

# Free Trade Agreement between Australia and the Republic of Peru

OBPR Reference Number: 22433

## Introduction

1. This Regulation Impact Statement (RIS) relates to the Free Trade Agreement between Australia and the Republic of Peru (PAFTA). Peru and Australia launched negotiations for PAFTA on 24 May 2017. PAFTA was signed in Canberra, Australia on 12 February 2018.

## Policy Problem

2. Peru is one of the fastest growing economies in Latin America with an average growth rate of 5.9 per cent over ten years (2005-2015 World Bank). Peru's Gross Domestic Product (GDP) of USD 189 billion is similar to that of Vietnam, and its population of 31 million is similar to Malaysia. Peru presents a low level of risk compared to some other economies in the region, with modern infrastructure networks, a favourable tax regime, and a history of solid macroeconomic reforms.

| <b>Table 1: Economic and Trade Relationship – Australia and Peru</b> |                 |                                      |                   |
|--|-----------------|--------------------------------------|-------------------|
| <b>Peru GDP</b>  | USD 189 billion | <b>Australian goods exports</b>      | \$82 million      |
| <b>GDP Growth (Trend 2005-2015)</b>                                  | 5.9%            | <b>Australian goods imports</b>      | \$255 million     |
| <b>Population</b>  | 31.38 million   | <b>Australian services exports</b>   | \$55 million      |
| <b>Exports (Trend 2005-2015)</b>                                     | 2.2%            | <b>Australian services imports</b>   | \$112 million     |
| <b>Imports (Trend 2005-2015)</b>                                     | 9.1%            | <b>Australian investment</b>         | \$ 5,000 million* |
| <b>Two way trade</b>   | \$504 million   | <b>Other investment in Australia</b> | \$163 million     |

\* An estimate of Australian badged investment, including in the mining sector.

Source: World Bank; DFAT Country Fact Sheets. All currencies AUD unless specified otherwise.

3. As shown in Table 1, Australia's trade and economic relationship with Peru is less developed compared to our relationship with economies of a similar size. Peru has high barriers to trade that have prevented the trade relationship from reaching its full potential.
4. The absence of a bilateral trade agreement with Peru:

- limits Australian producers' and exporters' ability to trade with Peru in the face of very high tariffs;
  - leaves Australian exporters at a disadvantage compared to competitors from countries with which Peru has concluded, or is negotiating, a trade agreement;
  - maintains tariffs on many imports from Peru, which can lead to higher costs for businesses and consumers; and
  - maintains barriers to investment and services exports.
5. Australia's trading relationship with Peru is governed by Peru's obligations under the *World Trade Organization (WTO) Agreement*. Australia's exports of beef, sheep meat, horticulture, wheat, barley, rice, canola, sugar and wine are effectively shut out of the Peruvian market because of high tariff barriers. Sugar, dairy, rice and corn are subject to Peru's price band system, which can result in applied tariffs of up to 29 per cent. There are also tariffs of up to 11 per cent on beef, and up to 9 per cent on sheep meat, almonds, vegetables and wine.
  6. Peru's market access commitments in relation to services are as agreed under the WTO General Agreement on Trade in Services (GATS). These commitments do not include services in sectors of commercial interest to Australia, including telecommunications, financial services, professional services, energy and mining-related services, environmental services, construction services, and transport services.
  7. Australian investment is the most important feature in Australia's commercial ties with Peru. Australia's commercial presence in Peru has increased significantly with nearly 90 Australian companies now represented in Peru. Australian investment in Peru is estimated to be around 5 billion, and Australia is the fourth largest investor in the mining and energy sector. Australia's investment relationship with Peru remains governed by a 1995 bilateral investment treaty. While this older treaty provides protections for Australian investors, it does not include the more effective, modern safeguards aimed at better protecting Australia's right to regulate in the public interest. Nor does it contain procedural safeguards regarding investor-state dispute settlement. These safeguards provide greater legal certainty, reducing the risk of investors bringing claims against the government for regulations designed for legitimate public policy purposes.
  8. A number of Australia's competitors, including the United States (US), Canada, European Union (EU), and Singapore, have FTAs with Peru. As a result Australian exporters face additional barriers including tariffs; restrictions on the sale of services; additional red tape; and barriers on temporary entry for business people. This places Australian exporters of goods and services at a significant disadvantage to our competitors.

