

**National Interest Analysis [2018] ATNIA 4  
with attachment on consultation**

**Free Trade Agreement between Australia and the Republic of Peru**

(Canberra, 12 February)

**[2018] ATNIF 5**

**and**

**The Agreement to terminate the Agreement between Australia and the Republic of  
Peru on the Promotion and Protection of Investments, Lima 7 December 1995,  
[1997] ATS 8**

<b>Attachment I:</b>	<b>Consultation</b>
<b>Attachment II:</b>	<b>Regulation Impact Statement</b>
<b>Attachment III:</b>	<b>Outcomes</b>

# **NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY**

## **SUMMARY PAGE**

### **Free Trade Agreement between Australia and the Republic of Peru**

(Canberra, 12 February 2018)

**[2018] ATNIA 4**

**[2018] ATNIF 5**

**and**

### **The Agreement to terminate the Agreement between Australia and the Republic of Peru on the Promotion and Protection of Investments, Lima 7 December 1995, [1997] ATS 8**

#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is to bring into force the Free Trade Agreement between Australia and the Republic of Peru (PAFTA) signed in Canberra, 12 February 2018.
2. Article 29.4 provides that PAFTA will enter into force 60 days after the date on which the Parties have exchanged written notifications certifying the completion of their respective procedures or on another date after the exchange of notifications as the Parties may agree. It is proposed that Australia provide such notification as soon as practicable following consideration by the Joint Standing Committee on Treaties (JSCOT), the passing of legislative amendments and the enactment of any necessary regulations. This will enable the benefits of the Agreement to be accessed by both Parties, and the tariffs cuts negotiated on Australia's top exports will enable our exporters to keep pace with competitors who already have access to Peru's markets.

#### **Overview and national interest summary**

3. PAFTA is a comprehensive free trade agreement that will open new trade and investment opportunities for Australia. It supports Australia's goal of capturing the gains of the Trans-Pacific Partnership (TPP), strengthening our economic relationships within the region and helping facilitate value chains between the Americas and Asia. Australia was able to obtain market access outcomes that improve upon those negotiated in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11).
4. Peru is a growing market for Australian goods and services exporters. Peru's GDP is comparable to that of Vietnam (USD189 and USD193 billion respectively), and it has been one of the fastest growing economies in Latin America, over the last ten years. In 2016, two-way trade with Peru was worth \$590 million. PAFTA will provide Australian businesses with an opportunity to expand and deepen our engagement with the dynamic markets of Latin America, helping to ensure Australia's continued economic growth and prosperity.

5. Under PAFTA, Australia has not only captured the gains of the TPP-11, but attained improved market access opportunities for Australian exporters. Peru will eliminate tariffs on 93.5 per cent of its tariff lines from entry into force of the agreement, and ultimately Peru will eliminate 99.4 per cent of all its tariffs. New market access opportunities will be available for Australia in areas of major export interest, including the elimination of tariffs on beef, sheep meat, wine, pharmaceuticals, medical devices, paper products and machinery.

6. PAFTA will create a platform for significant growth in Australian services exports and investment in Peru. Peru's commitments represent an almost ten-fold improvement over its World Trade Organization (WTO) General Agreement on Trade in Services (GATS) commitments (by sectoral coverage and extent of commitments), which will greatly improve certainty for Australian service suppliers and investors in Peru.

7. Australia is an open economy with low tariffs and significant opportunities for international services suppliers and investors. In addition, Australia's has an open and non-discriminatory government procurement system, and a flexible approach which enables business people to undertake the travel and work in Australia necessary for modern business. As a result, the proposed treaty action will require only the following regulatory and legislative changes:

- changes to the *Customs Tariff Act 1995* and the *Customs Act 1901* to implement new preferential tariff rates for Peru; and
- changes to the Foreign Acquisitions and Takeover Regulations 2015 to implement the commitment to a higher threshold for screening by the Foreign Investment Review Board.

### **Reasons for Australia to take the proposed treaty action**

8. PAFTA aims to expand trade between Australia and Peru. Australia has obtained outcomes that provide new opportunities of commercial interest for Australian goods exporters, services suppliers and investors. Further information on these outcomes are in Attachment II (Regulation Impact Statement) and Attachment III (Outcomes) to this National Interest Analysis (NIA).

#### *Goods outcomes*

9. Due to the high restrictions on trade imposed by Peru, bilateral merchandise trade between Australia and Peru is currently modest (\$414 million in 2016), and is predominately focused around the mining sector. PAFTA will create immediate market access opportunities for many sectors of the Australian economy. Peru will eliminate tariffs on 93.5 per cent of its tariff lines from entry into force of the agreement, and ultimately will eliminate 99.4 per cent of all its tariffs. Peru is offering Australia faster tariff elimination than that offered to the US, EU or Pacific Alliance partners. This will put Australia on a level playing field with our key competitors for goods that are Australia's top export strengths.

