresholds which began systematically with the introduction of the unified threshold in 2010, shown in Table 2.

Table 2: FIRB thresholds over time, A$ million

Year	2005	2010	2011	2012	2013	2014
US	800		1,004	1,062	1,078	1,078
All other		219	231	244	248	248

Source: FIRB Annual Reports

Liberalisation of the foreign investment regime through bilateral deals runs the risk of both more unequal treatment of investment from different sources and also an increase in the calls for closer scrutiny and more regulation for foreign investment in specific industries. An example of this is the agricultural land threshold arrangements that are included in the Japan and Koreans FTAs (see Table A1), which specify the right to screen agricultural land above $15m and agribusiness above $53 million should the Australian Government choose to apply these thresholds more broadly. In this case these thresholds for agriculture would constitute a tightening of the current arrangements, not a liberalisation.

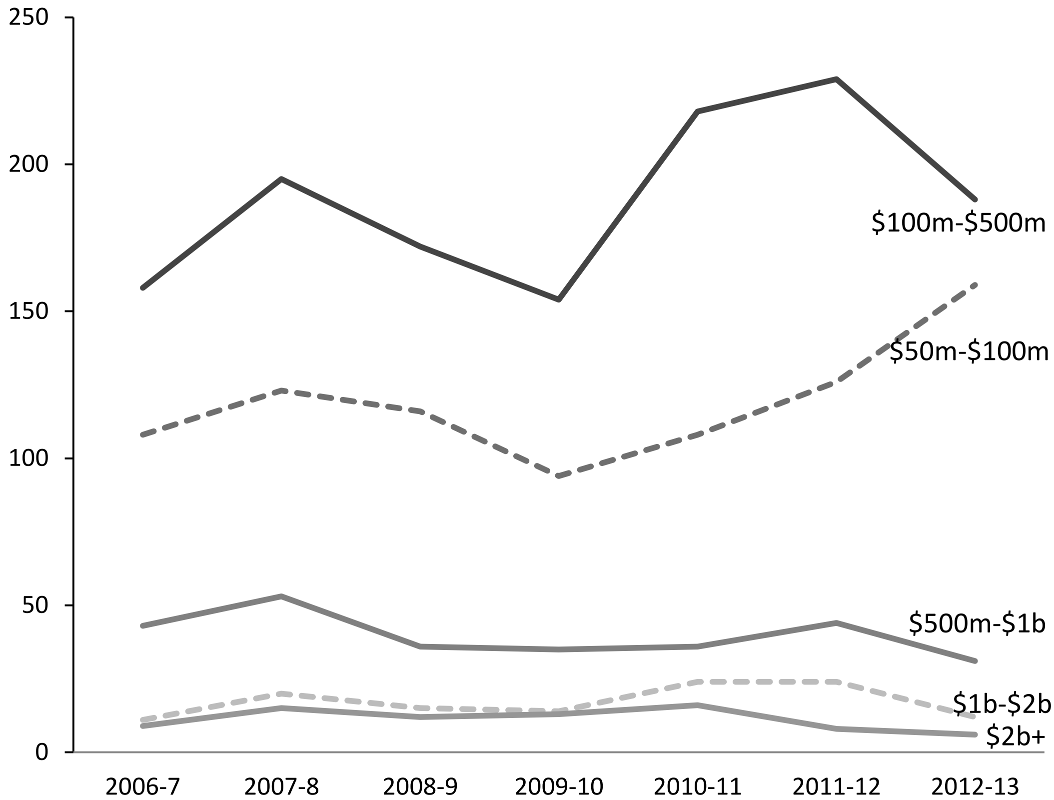
A mixture of increased liberalisation in some areas and more regulation in others and for some investors (see Tables A1 and A2) result in a more opaque system and arrangements that are more difficult to navigate and less predictable for investors. This outcome will dissuade investors by raising the costs of investments into Australia and will reduce the stock of capital, knowledge and technical skills flowing into the country.

One of the more recent changes to the foreign investment regime was to introduce greater scrutiny of SOEs in the 2013 Investment Policy statement requiring foreign government investors to notify the FIRB of investments under the normal 10 per cent threshold when doing so would amount to 'building a strategic stake in the target'. While public perceptions and possibly overseas investor perceptions around this measure focus on Chinese enterprises, the experience in the application of these requirements in Australia has been that a much broader number of countries are brought into scope. Developing country pension funds are a prime example of investors that have been increasingly looking to invest in Australia – often with limited shareholdings and a limited influence over the day-to-day running of the company into which they have invested – and which still require approval with a $0 threshold requirement when their investment is above 10 per cent.