### **Need for Government Action**

9. Peru maintains trade barriers on many goods and services of interest to Australia. Without an arrangement to reduce these restrictions, Australian exporters will remain constrained in their ability to capitalise fully on the opportunities presented by Peru's large and growing market. PAFTA provides unprecedented market access that unlocks new opportunities for Australian businesses and will make Australian exporters more competitive in the Peruvian market. Furthermore, it is in Australia's interest to secure a preferential advantage in the Peruvian market as soon as possible to enable Australia to keep pace with competitors, many of which have already negotiated FTAs with Peru.

## **Policy options and assessment**

### **No action**

10. Without an FTA, Australian business will continue to be at a disadvantage due to preferential treatment provided to our major competitors through FTAs. PAFTA outcomes build on and improve those in the Trans-Pacific Partnership (TPP) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11) for many of Australia's top goods and services exports. Without removing these barriers, trade is unlikely to increase.

### **Multilateral negotiations**

11. There are currently no negotiations for a comprehensive multilateral trade agreement advancing in the World Trade Organization. As a result, it is not currently feasible to seek improved market access for Australian exporters through multilateral negotiations.

### **Regional FTA negotiations**

12. Regional negotiations should not be seen as an alternative to PAFTA – the Government is pursuing regional agreements in tandem with bilateral agreements for many trading partners. PAFTA outcomes support further progress in these regional efforts while providing early gains and protection for Australia.
13. Australia and Peru are both signatories to the TPP and the TPP-11. TPP-11 incorporates the TPP with the exception of a limited number of suspensions. These agreements are not yet in-force. The market access outcomes obtained in PAFTA improve on those obtained through TPP-11. PAFTA has faster tariff elimination and new tariff quota access that was not possible in a regional agreement as Peru had greater sensitivities with other Parties.
14. On 30 June 2017, Australia and the Pacific Alliance (Chile, Colombia, Mexico and Peru) launched negotiations for a free trade agreement. Australia does not currently have FTAs (in force) with Colombia, Mexico or Peru. The Pacific Alliance was part of the government's multi-faceted strategy to capture the benefits of the TPP-11 and to strengthen Australia's trade relationship with Latin America. PAFTA will complement this and act as a building block to improved access in the region.

### **Bilateral FTA negotiations**

15. A high-quality bilateral agreement with Peru is only realistic option to achieve the Government's objectives and provide the greatest opportunities to Australian exporters. On 24 May 2017, Australia and Peru commenced negotiations on for a bilateral FTA and signed on 12 February 2018. Negotiations were swift due to a shared negotiating history in the TPP. Due to the bilateral nature of the negotiations, and Australia was able to secure market access outcomes that improved on those obtained in TPP-11.
16. PAFTA is a comprehensive modern trade agreement that addresses the key barriers faced by Australian exporters and investors in Peru. Small and medium-sized enterprises will benefit from provisions emphasising user-friendliness and accessibility of information on opportunities arising from PAFTA. Australian goods and services exporters will benefit

from commitments regarding state-owned enterprises and government designed monopolies, designed to create a level playing field and ensure non-discrimination. PAFTA will also support the expansion of Australia's creative and innovative industries through a common set of intellectual property rules that incentivise research and development and creative endeavour.

### *Outcomes on Goods*

17. For goods exporters, PAFTA will eliminate tariff barriers and provide mechanisms to address non-tariff barriers. 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. PAFTA outcomes represent a significant improvement to TPP-11. For example, under PAFTA, Peru has given Australia historic levels of new goods market access in areas such as sugar, dairy, rice and sorghum, while for all other tariff lines Australia attained quicker phase out periods than the TPP-11. Without PAFTA, Australian exports to Peru would face very high barriers to trade, which effectively prohibit trade across many of Australia's top export strengths.

18. 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).

19. Australian exports to Peru are currently concentrated in machinery and other goods related to the mining industry, along with some food products. 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.

