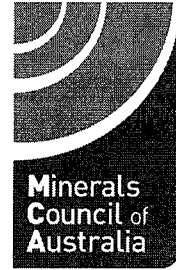


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**SUBMISSION TO THE
JOINT STANDING COMMITTEE ON TREATIES
ON THE AUSTRALIA – US FREE TRADE AGREEMENT**

**BY
THE MINERALS COUNCIL OF AUSTRALIA**

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April 2004

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Minerals Council of Australia

The Minerals Council of Australia (MCA) is the peak, national organisation representing the exploration, mining and minerals processing industry in Australia. The membership of the Council accounts for some 85 per cent of Australian minerals production and a slightly higher percentage of Australia's mineral exports.

Australian minerals industry

The Australian minerals industry has long been the foundation of Australia's economic and social prosperity, and is likely to continue to be well into the future. The industry is of considerable size, economic, regional and social significance, benefiting all Australians both directly and indirectly.

The minerals industry:

- accounted directly for around 8.5 per cent of Gross Domestic Product (GDP) in 2002-03;
- underpins vitally important supply and demand relationships with the Australian manufacturing, construction, banking and financial, process engineering, property and transport sectors;
- is the third largest (after the US and South Africa) minerals sector by value of production of any country in the world;
- has contributed through export sales some \$500 billion directly to Australia's wealth over the past 20 years;
- the value creation of minerals and metals processing in Australia, excluding mining and manufacturing, of around \$10 billion annually, and of around \$250 billion globally;
- is the world's leading producer of bauxite and alumina, diamonds (by volume), ilmenite, rutile and zircon and tantalum. Australia is the second largest producer of zinc ore, the third largest producer of aluminium, iron ore, nickel and gold, and the fifth largest coal producer. Australia is the largest exporter of gold, iron ore and black coal in the world;
- in 2002-03 generated exports of around \$42 billion, representing approximately 35 per cent of Australia's total merchandise exports and 28 per cent of total exports of goods and services;
- exports of mining technology, equipment and services of approximately \$2 billion in 2001-02 (60% of the mining software used in operations around the world is exported from Australia);
- directly and indirectly employs some 321,000 Australians, many of which are in sparsely populated, remote and regional Australia;
- represented around 18 per cent of private new capital expenditure in Australia in 2002-03. Over the decade of the 1990s – given its cyclical nature – new investment in the sector averaged closer to 25 per cent of total private investment;
- is responsible for significant infrastructure development – since 1967, the industry has built 26 towns, 12 ports and additional port bulk handling infrastructure at many existing ports, 25 airfields and over 2,000 kilometres of railway line;
- the largest bulk commodity mineral shipping task of any nation in the world;
- is often the sole provider of social infrastructure – health, education and welfare – in remote areas of Australia. This infrastructure often endures long past the completion of mining activities;
- brings spending and jobs not only to traditional mining towns but also to smaller neighbouring communities;
- is at the forefront of new investment, the adoption of new technology and Research, Development and Demonstration (RD&D) activity in Australia;
- total Government revenue payments of \$5.5 billion in 2002-03, comprising \$1.2 billion in mineral royalties, \$1.3 billion in Government port and rail charges, \$1.4 billion in income tax expense, \$0.6 billion in indirect taxes and \$0.9 billion in income tax paid by employees.

Prospects for Growth

The industry's contribution to Australia's socio-economic future looks likely to emulate the past. The Australian minerals industry is well positioned to continue to underpin Australia's wealth creation. Just as Australia's minerals exports to Japan and other industrialising economies since the 1960s underpinned Australia's wealth creation, the industrial and economic growth of developing countries, particularly China and India, presents Australia vast opportunities for wealth generation to the benefit of all Australians, both directly and indirectly.

Asian developing countries' economic development is fuelling demand for natural resources, for which the Australian minerals industry is well placed to supply. This growth in demand, coupled with expectations of a synchronised recovery in key western economies, underpins improved prospects for prices and global growth, which, in turn, has generated a resurgence of investment interest in the Australian minerals industry. The Australian industry is building capacity and international competitiveness to ensure its strategic position in converging global supply as companies increasingly rationalise and consolidate their operations, globally.