With both SOE and non-government related investors (and indeed Australian investors), similar questions need to be considered in relation to tax treatment, including where off-take agreements are in place; competition policy impacts and environmental regulations as well as all of the standard regulatory requirements that companies must comply with in order to operate legally in Australia. While it has been argued that foreign government investors are able to act strategically in a manner that other large MNEs are not likely to, it has never been clearly explained how such behaviour might manifest itself. Market manipulation and transfer pricing are genuine concerns when single companies (or governments) hold a large share of any single market, and to this end some degree of caution in SOE investments should be exercised. However, the same could be said about large MNE investments and the questions then becomes one of competition policy and/or tax administration and having sufficient legal protections in place in these regards may be a better way of addressing such issues than a $0 threshold that has the potential to stifle investment from sources with limited control and in some cases a small percentage of ownership.

In contrast with the SOE changes, the A$1.078 billion threshold which will apply to most investments from the four FTA signatory countries is well in excess of the vast majority of investments flowing into Australia; in 2012-13, 6 approvals out of 12,647 proposals were valued at over A$1 billion (see Figure 1). The highest number of proposals above A$1 billion in recent times was in 2010-11 with 16 approved projects.

Figure 1 Number of FIRB approvals by value of investment



Source:

Source: Foreign Investment Review Board Annual Report, 2012-13.

In essence this will mean that almost no private investments by companies based in the United States, New Zealand, Japan or Korea (and perhaps soon Chile) will be screened (unless in certain sectors). With this list of countries that face the higher threshold potentially growing, it will become increasingly unclear why we would continue to treat other countries differently. Should China be added to this list this would raise further questions about the differential treatment of other nations. One would anticipate that the higher threshold would and should become universal, which would be a significant liberalisation if successful.

A universally higher threshold would be a positive outcome for inflow of investment in Australia. There remains, however, uncertainty over the political economy of new investment and there would be a question of how sustainable such an approach would be publicly in Australia, given the consistent public, parliamentary and media scrutiny of foreign investments into Australia. It would be most unfortunate if the higher threshold were achieved, but then undermined by differential treatment across different assets and industries in response to concern over a higher threshold.

The piecemeal transformation of FIRB

The bilateral agreements which have altered pre-establishment FDI rules — the higher threshold for investments by preferential country investors and the introduction of differential rules between those countries — are likely to transform the operations of FIRB, if not make a major aspect of its operations redundant for those with bilateral deals. Given China is one of the largest sources of new investment, a lifting of the threshold for Chinese investment from an Australia-China FTA would also be a major change for FIRB. Given the underlying political and political economy rationale for screening investment, the nature and character of Australia's regulatory regime for FDI appears to have been and continues to be transformed in a piecemeal manner.

A more than quadrupling of the investment threshold for preferred investment source countries constitutes major liberalisation of FDI and the argument for maintaining a lower threshold for investment from all other countries will be difficult to sustain. The significant changes to the operation of FIRB occurred without a serious national conversation, through a white paper or government dialogue, or systematic review, by the Productivity Commission, for example. Instead, it has been included in bilateral trade or economic agreements as part of the trade-off for other inclusions or exclusions.

Foreign direct investment is not always a simple bilateral transaction: FDI can be routed through other jurisdictions to obtain preferential tax treatment. An interesting question might be the extent to which investment from countries with preferential FIRB arrangements is diverted through third countries, and the impact of this on the relevance of higher FIRB thresholds in FTAs. Unfortunately, ABS investment statistics record only immediate rather than ultimate sources, following the IMF's *Balance of Payments and Investment Manual* (IMF 2009). Statistics that report investment stocks and flows by immediate source might be thought to understate the 'true' investment positions of foreign countries in Australia. For example, a study of ultimate FDI sources was carried out in New Zealand and found that about 7.7 per cent of the stock of US FDI in New Zealand on an ultimate investor basis was intermediated by entities based in other countries, not necessarily for tax reasons (NZ Statistics, 2011).

To the extent that FIRB screening represents a real cost to foreign investors, higher screening thresholds for US, New Zealand and other investment in Australia might, for investments whose value falls between the lower 'world' threshold and the higher preferential threshold, offset some of the gains from routing investment through low-tax jurisdictions and therefore reduce investors' use of tax havens, a potential positive externality from Australia's selective liberalisation. But even if reducing tax haven-sourced investment was considered a policy goal of the Australian government, preferential investment treatment would be a second-best and indirect way of achieving this policy goal. Australia's foreign investment screening regime should aim for equal treatment of investment regardless of its immediate or ultimate source.

