

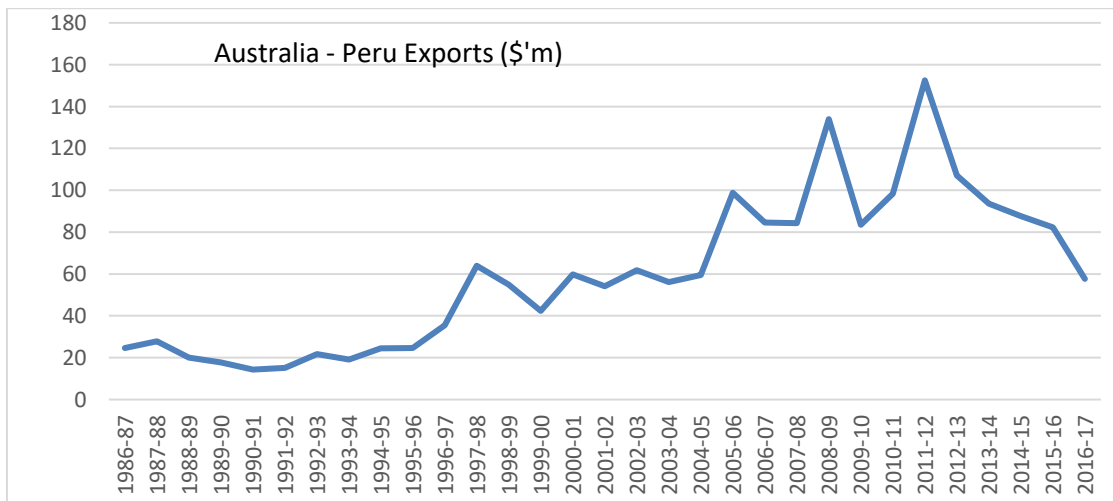


Free Trade Agreement between Australia and the Republic of Peru (Peru FTA) - revisited

Submission to the Joint Standing Committee on Treaties
November 5, 2018

The Australian Chamber welcomes the Government efforts to liberalise trade to the benefit of the Australian economy. We also appreciate that the Government has considered that a further inquiry into the this treaty is warranted given the recent passage of the enabling legislation for the CPTPP by the Australian parliament.

The CPTPP has also now been ratified by Australia and is expected to enter into force on December 30, 2018 and it is hoped that this might arrest the dramatic decline in exports from Australia to Peru that has occurred in recent years.



Source: <https://dfat.gov.au/trade/resources/trade-statistics/Pages/trade-time-series-data.aspx>

We respond to the terms of reference:

- **ongoing concerns over the increasing complexity created by the number of trade agreements, particularly multiple agreements with the same partner; and**

The Australian Chamber of Commerce and Industry has repeatedly warned of the aggregate complexity associated with negotiation of multiple agreements that cover the same market. Our call has been supported and economically analysed by the Productivity Commission, along with

academics from the ANU who agree that the increasing complexity of overlapping trade agreements is detrimental to our trade liberalising efforts.¹

Peru and Australia:

- Are implementing the CPTPP
- Have finalised and are considering ratification of the PAFTA bilateral
- Are in the process of negotiating the “Pacific Alliance” FTA which also involves Chile, Columbia and Mexico.

Despite frequent recommendations by JSCOT, to date there has not been any independent economic assessment of the value of PAFTA, nor in relation to the aggregate benefits relative to the other agreements covering Peru.

Our arguments on the aggregate complexity of trade are backed up by our member surveys which confirm that, in general, businesses do not understand trade agreements, nor how to access their benefits. Sometimes we hear counter-arguments that international trade has an inherent level of complexity and that multiple agreements offer “choice” to the commercial parties. We rebut these arguments and note:

- The purpose of trade liberalisation should be to make trade easier, not harder.
- The importer is the party liable for duties paid in the country of import. When relief from duties is available through a preferential trade agreement, this is sought voluntarily by the importer under all Incoterms except “Delivered Duty Paid” (DDP). This means that it is the importer who dictates the use of any given trade agreement and not the exporter. Anecdotally, we are aware that it is then the agreement with which the importer is most familiar (if any) that becomes the predominant terms of trade.

Prior to securing the CPTPP, Australia negotiated the bilateral with Peru to secure the gains of the original TPP, and advance upon these in some instances. In our April 2018 submission to the earlier inquiry of this committee, we suggested that it was wise to accept the certainty of the bilateral in the face of the uncertainty over the regional agreement. However, we also said that it would also be wise to include the terms of PAFTA in the CPTPP and then withdraw the bilateral in order to remove the “noodle bowl” effect of two similar agreements with the one country.

It is our understanding that nations are able to offer terms that are greater than their agreement commitments and also that the CPTPP is accompanied by a series of bilateral side letters that detail exclusions or additions to the CPTPP on a bilateral basis between parties that are exclusive and not necessarily offered to all parties.

There are beneficial terms within PAFTA relative to CPTPP, particularly for the agricultural sector (albeit that the trade is small), and so we believe that the Government should be able to attempt to include these within the CPTPP in a bilateral side letter, and if achieved, should not need to progress with the bilateral PAFTA.

¹ <https://www.pc.gov.au/research/supporting/rules-of-origin>

- ***the specific inclusion and operation of the ISDS provisions in recently concluded trade agreements.***

Since 1995, Australia and Peru have had a bilateral investment treaty (BIT) which has included an investor state dispute mechanism and there have been no claims under this treaty to our knowledge.

CPTPP also offers ISDS provisions (which differ from the BIT).

We see no additional threats from inclusion of ISDS in PAFTA, should it be endorsed, with the exception of the “noodle bowl” issues of complexity from differing terms for ISDS coverage from the multiple agreements.

Pacific Alliance negotiations:

As well as the CPTPP Australia, Peru and Mexico are negotiating the “Pacific Alliance” FTA. While encouraging trade liberalisation, we continue to caution about the impacts on business of overlapping agreements. It will be very concerning if the terms of the Pacific Alliance agreement are divergent from CPTPP outcomes.

History has shown this risk is high and so we would also encourage the terms of the existing PAFTA be taken forward and included in a prospective Pacific Alliance agreement. In the event that Columbia and Chile do not accept these terms and the conditions of the CPTPP (which Peru and Mexico have already done), then again we would think that a bilateral side letter between Peru and Australia could be used to capture the additional benefits offered by PAFTA. This will result in PAFTA being redundant.

As an example, PAFTA includes the Government certification process to support importers and exporters while making compliance claims under the agreement, whereas CPTPP does not. We encourage the parties to ensure that importers and exporters are assisted in their compliance efforts and so certified origin should be the process that is embedded in all trade agreements.

We would be delighted to address the committee on these points.

For further follow up please contact:

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