The industry's optimism for the future is also founded in the industry's outstanding productivity performance over the past decade. The industry's labour and capital productivity performance was key to the industry's resilience in the face of global economic uncertainty, long term price pressures, increasing global competition and, more recently, the appreciation of the Australian dollar and erosion of the natural hedge in the close relationship between the dollar and commodity prices.

For growth to continue and for the Australian minerals industry to remain internationally competitive, it needs unfettered access to global markets to sell its products and buy its inputs, capital to support development of Australia's natural geological wealth, and access to global professional expertise and leading edge technology.

International trade

The MCA continues to be a strong advocate of trade and investment liberalisation, primarily through the World Trade Organisation (WTO) multilateral system but complemented by regional and bilateral Free Trade Agreements (FTA).

The MCA attributes the growth in national income and the greatly improved annual purchasing power of Australian families, corporations and taxpayers to trade liberalisation. Australians are vastly better off for Australia's commitment to trade liberalisation.

Trade liberalisation has the capacity to reduce levels of poverty and increase standards of living across the globe, while fostering business expansion and export growth.

As a medium-sized economy whose prosperity significantly depends on exports, the Australian economy has been a major beneficiary of trade liberalisation. Accordingly, Australia has a key stake in maintaining an open, non-discriminatory system of enforceable international trade rules.

The MCA recognises the challenges in reinvigorating the WTO Doha Round of multilateral trade liberalisation negotiations and in particular, the sensitivities which remain in relation to agriculture, and the so called "Singapore issues" of trade and investment, trade and competition policy, government procurement and trade facilitation. We also recognise the necessity of bringing developing countries into the world trade system to ensure they can capitalise on their comparative advantages such as low labour costs, just as the developed countries capitalise on their natural comparative advantages.

The MCA supports a comprehensive approach to trade and investment liberalisation, which involves reducing tariffs and non-tariff barriers in opening markets and reducing subsidised competition through:

- the WTO "Doha Development Round" round of multilateral trade negotiations;
- encouragement of nations to conform to the existing compliance provisions of WTO Agreements;
- regional and bilateral trade agreements which complement and emphasise the integrity of the WTO rules based trading system;
- reinforcement of the foundation or underlying principles of the WTO rules based trading system viz:

- non-discrimination in like products and the concept of materiality, ie. any trade restrictions should be material, based on the physical characteristics of products, irrespective of the processes and production methods (PPMs);
 - respect for the principle of national sovereignty, rejecting trade coercion in the form of trade sanctions or restrictive measures beyond a country's general obligations to extra-territorially impose non-trade objectives on exporting countries without legal redress, or due and proper regard for the sovereignty of the nation state;
 - sound science as the foundation to proper risk analysis and risk management in determining trade restrictions legitimately provided for in WTO agreements where there is a risk of the imported product affecting the environment, product safety and public, animal and plant health; it is legitimate to protect an importing country from such risks, but it is not legitimate to seek to impose social or economic standards on the exporting country by way of trade sanctions; and
 - the legitimate exploitation of comparative advantage in forming competitive strength in international trade of goods and services.
- closer economic integration of countries within Australia's region, to complement both multilateral, regional and bilateral trade agreements/initiatives;
 - preventing trade sanctions and other trade restrictive measures as a means of achieving non-trade outcomes (for example, environmental and social);
 - ensure the application of Australia's laws governing anti-dumping and countervailing measures are not used for disguised protection and trade distortion but rather for the principal focus of protecting industries from predatory dumping.

Foreign investment policy

The conventional distinction between trade and investment no longer reflects business circumstances where trade and investment decisions are inexorably linked to how business decisions are made.

While there has developed a comprehensive and uniform body of multilateral rules to govern international trade, cross-border investment remains subject to a patchwork of rules contained in many bilateral investment treaties, other commercial accords and a few WTO agreements.