Further reform of FIRB should be undertaken with clear principles and goals articulated in order to maintain confidence in that regime. The liberalisations which have occurred through the bilateral deals may be groping towards what is ultimately a robust, transparent and fair regime which helps Australia get the balance right in maintaining an open investment environment and providing the Australian community confidence that new investment projects are in the interest of the community. But a much more practical way forward would appear to be one which articulates the principles, end goals and builds and sustains an argument for transformation of FIRB. Sustainable reforms require building coalitions for that reform and engaging stakeholders. Piecemeal change through side-deals in trade agreements runs the risk of undermining longer-term gains from confidence in the regulatory regime for investment as well as a complicating the role of FIRB.

Tables A1 and A2 in the Appendix show that beyond the higher FIRB thresholds, there are different investment rules which apply to investment from among the FTA signatory countries, as well as those which apply to all countries. The differential treatment applied to FTA partner investments is not at this stage too different or complex. There is scope for them to be unified and made consistent to all sources of investment. New changes to the screening of SOE investments or investments in land should not be introduced for new FTA partners such as China but such reforms should be undertaken unilaterally — that is, with universal applicability. If the signing of an Australia-China FTA, which would be potentially significant given China is Australia's largest economic partner, will inevitably cause changes to be made to the investment screening regime, such changes should be made with careful thought and extended to all other investment sources.

Should the threshold be lifted to $1.078 billion for all investors (or all non-SOE investors), there are a number of different approaches to managing the issue of public concern with the non-screening of the vast majority of foreign investments. As noted above, without a considered approach, the likelihood is that in the short term Australia will increase the number of carve-outs from the threshold – from agricultural investments, to residential property, to 'sensitive sectors', and beyond. Alternative approaches include contemplating more ambitious change, such as adopting a pure national security test for investments below the threshold (similar to the US arrangements), but with clear rules and safeguards to avoid protectionist intervention in the guise of national security (see Li, 2014, for example). It would be important to leave all other aspects of the current national interest test (including competition policy, tax issues and environmental approvals) to the relevant national regulatory authority. Such an approach would provide the public with assurances without adding to the regulatory burden of investors.

Conclusions

If Australia aims to continue to attract investment from abroad and maintain confidence in having an open investment regime, there is no clear justification for giving preferential treatment to investment from selected countries. Investment from the United States and New Zealand, and soon South Korea and Japan, have a threshold of A$1.078 billion, more than quadruple that of other countries. This represents a major liberalisation towards investment from those countries, given that a vast majority of investment is below the A$1 billion threshold.

There is expectation that a free trade agreement with China will also lift the threshold for Chinese investment. Other changes to the screening of FDI have been introduced in the period of a new wave of investment from China with all investment involving a degree of foreign state-ownership requiring screening and changes to sensitive sectors requiring screening having changed over time.

Some new rules regarding investment have also been introduced in those bilateral agreements which only apply to the signatories of those bilateral deals. The differential treatment, however, is not at this stage too different or complex and there is scope for them to be unified and made consistent to all sources of investment.

The lifting of the threshold for investment from preferred partner countries raises the question of lifting the threshold for all countries and thus significantly transforming FIRB from a general board of review for investments. The piecemeal changes to FIRB through bilateral trade and economic agreements have occurred without a clear strategy set forth. This has put the cart before the horse and further piecemeal changes threaten to impact the operation and function of FIRB with implications for confidence in Australia maintaining an open investment environment.

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Appendix

Table A1 Land investment rules for FTA signatories

	NZ	**US**	**Korea**	**Japan**	**Investors from all other countries**
Commercial land	$1.078 billion - developed non-residential commercial real estate	$1.078 billion - developed non-residential commercial real estate	Once KAFTA is in effect, $1.078 billion or equivalent threshold	Once EPA in effect, $1.078 billion or equivalent threshold	$5 million - developed non-residential commercial real estate where the property is heritage listed $54 million – non heritage-listed
Rural land	$1.078 billion - rural land	$1.078 billion - rural land (*	Contain provisions reserving the right to lower threshold to $15 million as per Coalition election platform		$248 million
Residential land	No need to notify if buying residential real estate	Must apply for approval - $0 threshold Non-residents cannot purchase established real estate			
Land-rich company (urban land corporation)	Where over 50% of total assets are in land Must apply for approval to invest in land-rich companies, except where the acquisition is of shares as a consequence of which the foreign person holds less than a substantial interest in an Australian urban land corporation less than 10 per cent of the real estate assets of which are in the form of developed residential real estate that the corporation has not developed itself, being an Australian urban land corporation that is: (i) publicly listed on an Australian Stock Exchange; and (ii) primarily involved in the development of land; (j) where the acquisition is of shares as a consequence of which the foreign person holds less than a substantial interest in an Australian urban land corporation less than 10 per cent of the real				

	estate assets of which are in the form of developed residential real estate, being an Australian urban land corporation that is publicly listed on an Australian Stock Exchange, or, where 2 or more foreign persons hold interests in the Australian urban land corporation, those foreign persons hold less than an aggregate substantial interest in that corporation;				
A company with total asset in land less than 50% (regardless of the value of the land)	$1.078 billion	$1.078 billion	$1.078 billion or US threshold once FTA in effect	$1.078 billion or US threshold once FTA in effect	$247m
SOE – can we fill this in (for less than and greater than 10% shares in a company buying land)					

Source:

Table A2 Investor rule differences by FTA partner

Highlighted in orange: wording that varies between the four agreements

Highlighted in green: wording that is identical across agreements (except for the annually adjusted threshold.)