10. Peru's high barriers on agricultural goods imports have largely prohibited trade from Australia. Australia exported \$4.1 million worth of agricultural goods to Peru in financial year 2017 (down from \$10.9 million in financial year 2016), representing only 0.01 per cent of Australia's total exports of these products. Despite this Peru imported US\$4.6 billion of agricultural goods in 2016. The elimination of tariffs and preferential access through new quotas and tariff reductions will enable Australian agricultural exporters to access this growing market in Peru. On the most protected agricultural products, Peru will offer new

quotas for Australia on sugar, dairy, rice and sorghum that are currently subject to a restrictive price band, up to a 20 per cent duty, which is prohibitive of trade. The duty free access permitted under these tariff quotas provides unprecedented access to the Peruvian market, allowing Australia the opportunity to commence exporting and establishing commercial relationships with Peru in these sectors.

11. In addition, Australia attained quicker phase out periods than the TPP-11 for other goods. Beef cuts improved from an 11 year phase out period to a 5 year phase out period, and an additional 12 per cent of tariff lines which under the TPP-11 had a 6, 11 or 16 year phase in period will be eliminated immediately, including for wine, pharmaceuticals and medical devices.

12. Australia and Peru are already closely integrated across the mining sector, particularly through mining investment and mining equipment. Australia's top five exports to Peru are all mining equipment or inputs used in the mining process and Peru's top three exports to Australia are also related to mining. PAFTA will deepen economic integration in the mining sector between Australia and Peru. Australian companies operating in Peru will benefit from further tariff reductions on Australian mining equipment, and greater integration of mining supply chains.

13. In addition to tariffs, PAFTA also includes provisions aimed at cutting red tape, improving transparency of the international trade environment, and reducing the cost of trade, including:

- more transparent and efficient customs procedures;
- modern trade rules to reflect commercial shipping routes;
- duty-free temporary admission of pallets and containers;
- mechanisms to address non-tariff barriers (NTBs);
- simplified rules and technical requirements for several products, including wine and spirits; and
- ability to self-certify whether the goods originate in Australia.

14. Australia will eliminate 96 per cent of its tariffs from entry into force of the agreement, and within four years will eliminate 99.8 per cent of all tariffs. This is consistent with other Australian FTAs and our trade policy settings. This includes tariffs of mostly five per cent on plastics and rubber, textiles, clothing and footwear, iron and steel, motor vehicle components and some machinery and furniture tariffs.

### *Services*

Services trade with Peru was valued at around \$176 million in 2016. Through PAFTA, Australian services suppliers will be better able to compete for business in Peru. Key barriers to services trade will be removed, providing more transparent and predictable operating conditions for Australian service suppliers in Peru. In addition Australia will benefit from future reforms in Peru's services sector. Peru's commitment will open opportunities for a range of service providers including:

- Australian universities will benefit from Peruvian recognition of Australian degrees.
- Australian education providers seeking to establish campuses in Peru will be treated the same as Peruvian education providers;

- Peru has granted access on non-discriminatory terms to Australian suppliers of mining-related consulting, research and development, engineering, environmental, mining and technical testing and analysis services;
- Australians working in the mining equipment and technology sectors and Australian technicians working on oil and gas wells are covered by Peru's commitments on temporary entry, allowing them to stay for a year with the possibility of extension;
- Guaranteed access for Australian lawyers, engineers, architects, accountants and urban planners to provide their world-class services in Peru; and
- Guaranteed access for Australian financial service suppliers to export their services to Peru, including investment advice and portfolio management services to a collective investment scheme and insurance of risks relating to maritime shipping and international commercial aviation and freight, and related brokerage.

Australia's services commitments in PAFTA, including on financial services, generally match Australia's TPP-11 commitments. This reflects Australia's general market openness for services trade, but retains flexibility for key defensive sectors such as public health, education and social services as well as cultural industries and the audio-visual sector.

### *Investment*

15. PAFTA provides improved access and protection for Australian investors and investments in Peru as well as for Peruvian investors in Australia, promoting investor confidence and certainty in both countries. Australia has significant energy and resources investments in Peru of around \$5 billion and is the fourth largest foreign investor in Peru's mining sector. PAFTA includes modern rules which:

- protect against discriminatory treatment;
- require payment of compensation in certain circumstances where an investment is expropriated;
- require that investment-related capital transfers can occur freely and without delay; and
- guarantee that investors and their investments will be accorded a minimum standard of treatment in accordance with the applicable customary international law standard, which includes an obligation to provide due process in court proceedings.

16. The PAFTA Investment Chapter contains an Investor-State Dispute Settlement (ISDS) mechanism which provides investors with access to an independent arbitral tribunal to resolve disputes for breaches of these investment rules. An ISDS claim concerning PAFTA may only be brought in relation to commitments in the Investment Chapter. The ISDS mechanism contains explicit safeguards protecting the Australian Government's right to regulate in the public interest.