20. Australia's exports of manufactured goods to Peru were worth an estimated \$55.7 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.

## *Outcomes on Services*

21. 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 \$177 million in 2016.
  
22. 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; and
  - Environmental protection services;

#### *Outcomes for Investors*

23. Australia has around 5 billion of energy and resources investments in Peru, and is the fourth largest foreign investor in Peru's mining sector. 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.
24. 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 \$261 million to \$1,134 million.
25. 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.
26. 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.

#### *Outcomes for Australian consumers and businesses*

27. PAFTA also includes a number of provisions and many others help to reduce red tape, improve transparency of international trade environment and support the competitiveness of Australian exports. 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 impeding Australia's 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.

*Commitments made by Australia*

28. In order to obtain high quality outcomes in the FTA with Peru, Australia also commitments on trade and investment. By international standards, Australia's trade and investment regime is already open, 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 business travel and work within Australia. The commitments in PAFTA did not extend beyond those already offered in other Australian FTAs, including TPP-11. As such, minimal changes are need to Australia's regulatory system to implement PAFTA. Australia's commitments in PAFTA cover:
- elimination of tariffs;
  - ability to provide services in Australia;
  - increased thresholds for FIRB screening;
  - access to Australia's government procurement market; and
  - commitments on the temporary entry of business persons.
29. 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 includes tariffs of no higher than five per cent on plastics and rubber, textiles, clothing and footwear, iron and steel, motor vehicle components and some machinery and furniture tariffs. This is consistent with Australia's other FTAs. Peru is a significant textile exporter and prioritised textile market access in negotiations. As a result of PAFTA, there may be an increase in imports of textile products, or other products from Peru, where Australia has eliminated its tariffs. This is not expected to have a significant impact on the Australian textile sector or others sectors, as the Australian economy is already open to import competition from our major trading partners, including China, the US, Japan, Korea, Singapore and New Zealand.
30. Under PAFTA, Australia will provide greater certainty to Peruvian business people and skilled professionals seeking temporary entry to Australia. These commitments are consistent with Australia's existing immigration and workplace relations frameworks. This includes the sponsorship requirements under the new Temporary Skill

Shortage visa. Sponsors must meet market salary rates and offer employment conditions as required under Australian workplace law, and equivalent to those accorded to Australian workers performing similar duties in the workplace. Peruvian skilled professionals must also meet all relevant Australian skills, qualification and licensing requirements. Australia's PAFTA commitments go beyond Australia's WTO commitments on the category of Installers and Servicers and Contractual Service Suppliers. These commitments, including in relation to length of stay and labour market testing, are consistent with Australia's current immigration policy and require no regulatory changes to implement.

## **Regional Impact**

31. PAFTA is expected to have a positive impact on regional Australia. PAFTA provide new open opportunities for regions that export goods or services, particular in sectors related to agriculture and mining. Australia has not only captured the gains of the TPP, but attained improved market access opportunities for Australian exporters.
32. In addition to reducing tariff barriers and improving market access, PAFTA will provide certainty for businesses and reduce costs and red tape for Australian exporters, service suppliers and investors in Peru by setting common rules and promoting transparency of laws and regulations. These include more transparent and efficient customs procedures, streamlined rules of origin procedures, mechanisms to address non-tariff barriers, and simplified rules and technical requirements for several products.
33. Consistent with Australia's other free trade agreements, remaining Australian tariffs on imports from Peru will be eliminated within five years, with consumers and businesses across Australia set to benefit from lower prices. PAFTA is unlikely to impose major adjustment costs on any region or sector.