	Japan EPA	**ROK** FTA	**US** FTA	**NZ** Protocol on Investment
Media	*"investments by foreign persons of 5 per cent or more in the media sector, regardless of the value of the investment"*	*"investments by foreign person of five per cent or more in the media sector, regardless of the value of the investment;"*	*' Investments by foreign persons in existing Australian businesses in the media sector as follows: (i) Direct (i.e., non-portfolio) investment irrespective of size; and (ii) Portfolio investments of 5 per cent or more*	*Investments by foreign persons in existing (i) Direct (i.e., non-portfolio) investment irrespective of size; and Australian businesses in the media sector as follows: (ii) Portfolio investments of 5 per cent or more' '*
Telcos *'the telecommunications sector',*	General screening threshold			
Transport *"the transport sector, including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided either within, or to and from, Australia;"*	General screening threshold			

Military supplies/military services: *"The supply of training or human resources, or the manufacture or supply of military goods, equipment, or technology, to the Australian or other defence forces" and "The manufacture or supply of goods, equipment or technologies able to be used for a military purpose;"*	General screening threshold
Encryption services: *'The development, manufacture or supply of, or provision of services relating to, encryption and security technologies and communication systems'*	General screening threshold
Uranium/plutonium *"The extraction of (or rights to extract) uranium or plutonium, or the operation of nuclear facilities"*	General screening threshold

Foreign government investors	*"All direct investments by foreign government investors, irrespective of size."*	*"direct investments by foreign government investors, irrespective of size"*	*"Direct (i.e., non-portfolio) investment by foreign governments or their agencies, or companies with greater than a 15 per cent direct or indirect holding by a foreign government or agency or otherwise regarded as controlled by a foreign government, irrespective of size."*	*"Direct (i.e., non-portfolio) investment by foreign governments or their agencies, or companies with greater than a 15 per cent direct or indirect holding by a foreign government or agency or otherwise regarded as controlled by a foreign government, irrespective of size."*
Developed non-residential commercial real estate *"acquisitions by foreign persons of developed non-residential commercial real estate valued at more than 1078 million Australian Dollars"*	$1.078 bn			
All others excluding financial *"investments by foreign persons in existing Australian businesses, or prescribed corporations, in all other sectors, excluding financial sector companies, the value of whose total assets exceeds $A1078 million"*	$1.078 bn			

Other measures (In bold are measures not common to all other agreements)	*In addition to the measures identified in this entry, other entries in Annex 6 or Annex 7 set out additional non-conforming measures imposing specific limits on, or requirements relating to, foreign investment in the following areas:* *(a) Telstra;* *(b) Commonwealth Serum Laboratories;* *(c) Qantas Airways Ltd.;* *(d) Australian international airlines, other than Qantas;* *(e) urban land;* ***(f) agricultural land;*** ***(g) agribusiness;*** *(h) federal leased airports; and* *(i) shipping.*	*In addition to the measures identified in this entry, other entries in Annex I or Annex II set out additional non-conforming measures imposing specific limits on, or requirements relating to, foreign investment in the following areas:* *(a) Telstra;* *(b) Commonwealth Serum Laboratories;* *(c) Qantas Airways Ltd.;* *(d) Australian international airlines, other than Qantas;* *(e) urban land;* *(f) federal leased airports;* ***(g) agricultural land;*** ***(h) agribusiness;*** *and* *(i) shipping.*	*In addition to the measures identified in this entry, other entries in Annex I or Annex II set out additional non-conforming measures imposing specific limits on, or requirements relating to, foreign investment in the following areas:* • ***Newspapers;*** • ***Broadcasting;*** • *Telstra;* • *CSL;* • *Qantas Airways Ltd;* • *Australian international airlines, other than Qantas;* • *Urban land;* • *Federal leased airports; and* • *Shipping*	*In addition to the measures identified in this entry, other entries in Annex I or Annex II set out additional non-conforming measures imposing specific limits on, or requirements relating to, foreign investment in the following areas:* • *Telstra;* • *Commonwealth Serum Laboratories;* • *Qantas Airways Ltd.* • *Australian international airways, other than Qantas;* • *Urban land;* • *Federal leased airports; and* • *Shipping*