17. PAFTA will promote further foreign investment in Australia by liberalising the screening threshold at which private foreign investments in non-sensitive sectors are considered by the Foreign Investment Review Board, increasing the threshold from \$261 million to \$1,134 million. Under PAFTA, Australia retains the ability to screen investments in sensitive sectors to ensure they are not contrary to the national interest. Proposed investments by foreign governments will continue to be examined and lower screening thresholds of \$15 million and \$55 million will apply to investment in agricultural land and agribusiness respectively.

### *Government Procurement*

18. Peru's commitments on government procurement are equivalent to Peru's TPP-11 commitments. Peruvian entities bound by the Government Procurement Chapter include 31 ministries and agencies, 21 statutory authorities and state-owned enterprises and 25 regional governments. Australian businesses will be able to bid for government procurement in all categories of goods and construction services, and in most services categories, such as:

- management consulting services;
- computer and related services, including maintenance of office machinery;
- architectural, engineering and other technical services;
- land and water transport services;
- telecommunications and related services;
- environmental protection services;
- education services; and
- health and social services.

### *Temporary entry*

19. PAFTA commitments on temporary entry of business people will help facilitate increased trade and investment between Australia and Peru, enabling business people to enhance their commercial relationships and pursue new opportunities. Peru's commitments on the temporary entry of skilled Australian workers are significantly better than Peru's World Trade Organization commitments, which came into effect in 1995. Peru has committed to not imposing labour market testing on all categories of Australian temporary workers. Those categories are:

- Business visitors, who are allowed to stay for up to 183 days;
- Intra-corporate transferees, who are allowed to stay for one year with extensions;
- Independent executives/investors, who are allowed to stay for one year with extensions;
- Installers and servicers, who are allowed to stay for three months with extensions;
- Contractual service suppliers/technicians/independent professionals, who are allowed to stay for periods between 90 days and one year, depending on level of experience and education;
- Spouses of intra-corporate transferees and investors; and
- Peru has retained the right to impose a 20 per cent quota on foreign workers, but only for the category of intra-corporate transferees.

20. Australia's PAFTA commitments are consistent with Australia's existing immigration and workplace relations frameworks. Australia has committed to allow Peruvian short-term business visitors and installers and servicers, as well as intra-corporate transferees, contractual service suppliers and independent executives to stay temporarily in Australia. In addition, Australia has undertaken to allow spouses and dependents of Peruvian intra-corporate transferees, contractual service suppliers and independent executives to stay in Australia for the same period as the primary visa holder. Australia has undertaken not to impose any

numerical quotas on all categories of skilled Peruvian business people, but has retained the right to require labour market testing for Peruvian contractual service suppliers.

#### *New trade challenges*

21. PAFTA tackles new trade challenges by promoting innovation, productivity, and competitiveness by addressing issues which are emerging and changing the way business is conducted. These include:

- state of the art e-commerce provisions driving the information economy and facilitating trade between Australia and Peru;
- establishing a common set of rules on intellectual property protection and enforcement consistent with Australia's existing intellectual property regime and requiring no changes to Australian intellectual property laws or policies;
- promoting high levels of environmental protection, ensuring Parties effectively enforce their domestic environmental laws; and
- enhanced compliance with internationally-recognised labour rights, such as elimination of forced labour, abolition of child labour, freedom of association and the right to collective bargaining.

#### *Associated documents*

22. Two non-binding side letters were also agreed during the PAFTA negotiations, and were exchanged between the Hon Steven Ciobo MP, Minister for Trade, Tourism and Investment, and his Peruvian Counterpart, Eduardo Ferreyros Küppers, on 12 February 2018.

23. These two letters address:

- recognition of Australian university degrees and commitment to an ongoing dialogue to facilitate the supply of professional services between Australia and Peru; and
- a commitment by Australia to provide Peru with a list of measures at the regional level of government which do not meet the commitments (made at the federal level) on services and investment.

24. Further, an exchange of binding side letters with Peru means that the entry into force of PAFTA will terminate the *Agreement between Australia and the Republic of Peru on the Promotion and Protection of Investments, and Protocol* done in Lima on 7 December 1995 (the IPPA). This is detailed in paragraph 32 below.

### **Obligations**

25. PAFTA consists of 29 Chapters with associated Annexes. PAFTA is consistent with Australia's other international agreements, including in the World Trade Organization. Chapter 1 (Initial Provisions and General Definitions) provides that the PAFTA will coexist with Parties' rights and obligations in other agreements to which they are also a party. The obligations in PAFTA align with those made by Australia to other FTA partners. Key obligations are outlined below.

