To: Department of Treasury

Re: Foreign Investment Reform (Protecting Australia's National Security) Bill 2020

3 September 2021

Introduction

AMEC appreciates the opportunity to provide a submission to the Commonwealth Treasury's review of the *Foreign Investment Reform (Protecting Australia's National Security) Act 2020* (the Act). The consequences of the reforms have affected how investment is attracted and how the mining and mineral exploration industry financial structure arrangements.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry body representing over 400 mining and mineral exploration companies across Australia.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people. In 2017/18, these companies collectively paid over $31 billion in royalties and taxation, invested $36.1 billion in new capital, and generated more than $250 billion in mineral exports.

In 2017/18 Australian mining and exploration companies invested $1.97 billion to discover the mines of the future.

General Feedback

The reforms to the Foreign Investment Review Framework and Foreign Investment Review Board (FIRB) powers have been extensive. The Act is an almost complete rewriting of the prior framework. An overhaul that occurred amidst a global pandemic and a period of greater tension with some of our largest trading partners.

It must be noted that the Australian Tax Office's Concierge service has been highlighted by Industry as working well. The role of the service is appreciated, despite the concerns identified in the remainder of the submission.

National Security

While supportive of protecting Australia's national interest and security, Industry has historically relied on foreign investment. This investment has facilitated many opportunities for our sector. It has underpinned the development of mines, which have generated benefits such as local jobs, royalties, and taxes.

As at 31 December 2019, the reported level of foreign investment in Australia reached $3,844.5B, representing an increase of $278.9B from the previous year[1]. A 2016 Treasury Paper on Foreign Investment in Australia reported that less than 10% of Australian mining projects underway at the time were solely Australian owned[2]. Austrade reported in 2018, Australia's mining sector comprised of $366B of foreign investment, representing 38% of the total stock value of foreign direct investment in Australia[3]. These statistics reflect the great investment potential our minerals and mining sector offers. The level of foreign investment into the mining and quarrying sector is almost triple that of the next closest industry, manufacturing. Therefore, over the longer term these reforms are likely to shape the mining and quarrying sector the most.

Review period

Measuring the impact of the FIRB reforms across a single year, is too short a timeframe to allow an accurate estimate of their impact. A paper produced by Treasury in 2012 estimated that a reduction in capital inflow and investment equal to 1% of Gross Domestic Product (GDP), would reduce Australia's gross national income by approximately 0.5% per year, over a ten-year period[4].

The impact of the reforms has also been distorted by COVID-19. The global pandemic has been highly disruptive on all parts of the community, including international investment patterns. A future review in five years, post COVID-19 would be beneficial.

Consultation process requiring agency input creates delays

The FIRB consultation process requires the engagement with multiple Commonwealth agencies and Departments. This consultation slows the process of receiving approval and is a source of frustration for companies who are often on tight commercial timeframes. Enforcing tighter timeframes on agencies when consulting would reduce the frustration.

Transaction costs

Industry feedback has suggested that the transaction costs of the FIRB amendments may not be as transparent to Government assessment. Companies that have an opportunity to receive foreign investment are seeking far greater financial advice on the structuring on these deals than they have under the previous framework. This increase in transaction costs is reducing the willingness of some to access financing that would be available due to the increased complexities to make it work. Industry has noted that this has led to some companies accepting less favourable terms and conditions on financing, as the increased transaction costs and FIRB uncertainty are traded for speed and certainty.

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[1] https://www.abs.gov.au/ausstats/abs@.nsf/mf/5352.0
[2] https://www.tai.org.au/content/undermining-our-democracy-foreign-corporate-influence-through-australian-mining-lobby
[3] https://www.austrade.gov.au/news/economic-analysis/global-investors-stay-keen-as-australia-s-fdi-stock-reaches-a-970-billion
[4] Gali, J. and Taplin, B, 2012, *The macroeconomic effects of lower capital inflow,* Economic Roundup Issue 3, 2012.

Call in powers creates uncertainty.

The threat of the call in powers generate difficult to substantiated concerns within Industry, with fear that a future project will be drawn into the process because it has crossed an unseen or unknown threshold. This uncertainty is damaging for investment. Greater guidance material on how these call in powers may be used in the future will ameliorate some of this concern.

Post Rejection Uncertainty

A question that remains for the Commonwealth Government is what is their responsibility if FIRB decides to reject an investor? A project will be delayed and possibly not proceed at all because of such a decision. The significant economic and social benefits will be forgone, and the State and local community will bear the cost. This was a central question of AMEC's original submission to the reforms, and it remains unanswered.

Final comments

AMEC and Industry acknowledge the complexities in the governance and administration of foreign investment. Australia's popularity as a foreign investment destination is due to the commercial opportunities available coupled with a low sovereign risk environment and a transparent and certain governance arrangements.

We understand the need to protect our nation's interest and security by ensuring foreign investment applications come from legitimate sources with aligned interests.

The primary underlying concern is that these reforms have discouraged foreign investment from legitimate investors who wish to avoid excessive regulatory burden and further uncertainty. This is difficult to quantify but will have a substantial impact on the future of Australia's mining and mineral exploration sector.

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