## **Regulatory costs/savings**

34. In order to implement PAFTA the following regulatory and legislative changes will be required:
  - changes to the *Customs Act 1901* and the *Customs Tariff Act 1995* to implement new preferential tariff rates and associated rules of origin; and
  - changes to the *Foreign Acquisitions and Takeover Regulations 2015* to implement the commitment to a higher threshold for screening by FIRB.
35. PAFTA will benefit Australian businesses trading with Peru by removing the regulatory burdens of any tariffs on applied to 99.8 per cent imported goods from Peru, and eliminating tariffs on 99.5 per cent of Australian exports to Peru. To enable Australian importers or exporters to claim preferential access under PAFTA, like any other FTA, traders may need to fulfill some documentary requirements. Under PAFTA, with the objective of minimising regulatory requirements, exporters will be able to self-certify the origin of their goods when claiming the preferential rate. Exporters and importers are not required to trade under preferential rates of PAFTA, and thereby not required to change their documentary requirements when trading with Peru.
36. This Regulation Impact Statement does not assess the change in the regulatory burden faced by Australian businesses and individuals which will arise from regulatory and



legislative changes made by Peru. Changes by Peru as a result of the FTA are expected to reduce the regulatory burden for Australian businesses trading with Peru.

## **Conclusion**

37. It is in Australia's national interest to enter into a bilateral trade agreement with Peru given PAFTA will:
- deliver commercially meaningful market access gains that will benefit Australian agricultural producers, as well as energy and mineral resources exporters, service providers, consumers and investors;
  - secure a competitive advantage for Australian exporters in the Peruvian market against other trading partners, and level the playing field for Australian exporters with countries that already have an FTA;
  - deliver faster and deeper market access gains than those possible through multilateral WTO or regional negotiations;
  - be consistent with WTO requirements for free trade agreements; and
  - complement Australia's efforts to seek additional trade liberalisation from the region, through the WTO and other regional agreements.

## **Consultation**

38. The Department of Foreign Affairs and Trade (DFAT) leads Australia's negotiations on FTAs in consultation with other government agencies. Australia's negotiating positions were informed by the views and information provided by stakeholders through both formal and informal mechanisms.
39. The public consultation and stakeholder engagement process on the 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. A list of businesses and organisations that have been consulted – through consultation events, stakeholder meetings, and phone calls – is set out below.
40. 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 has been 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 the TPP could be expanded, with agricultural stakeholders particularly forceful advocates for improved market access outcomes.
41. 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.

42. Interest in PAFTA by civil society groups was limited. The Australian Fair Trade and Investment Network provided a submission outlining its concerns, which included: lack of transparency of the negotiating process; the use of the TPP text as a model; the possible inclusion of ISDS provisions; the possible extension of monopoly intellectual property rights on patents or copyright; the existence of provisions on the movement of natural persons and government procurement.
43. Engagement with stakeholders will continue following entry into force of PAFTA to raise awareness of the FTA and ensure businesses and consumers can access the benefits of the agreement. Stakeholders will have an additional opportunity to provide their views on PAFTA through the inquiry process by the Joint Standing Committee on Treaties (JSCOT).

*Stakeholders consulted*

- Australian Industry Group
- Almond Board of Australia
- Apple and Pear Australia
- Australian Chamber of Commerce and Industry
- Australian Fair Trade and Investment Network
- 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 (FMG)
- Fremantle Chamber of Commerce
- FTI Consulting
- Grain Growers Limited
- Joondalup Council
- Meat & Livestock Australia
- Minerals Council of Australia
- Navitas
- National Farmers' Federation
- PWC
- 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
- Winemakers Federation of Australia
- Woodside

## **Implementation and evaluation**

44. In line with Australia's treaty-making processes, the text of the FTA will be tabled in Parliament. JSCOT will conduct an inquiry into the FTA and report back to Parliament. Implementation of PAFTA will require changes to: the *Customs Act 1901*; the *Customs Tariff Act 1995* and associated regulations; the *Foreign Acquisitions and Takeovers Regulations 1989*.
45. Once domestic processes are completed, including amendments to legislation and regulatory, Australia and Peru will exchange diplomatic notes to advise that the ratification process has been completed by both Parties. Both Parties are aiming for entry into force before the end of 2018.
46. DFAT and other Government agencies will use existing resources to implement PAFTA. The operation and effectiveness of the FTA will be addressed through working groups, Senior Officials Meetings, Ministerial Meetings and through future reviews of the FTA. In advance of these meetings and any formal review, DFAT will invite submissions from the public, and consult with stakeholders to identify concerns regarding the implementation of the FTA.