### *Goods*

26. Upon entry into force of PAFTA, Australia is required to eliminate or reduce specified tariffs and non-tariff barriers, or restrictive policies, on imports of goods from Peru. These obligations are contained in Chapter 2 (National Treatment and Market Access for Goods) and associated annexes. In order to benefit from preferential rates, goods must originate in Peru. The criteria for determining origin are contained in Chapter 3 (Rules of Origin and Origin Procedures) and associated annexes. The phased elimination of these tariffs aligns with existing FTAs.

27. The provisions contained in PAFTA's goods related chapters (Chapters 2-7), reaffirm existing rights and obligations under the relevant WTO Agreements. In addition, PAFTA will contain provisions included in more modern FTAs that enhance transparency and cooperation. In particular:

- committees on sanitary and phytosanitary measures and technical barriers to trade;
- commitments on transparency;
- allowing for self-certification of rules of origin; and
- disciplines specific to wine and spirits labelling and organic products to promote greater regulatory coherence across the region.

### *Services and investment*

28. Under Chapter 8 (Investment), Chapter 9 (Cross-Border Trade in Services) and Chapter 10 (Financial Services), each Party is required to grant market access and non-discriminatory treatment to investments and services from the other Party. That is, services suppliers and investors from Peru, must be treated no less favourably than like providers from Australia or other countries on the basis of nationality. Parties are also prevented from requiring investors of the other Party to appoint people of a particular nationality to senior management positions (the 'senior management and board of directors' obligation). The obligations will apply unless otherwise specified in the non-conforming measures annexes to the Agreement (Annexes I, II and III). The obligations and non-conforming measures of PAFTA are generally consistent with those of the TPP-11.

29. Chapter 8 (Investment) contains a set of high-quality, modern rules governing the treatment of investors and their investments, balanced with robust safeguards to preserve the right of the Government to continue regulating in the public interest. It also contains an ISDS mechanism which provides investors with access to an independent arbitral tribunal to resolve disputes for breaches of these investment rules. The ISDS mechanism contains explicit safeguards protecting the Australian Government's right to regulate in the public interest.

### *Telecommunications and electronic commerce*

30. Chapter 12 (Telecommunications) and Chapter 13 (Electronic Commerce) include obligations consistent with those of the 2017 amendments to the Singapore-Australia Free Trade Agreement and TPP-11. Key obligations include:

- ensure telecommunication companies with a dominant market position, in Peru or Australia, provide telecommunications suppliers from the other country with access to services and key infrastructure on reasonable terms and conditions;



- access to public telecommunication services on a reasonable and non-discriminatory basis;
- prohibition on requiring a service supplier or investor to use or build local data centres in order to conduct business.

31. The right of governments to impose appropriate and proportionate restrictions on the cross-border transfer of information in order to achieve legitimate public policy objectives is preserved.

#### *Termination of the bilateral investment treaty*

32. During the course of PAFTA negotiations, Australia and Peru agreed to terminate the IPPA on the date of entry into force of PAFTA. The IPPA is an older style bilateral investment treaty that contains an investor-State dispute settlement (ISDS) mechanism without the explicit safeguards of modern agreements. Upon entry into force of PAFTA the broadly drafted older-style provisions will be replaced with modern investment protections and safeguards in PAFTA's investment chapter. The PAFTA Investment Chapter contains a set of high-quality, modern rules governing the treatment of investors and their investments, balanced with robust safeguards to preserve the right of the Government to continue regulating in the public interest. The safeguards include an explicit recognition that the Parties' have an inherent right to regulate for public welfare objectives, such as public health and the environment, and procedural safeguards to ensure a transparent and robust arbitral process.

33. The IPPA will continue to apply for a period of five years from the date of termination to any investment which was made before the entry into force of PAFTA with respect to anything that took place before the date of termination. However, an investor may only submit an ISDS claim under the IPPA within three years of the date of termination.

#### *Government Procurement and other chapters*

34. Chapter 14 (Government Procurement) includes obligations broadly consistent with those of the TPP-11. Peru's ability to tender for government procurement contracts through PAFTA are the same as those provided to it under the TPP-11. Australia has maintained its standard exceptions in sensitive areas, such as Indigenous procurement, defence, and health services.

#### *Temporary entry for Business Persons*

35. Chapter 11 (Temporary Entry for Business Persons) regulates the temporary entry of business persons. It does not create any obligations in relation to citizenship, residence or employment on a permanent basis. Under the Chapter, each Party makes specific commitments guaranteeing access for categories of businesspersons who, provided they fulfil visa eligibility requirements, will be permitted to enter and temporarily stay in a Party. Those categories cover businesspersons undertaking activities such as attending meetings, conferences and trade fairs, setting up a business or an investment, working in an overseas branch of their office, or providing services under a contract they have negotiated, such as installing or maintaining specialised machinery and equipment. In PAFTA, Australia has reaffirmed existing commitments under the World Trade Organization to waive labour market testing for several categories of Peruvian temporary skilled workers, including for intra-company transferees and independent executives.