The agreement at Doha provided for a two-stage process aimed at identifying core principles for investment (transparency, non-discrimination, procedural fairness) and for competition policy (transparency, non-discrimination, modalities for making agreements, dispute settlement between governments).

The likelihood that a global set of investment rules is a product of the Doha Round negotiations is significant for the mining sector.

Access to global capital markets is vital to the Australian minerals industry, particularly as the scale of most minerals projects is beyond the ability of a capital market the size of Australia's to support (the Australian share market, for example, represents only around 2 per cent of the global equity market).

The market capitalisation of Australian minerals industry operations is \$US 46 billion and Access Economics has estimated there is \$A 22 billion of minerals investment projects in planning of which \$A 6 billion is already committed.

Australia's key strengths in attracting foreign direct investment are its stable and transparent political, economic and legal systems, in addition to sound macroeconomic fundamentals and broader business regulatory arrangements. While recent reforms have enhanced the capacity of Australian business to attract capital, there is no room for complacency. International capital is highly mobile, competition for investment is vigorous and a number of nations provide investment incentives to Australia's detriment.

The MCA supports a foreign investment policy designed to maximise the benefits to Australians of increasing globalisation and the international flow of capital.

In principle, the MCA supports the development of multilateral rules governing foreign direct investment:

- that provides a legal right for investments from each party to receive treatment no less favourable (national treatment) to that given to national investors;
- that provides parties and individual companies legal right to redress and access to dispute settlement;
- that attaches no conditions to investment such as local content provisions, trade balancing requirements or environmental, or other non-trade considerations;
- that establishes a comprehensive and transparent legal investment framework providing predictability and legal certainty to investment decisions.

The MCA advocated the following provisions be made under an Australia-US Free Trade Agreement:

- as a principle, the legal right of national treatment for foreign investors, specifically foreign investment on a most favoured nation (MFN) basis, (no less favourable/differential treatment between foreign and national), subject to Australia's ultimate right to veto foreign investment in the national interest;
- exemptions to the national treatment rule, on the grounds of public benefit in the national interest, to be determined on the basis of a negative list, ie. national treatment applies unless exemptions are prescribed, ie. stipulated investments requiring approval from the FIRB;
- this would be along the lines prescribed in current regulations, but with the amendments as proposed by AUSTA– "approval not be required, when owned by Executives of companies registered in Australia, irrespective of value for:
 - *acquisition of developed non-residential commercial real estate;*
 - *acquisitions of accommodation facilities;*
 - *acquisitions of vacant urban real estate; and*
 - *acquisitions of residential real estate".*
- retain a threshold over which prior FIRB approval is required – while no firm position was agreed on the appropriate threshold level of investment, it was felt it should be closer to \$A500 million than the current threshold of \$A50 million;
- legal right to redress for non-government entities when the right of national treatment, subject to prescribed exemptions is denied, and there be access to dispute settlement, ie under:
 - the International Centre for Settlement of Investment Disputes (ICSID) Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;
 - the ICSID Additional Facility Rules; and
 - the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules.
- no prescribed conditions attached to investment, such as requirements to introduce higher environmental standards than required in national law, local content provisions, trade balancing requirements, or purchasing preferences
- neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory:
 - (a) to export a given level or percentage of goods or services;
 - (b) to achieve a given level or percentage of domestic content;
 - (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
 - (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

- (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
 - (f) to transfer a particular technology, production process, or other proprietary knowledge to a person in its territory;
 - (g) to supply exclusively from the territory of the Party the goods that it produces or the services that it supplies to a specific regional market or to the world market; or
 - (h) to prevent the imposition of unreasonably discriminatory (ie more severe or stringent) regulatory requirements in relation to the use or operation of the assets acquired.
- complementarity or consistency in state/regional or local laws, such that state and/or municipal authorities cannot impose extraordinary conditions on foreign investors.