## **Implementation**

36. Following consideration by the Joint Standing Committee on Treaties, and prior to treaty action being taken, Australia will need to make the following regulatory and legislative changes:

- changes to the *Customs Tariff Act 1995* and the *Customs Act 1901* to incorporate preferential tariff rates and associated rules of origin for Peruvian goods; and
- changes to the *Foreign Acquisitions and Takeover Regulations 2015* to implement the commitment to a higher threshold for screening by the Foreign Investment Review Board.

## **Costs**

37. The cost of PAFTA is negligible. PAFTA will be implemented through existing resources and the estimated loss of revenue from tariff elimination by Australia from PAFTA is negligible. The estimates are based on existing trade between Peru and Australia, and do not take into account any changes to Australia's trade and investment relationship that may result from the implementation of PAFTA. Nor do these estimates take into account any reductions in tariff revenue as a result of Australia's commitments under the TPP-11.

38. A Regulatory Impact Statement is attached to this NIA.

## **Future treaty action**

39. Article 29.2 (Amendments) provides that the Parties may agree in writing to amend the Agreement. Amendments to PAFTA would enter into force 60 days after the date on which the Parties exchange written notification certifying that applicable legal procedures have been completed, or on another date as the Parties may agree.

40. Any amendments will be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

## **Withdrawal or denunciation**

41. Article 29.5 (Termination) provides that either Party may terminate the Agreement by written notification to the other Party. The Agreement will terminate six months after the date of notification.

## **Contact details**

Office of Trade Negotiations  
Department of Foreign Affairs and Trade

## **ATTACHMENT ON CONSULTATION**

### **Free Trade Agreement between Australia and the Republic of Peru**

(Canberra, 12 February 2018)

**[2018] ATNIA 4**

**[2018] ATNIF 5**

**and**

### **The Agreement to terminate the Agreement between Australia and the Republic of Peru on the Promotion and Protection of Investments, Lima 7 December 1995, [1997] ATS 8**

#### **Attachment I: Consultations**

1. The public consultation and stakeholder engagement process on the Peru-Australia Free Trade Agreement (PAFTA) negotiations commenced with the government's announcement on 24 May 2017 that Australia and Peru would be launching PAFTA negotiations. DFAT, in conjunction with other government agencies, has consulted widely with industry and other stakeholders in formulating our positions. Information about PAFTA was published on the DFAT website on 24 May 2017 and public submissions were welcomed throughout the negotiation process. A list of businesses and organisations that have been consulted – through consultation events, stakeholder meetings, submissions and phone calls – is set out below.

2. Stakeholders in the public consultation process broadly appreciated the benefits of the Peru-Australia Free Trade Agreement. Most stakeholders supported the government's efforts in the pursuit of a comprehensive trade agreement. Particular interest was shown in reducing barriers in the agriculture sector, and in enhancing opportunities for Australian providers of, and investors in, mining services, professional services, and telecommunications. Many were especially keen that market access gains achieved under TPP-11 could be expanded, with agricultural stakeholders particularly forceful advocates for improved market access outcomes. Representatives from a range of peak farming bodies, including Meat & Livestock Australia, Dairy Australia, and the National Farmers' Federation, have been consulted throughout PAFTA negotiating rounds, where they have pressed for better access for Australian agricultural products. Representatives from the mining industry have been closely consulted throughout negotiations, since Australia and Peru's mining sectors are already closely integrated across the areas of mining investment, mining equipment and inputs used in mining.

39.

3. Interest in PAFTA by civil society groups was limited. The Australian Fair Trade and Investment Network (AFTINET) provided a submission outlining some concerns, which included: lack of transparency of the negotiating process; the use of the TPP text as a model; the possible inclusion of Investor-State Dispute Settlement (ISDS) provisions; the possible extension of monopoly intellectual property rights on patents or copyright; and the existence of provisions on the movement of natural persons and government procurement.

4. State and Territory governments were consulted through the Ministerial Council on International Trade and regular Senior State and Territory Trade Officials' Group (STOG) and

Commonwealth-State-Territory Standing Committee on Treaties (SCOT) meetings. State and Territory departments were contacted and invited to make public submissions at the outset of negotiations. The Trade Minister wrote to the Premiers and Chief Ministers on 23 June 2017 seeking their formal endorsement of Australia's initial offer to Peru regarding services, investment and government procurement and again regarding the final offer on 13 November 2017.

5. Engagement with stakeholders will continue after the conclusion of PAFTA to raise awareness of the FTA and ensure businesses and consumers can access the benefits of the agreement. Austrade runs an Australia-wide outreach programme to provide practical information on how to maximise benefits from Australia's FTAs.

6. Stakeholders that made submissions or were consulted during the PAFTA negotiation process:

- Australian Industry Group
- Almond Board of Australia
- Apple and Pear Australia
- Australian Chamber of Commerce and Industry
- Australian Fair Trade and Investment Network (AFTINET)
- Australia-Latin America Business Council (ALABC)
- Atlas Pearls
- AusQuest
- Austal
- Austin Engineering
- Australia Indonesia Business Council (WA)
- Australian International Commerce Centre
- Australian Wool Industries Secretariat
- BHP
- Chamber of Commerce and Industry of Western Australia
- Canegrowers
- City of Perth
- Costa Group
- Council on Australia Latin America Relations (COALAR) and Managing Director, Latin Resources
- Dairy Australia
- DTI Group Ltd
- EFIC
- Fortescue Metals Group
- Fremantle Chamber of Commerce
- FTI Consulting
- Grain Growers Limited
- Joondalup Council
- Meat & Livestock Australia
- Minerals Council of Australia
- Navitas
- National Farmers' Federation
- Price Waterhouse Coopers

- Ricegrowers
- Rio Tinto
- Spinnaker Run
- Squire Patton Boggs
- Sunrice
- Sweetlips
- WA European Business Association
- Western Australia Government
- Wellard Rural Exports Limited
- West Australian European Business Association
- Wine Australia
- Winemakers Federation of Australia
- Woodside



# PERU-AUSTRALIA

## FREE TRADE AGREEMENT

### OUTCOMES AT A GLANCE

The Peru-Australia Free Trade Agreement (PAFTA) is a comprehensive, high quality free trade agreement that will open new markets for Australian exporters and create more Australian jobs. It supports Australia's goal of capturing the gains of the Trans-Pacific Partnership (TPP), and provides a gateway to Latin America, strengthening our economic relationships within the region and helping facilitate value chains between the Americas and Asia.

Peru is a growing market for Australian goods and services exporters. Its GDP is comparable to that of Vietnam (USD189 and USD193 billion respectively), and it has been one of the fastest growing economies in Latin America, and the world, over the last ten years. In 2016, two-way trade with Peru was worth AUD590 million, up 51.2 per cent from the previous year. PAFTA will provide Australian businesses with an opportunity to expand and deepen our engagement with the dynamic markets of Latin America, helping to ensure Australia's continued economic growth and prosperity.

PAFTA has delivered high quality outcomes that will:

- open substantial new trade and investment opportunities for Australia;
- promote job-creating growth; and
- further integrate our economies in this fast-growing region, along with the [Pacific Alliance Free Trade Agreement](#) (currently under negotiation).

Particular outcomes of note include:

- elimination of tariffs on beef within five years to ensure that Australian beef farmers will have duty free access to the Peruvian market at the same time as US farmers;
- more sugar market access for Australian sugar farmers than what Peru has provided to any sugar exporting country in the last twenty years;
- dairy farmers will be able to compete with competitors, and outcomes on certain dairy products, such as butter, exceed outcomes provided to the EU;
- immediate duty free access for Australian wine, sheep meat, most horticulture products (including almonds), kangaroo meat and wheat;
- immediate duty free access for pharmaceuticals, medical devices, paper and paperboard;
- the best services commitments that Peru has offered any other country, which will create new opportunities for Australian mining service providers; and
- recognition of Australian degrees by Peru.

By setting high quality rules and promoting transparency of laws and regulations, PAFTA will provide certainty for businesses and reduce costs and red tape for Australian exporters, service suppliers and investors in Peru.



## FOR AUSTRALIAN GOODS EXPORTERS

PAFTA will eliminate more than 99 per cent of tariffs within five years of entry into force. Under PAFTA, new market access outcomes include:

- **Sugar:** on entry into force of the agreement, Australia will have duty free access of 30,000 tonnes of sugar into Peru, growing to 60,000 tonnes in five years and 90,000 tonnes in 18 years.
- **Dairy:** on entry into force of the agreement, Australia will have duty free access of 7,000 tonnes of dairy products into Peru, growing to 10,000 tonnes in ten years.
- **Rice:** on entry into force of the agreement, Australia will have duty free access of 9,000 tonnes of rice products into Peru, growing to 14,000 tonnes in five years.
- **Sorghum:** on entry into force of the agreement, Australia will have duty free access of 15,000 tonnes of sorghum products into Peru, growing to 20,000 tonnes in five years.
- **Beef cuts:** tariffs (up to 17 per cent) will be eliminated within five years.
- **Sheep meat:** tariffs on all sheep meat (up to 9 per cent) will be eliminated on entry of the agreement into force.
- **Seafood:** Peru will eliminate all tariffs (up to 9 per cent) on entry into force.
- **Almonds:** immediate elimination of duties on all tariff lines (up to 9 per cent).
- **Wine:** immediate elimination of duties across lines of commercial interest to Australia with the remainder being phased out over 5 years (up to 9 per cent).