Trade and Environment Policy

The MCA's objective is to ensure that bilateral and regional trade agreement do not give rise to adverse trade intersections with environment policies that would simply be unachievable through the multilateral forum and, worse still, serve to undermine the integrity of the key foundation principles of the WTO trading system, viz:

- non-discrimination in like products irrespective of the processes and production methods (PPMs);
- respect for the principle of national sovereignty;
- sound science as the foundation to proper risk analysis and risk management in determining trade restrictions legitimately provided for in WTO agreements; and
- the legitimate exploitation of comparative advantage in forming competitive strength in international trade of goods and services.

The MCA rejects the intersection of trade with environment policies where that undermines the integrity of the WTO system, sponsors an alternative form of protectionism, imposes one country's environmental and social standards on another, and/or compromises the legitimate objectives of increased trade and protection of the environment.

The Agreement has achieved an outcome in relation to the environment, which is in conformance with the foundation principles and Agreements of the WTO rules based trading system:

- the primary obligation on both parties is not to fail to enforce national environmental law through sustained action in a manner affecting trade between the parties;
- neither party is allowed to challenge the domestic environmental laws of the other;
- is silent on the nature of environment law, quite properly leaving that for the determination of the sovereign state – except for what the MCA considers to be an aspirational clause - that each party shall strive to ensure that its laws and policies provide for, and encourage, high levels of environmental protection with regard to continuous improvement;
- does not attempt to define “enforcement” nor make provision, aside of trade affects, for any recourse for either party given that the commitments centre on the exercise of the sovereign state's right to determine and enforce its own levels of domestic environmental protection.

To the extent that a bilateral FTA between two developed economies evens needs a chapter on environment, these are quite appropriate provisions in rendering determination of the nature and enforcement of environmental laws, the responsibility of the nation state.

Trade and Labour Policy

As mentioned in relation to the intersection of trade and environment policies, conditioning international trade on non-trade related matters, such as core labour standards, is detrimental to the welfare of both employees and free trade.

The MCA supports:

- adherence to core labour standards defined to include freedom of association;
- the right to organise and bargain collectively;

- non-discrimination in respect of employment and occupation;
- freedom from forced or compulsory labour; and
- freedom from exploitation of child labour.

and considers the ILO, not the WTO or bilateral and regional trade agreements, is best placed to deal with these issues. The MCA considers utilising trade sanctions to address labour standards issues is a blunt tool

To the extent that it was necessary to even have a Chapter on Labour in the Agreement, to appease the requirements of the US Congress manifest in the Trade Promotion Authority, the MCA is:

- comfortable with the statement of shared commitment to the ILO Declaration on the Fundamental Principles and Rights at Work and its Follow-up, which includes a declaration that labour standards should not be used for protectionist trade purposes;
- sees no adversity in the commitments of parties to not fail to effectively enforce domestic labour laws, and in a manner affecting trade, and recognition that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws.

Minerals Industry Trade and Investment with the United States

Trade

Current Value of Australian Resource Sector Exports to the US

Commodity	Exports to US Value \$m	Total Exports Value \$m	Exports to "Other" Value \$m
Aluminium	134	3696	319
Alumina	0	3660	
Coking Coal	0	7445	
Steaming Coal	0	4449	
Copper (ore + conc)		1050	10
Copper (metal)		956	133
Gold		4908	84
Iron ore + pellets	20	5342	
Iron + Steel	148	1853	
Scrap		211	
Lead (ore + Conc)	0	289	
Lead (bullion)	0	168	
Lead (refined metal)	41	203	
Nickel		2200	
Silver		154	36
Tin	0	43	
Zinc (ore + Conc)		667	55
Zinc (metal)	91	757	
Ilmenite	na	139	
Rutile	na	171	
Zircon	na	281	
Total	434	38642	

NOTES

1. "na" denotes data not available since 1993
2. The "Other" column refers to countries not specifically identified and could include the US
3. Reference source: ABARE Commodity Statistics 2003 (except for aluminium)
4. For exports of aluminium, ABARE do not identify US as a specific destination, but exports of "other" countries (\$319m) are assumed to include the value of \$134m to the US

Investment

Two-way investment with the US is significant and growing. In 2002, Australian investment in the US was valued at \$US190 billion and US investment in Australia was valued at \$US240 billion.