The agreement will feature new trade rules to encourage the **use of ultrafine Australian merino wool in supply chains** between Australia and Peru.

While some of Australia's major global exports, such as liquefied natural gas, iron, steel and aluminium already enter Peru duty-free, PAFTA has secured additional market access, including:

- immediate elimination of tariffs on **base metals** including **iron ore, copper and nickel**;
- immediate elimination of tariffs on **coal**; and
- immediate elimination of duties on **mineral fuels and mineral oils**.

Australia's exports of **manufactured goods** to Peru were worth an estimated AUD55.7 million. New market access outcomes include:

- immediate elimination of duties on **paper and paperboard** to Peru; and
- immediate elimination of duties on **pharmaceuticals** and **medical devices**.

For further information on the **goods market access outcomes**, refer to [Outcomes: Goods market access](#).



## FOR AUSTRALIAN SERVICE SUPPLIERS

PAFTA benefits Australian service suppliers by removing key barriers to services trade, providing more transparent and predictable operating conditions for Australian service suppliers in Peru, and capturing future Peruvian services sector reforms. This creates opportunities to expand our services trade with Peru, which was worth AUD176 million in 2016.

A snapshot of the PAFTA services outcomes include:

- **Education:** Australian universities will benefit from Peruvian recognition of Australian degrees. Australian education providers seeking to establish campuses in Peru will be treated the same as Peruvian education providers. Neither Australia nor Peru have made any services-related commitments on public education and the agreement will not require Australia to make any changes to its current laws and regulations covering education.
- **Mining Equipment, Technology and Services (METS) and oilfield service providers:** Peru has granted access on non-discriminatory terms to Australian suppliers of mining-related consulting, research and development, engineering, environmental, mining and technical testing and analysis services. Australians working in the METS sectors and Australian technicians working on oil and gas wells are covered by Peru's commitments on temporary entry, allowing them to stay for a year with the possibility of extension.
- **Professional services:** Guaranteed access for Australian lawyers, engineers, architects, accountants and urban planners to provide their world-class services in Peru.
- **Financial services:** Guaranteed access for Australian financial service suppliers to export their services to Peru, including investment advice and portfolio management services to a collective investment scheme and insurance of risks relating to maritime shipping and international commercial aviation and freight, and related brokerage.
- **Temporary entry of business people:** Guaranteed minimum length of stay for Australian professionals of up to one year and an undertaking from Peru not to impose any labour market testing requirements on Australians covered by PAFTA. Australia retains the right to impose labour market testing on Peruvian contractual service suppliers. Spouses of Australian intra-corporate transferees and investors will be allowed to stay in Peru for the same length of time as the primary visa holder.
- **Telecommunications services:** Guaranteed non-discriminatory treatment, including no foreign equity limits, for Australian investors in telecommunications and e-commerce services.
- **Health services:** Australian providers of private health and allied services will be treated the same as Peruvian suppliers. Neither Australia nor Peru have made any services-related commitments on public health and the agreement will not require Australia to make any changes to its current laws and regulations covering suppliers of health services.
- **Hospitality and tourism services:** Australian hotel, restaurant, travel agency, tour operator and tour guide operators will benefit from guaranteed access to Peru's significant and expanding tourism market.
- **Government procurement:** Opportunities arising from Australian businesses now having the guaranteed right to bid for government procurement services contracts, such as:
  - Management consulting services;





- Computer and related services, along with maintenance of office machinery;
- Architectural engineering and other technical services;
- Land and water transport services;
- Telecommunication and related services;
- Environmental protection services;
- Education services; and
- Health and Social Services.

For further information on the **services outcomes**, refer to [Outcomes: Services market access](#), [Outcomes: Education services](#), [Outcomes: Professional services](#), [Outcomes: Financial services](#), [Outcomes: Temporary entry of business persons](#), [Outcomes: Trade in the digital age](#).

## FOR AUSTRALIAN INVESTORS

PAFTA will create new investment opportunities and provide a more predictable and transparent regulatory environment for investment. It will facilitate foreign investment into Australia, and provide important protections to Australian businesses investing in Peru. This is significant given that Australia has around AUD5 billion of energy and resources investments in Peru, and is the fourth largest foreign investor in Peru's mining sector.

PAFTA will promote further growth and diversification of Australian outward investment by liberalising investment regimes in key sectors such as mining and resources, telecommunications and financial services. PAFTA will also promote foreign investment in Australia by liberalising the screening threshold at which private foreign investments in non-sensitive sectors are considered by the Foreign Investment Review Board (FIRB), increasing it from AUD261 million to AUD1,134 million.

Under PAFTA, Australia has retained the ability to screen investments in sensitive sectors to ensure they do not raise issues contrary to the national interest. All investments by a foreign government will continue to be examined and lower screening thresholds will apply to investment in agricultural land and agribusiness.

PAFTA's investment obligations can be enforced directly by Australian and Peruvian investors through an Investor-State Dispute Settlement (ISDS) mechanism. The ISDS mechanism includes safeguards to protect the government's ability to regulate in the public interest and pursue legitimate public welfare objectives, such as public health. Public health measures cannot be challenged.

For further information, refer to [Outcomes: Investment](#), [Outcomes: Resources and energy](#).



## FOR AUSTRALIAN CONSUMERS AND BUSINESSES

Consistent with Australia's other free trade agreements, remaining Australian tariffs on imports from Peru will be eliminated, with consumers and businesses set to benefit from lower prices. PAFTA also includes additional commitments which will **lower the costs of trade**. Highlights include:

- more transparent and efficient **customs procedures** making it easier for Australian companies to export and do business with Peru. For example, under PAFTA, Peru is required to provide an advance ruling on the tariff classification of a good, how it should be valued, whether a good is originating and how to claim preference;
- modern trade rules to reflect **commercial shipping routes**. Most products don't travel directly from one country to another. PAFTA recognises that products are often shipped via logistics and supply hubs and has trade rules to ensure that Australian products that transit through, or are stored in, third countries still qualify for tariff preferences. For example mining equipment from Australia will be able transit through the US or Chile and still qualify for preferential tariff rates, as will advanced Australian mining manufactures, which may be stored in global distribution hubs in customs control of countries outside of Peru or Australia;
- **duty-free temporary admission of pallets and containers**. This commitment will provide cost and administrative savings for Australian businesses engaged in providing transport logistics services to Peru;
- mechanisms to address **non-tariff barriers** (NTBs) impeding trade, which will give Australia an important avenue to address NTBs affecting our exports. PAFTA will enhance transparency, cooperation and promote good practice with regard to establishment and maintenance of technical regulations;
- simplified rules and **technical requirements** for several products, including **wine** and spirits. For example, PAFTA includes a wine annex that enables Australian exporters to use the same label to Peru as all other World Wine Trade Agreement countries, saving money on marketing and distribution costs; and
- trade facilitative **rules of origin** that enable exporters, producers or their authorised representatives to self-certify whether the goods originate in Australia. Traders will also be able to make post-importation claims for preferential tariff treatment, provided certain conditions are met.

These provisions and many others help to reduce red tape, improve transparency of international trade environment and support the competitiveness of Australian exports.

## ADDRESSING CONTEMPORARY TRADE CHALLENGES

PAFTA will also address contemporary trade challenges in ways that have not previously been addressed in Australian FTAs. Highlights include:

- State of the art **e-commerce** provisions driving the information economy and facilitating trade between Australia and Peru. For example, Australia and Peru have committed to allow the movement and storage of data across borders, providing a platform for growth in Australian ICT exports. PAFTA will ensure appropriate consumer protections and the right of governments to regulate in the public interest. Australia's regulatory framework, including the Privacy Act, will not be affected. For further information, refer to [Outcomes: Trade in the digital age](#).



- Assisting **small and medium-sized enterprises** (SMEs) to reap the benefits of PAFTA, with an emphasis on exchanging experiences on best practices to support SME exporters and user-friendly websites targeted at SMEs to provide easily accessible information about PAFTA.
- Establishing a common set of rules on **intellectual property** protection and enforcement consistent with Australia's existing intellectual property regime and requiring no changes to Australian intellectual property laws or policies. For further information, refer to [Outcomes: Intellectual Property](#).
- Promoting high levels of **environmental protection**, ensuring Parties effectively enforce their domestic environmental laws. Parties must also take measures in relation to a number of important environmental challenges, such as addressing climate change, protecting biodiversity, and combatting illegal wildlife trade.
- Enhanced compliance with internationally-recognised **labour rights**, such as elimination of forced labour, abolition of child labour, freedom of association and the right to collective bargaining. PAFTA will also enhance cooperation and consultation on labour issues, and effective enforcement of labour laws in Australia and Peru.
- Robust provisions combatting corruption and bribery of public officials, and other acts of corruption adversely affecting international trade and investment. These anti-corruption provisions will provide greater transparency and certainty to Australian individuals and businesses seeking to trade with, and invest in, Peru.

## NEXT STEPS

In accordance with Australia's treaty-making process, the PAFTA text and accompanying National Interest Analysis will be tabled in Parliament. Following tabling, the Joint Standing Committee on Treaties will conduct an inquiry into PAFTA and will report back to Parliament. Parliament will also consider any legislation that may be necessary to implement the Agreement.

When either Australia or Peru has completed its domestic treaty-making processes, it will notify the other party that it has done all that is required for the Agreement to enter into force. PAFTA will enter into force 60 days after both signatories have notified completion of their domestic legal procedures.