Benefits of the Australia / US Free Trade Agreement

General Benefits

The MCA supports the recently negotiated Australia / US Free Trade Agreement "the Agreement" and considers that it provides an unprecedented opportunity for Australia to achieve closer economic integration with the world largest economy and achieve a significant increase in trade and investment.

The general benefits include:

- a broadening and strengthening of the bilateral relationship with the US;
- an opportunity to achieve deep economic integration of the Australian and US economies;
- the removal of restrictions on goods, services and capital;
- an expansion of two way trade and investment;
- protection of Australian exporters from harassment under US safeguards actions;
- expansion of Australian services industries, particularly telecommunications and IT, by adoption of US models and integration with them;
- securing a hedge against further preferential access being granted to global competitors;
- greater access for some agricultural products;
- mutual recognition of standards on food and manufactured products and better access to service and information and communication technology industries; and
- better access to knowledge, technology and intellectual capital to help Australia prosper in the information age and demonstrate our new economy credentials to the rest of the world.

That the US has concluded an FTA with Australia will enhance Australia's attractiveness as a favourable destination for US investment. Flow on effects to other major trading partners such as China, Japan and India can also be expected to enhance investment opportunities as closer economic and trade relationships are developed with those countries.

The Agreement can also establish a benchmark for Australia's other major trading partners and for the WTO multilateral trade liberalisation negotiations.

Specific Benefits to the Minerals Industry

We consider the top five key benefits to the minerals industry to be:

- enhance Australia's attractiveness as a favourable destination for US investment, increasing the opportunity for new resource projects to proceed. Specific benefits in relation to investment include:
 - legal right of national treatment for foreign investors;
 - national treatment should apply unless exemptions are prescribed;
 - no restrictions on greenfield investment and an increased threshold to \$800m (market cap value of target enterprise) for brownfield investment over which prior FIRB approval is required;
- flow on effects to other major trading partners such as China, Japan and India – expected to enhance both trade and investment opportunities as closer economic and trade relationships are developed with those countries:
 - the elimination of the limit on Greenfield investment and the higher threshold of \$800m in relation to FIRB approval of brownfield may also be extended to other countries, particularly the EU and Japan;
 - increase pressure on these major trading partners and other countries to liberalise their foreign investment policies and Australia to extend the investment provisions of this Agreement on an MFN basis to other countries (at least to CER and Nara).

- the elimination of tariffs:
 - on products will increase access and competitiveness for mineral ores and concentrates and refined metals such as aluminium, iron ore, lead and zinc sold into US markets
 - the total value of current Australian minerals exports to the US (including iron and steel) is estimated at \$450m or around 1% of Australia's total minerals exports;
 - the tariffs for these products at less than 5%;
 - on imported capital equipment will deliver immediate savings for mining and mineral processing companies
 - in the event there is an Australian alternative product to the imported capital equipment a customs duty of 3% applies – this will be eliminated reducing the costs of US imports for Australian resource companies;
 - it is difficult to quantify this benefit to the resources sector, as mining related capital equipment is not identified separately in available statistics;
- enhanced potential for Australian mining technology and service industries to build partnerships with US technology firms in servicing what is a global industry.
 - achieving exports of \$6 billion by 2010 from the current level of around \$2 billion is an achievable goal.
- does not introduce trade related measures to restrict trade for environmental, labour, or other non-trade objectives, but includes commitments not to fail to enforce domestic environmental and labour laws in a manner affecting trade between the parties.

Conclusion

Australia will be unambiguously better off for this agreement than if it had not been reached. It will deepen the integration of our two economies. It will strengthen the trade and investment relationship and will emphasise Australia's standing in international trade negotiations and the global economy.

We have already seen renewed interest in Australia's trading arrangements from other countries on account of these negotiations, and we can expect more.

The MCA supports the ratification of the Australia – US Free Trade Agreement.

MINERALS COUNCIL OF AUSTRALIA

16 April 2004