



MINERALS COUNCIL OF AUSTRALIA

SUBMISSION TO DEPARTMENT OF FOREIGN
AFFAIRS AND TRADE ON PROPOSED PACIFIC
ALLIANCE FREE TRADE AGREEMENT

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INTRODUCTION

The Minerals Council of Australia (MCA) supports the negotiation of a high-quality free trade agreement (FTA) between Australia and the Pacific Alliance group of countries comprising Mexico, Chile, Peru and Colombia.

There are significant opportunities for greater trade, investment and economic engagement between the mining industries of Australia and the Pacific Alliance countries. Australia has a world-class mining and mining equipment, technology and services (METS) sector. Resources exports made up more than half of Australia's total exports of goods and services in 2017. Exports of mining services and mining-related equipment and technology are a growing opportunity for Australia. Countries developing their own mining sectors, such as the Pacific Alliance nations, are key markets for METS exports. Australian mining businesses are also major outward investors in minerals exploration and development in countries with significant minerals and energy resources and are active in all of the Pacific Alliance countries.

An FTA with the Pacific Alliance has the potential to advance the economic relationship between Australia and these Latin American countries. It can help realise future opportunities by building on Australia's existing bilateral FTAs with Chile and Peru, complementing the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (TPP-11), which includes Mexico, Chile and Peru, and extending Australia's network of trade agreements to Colombia.

Mining is an area where an FTA with the Pacific Alliance can add value to Australia's existing trade agreements with these countries. This can be achieved both by seeking additional liberalising commitments in goods and services market access and investment disciplines, and by exploring opportunities to promote commercial linkages between Australia's mining sector and the mining sectors of the Pacific Alliance countries. Accordingly, the MCA supports the Australian Government addressing mining industry issues in the goods, services and investment provisions of the proposed FTA and by seeking to negotiate a separate chapter or annex to the agreement devoted to mining and mining services.

This submission outlines the Australian mining industry's broad interests in trade and investment negotiations and makes suggestions for issues which could be considered in a mining annex to the Pacific Alliance FTA.

AUSTRALIA'S MINING TRADE INTERESTS

Mining industry priorities for trade and investment negotiations

Goods: Improved market access for exports of Australian minerals commodities and mining-related equipment, through reducing tariffs and other market access barriers.

Services: Improved market access for Australian mining services and technology by liberalising barriers to trade in services. It should be noted that mining services encompasses sectors beyond the WTO/GATS classification 'services incidental to mining', including engineering, construction, legal, computer and accounting services.

Investment: Non-discriminatory treatment of Australian mining investments. Commitments to non-discrimination and national treatment are important for Australia's ability to pursue mining investment opportunities which will improve economic and social welfare both for Australia and for countries seeking the investment capital to develop their mining sectors. These opportunities can be impeded by policies of 'resources nationalism' which may involve restrictions on foreign investment in mining exploration, development and operations and/or requirements for domestic processing of minerals.

Technical barriers to trade: Substantive commitments to avoiding unwarranted technical barriers to trade are important for ensuring that Australian commodities do not face trade-distorting technical standards or testing procedures which can add costs, delay shipments and put Australian resources at a competitive disadvantage in export markets.

Regulatory certainty and best practice: Stability, certainty, transparency and consultation on government regulations or proposed regulatory changes with the potential to affect mining trade or investment is important for providing a stable investment and business climate for Australian mining businesses engaged in international trade and investment.

Movement of persons: Australia's mining exports and investment opportunities can be supported through trade agreements improving the ability to deploy Australian executives and specialist and skilled personnel to markets of interest.

E-commerce/digital trade: Provisions in trade agreements can improve the ability to deliver mining services and technology through digital platforms, an increasingly important avenue for the delivery of Australian mining technology and software to customers in export markets.

Environmental, social and governance (ESG) standards: Recognition of the Australian mining industry's sustainable performance in areas such as environmental management, workforce health and safety, social and community relations, governance and transparency, and sustainable mining practices.

Further information on these priorities in the context of Australian mining's trade and investment relationship with Pacific Alliance countries is provided below.

Minerals commodities exports

Market access barriers for Australian minerals commodities are already relatively low for the countries comprising the Pacific Alliance. Australia has negotiated removal or significant reductions in tariffs for minerals exports to Chile under the Australia-Chile FTA, Peru under the Peru-Australia FTA and Mexico under the TPP-11.

Overall Australian minerals exports to Chile, Colombia, Mexico and Peru are currently relatively small. However they still comprise some of Australia's biggest exports to these countries. Coal was

Australia's largest export to Chile in 2017, with exports valued at \$277 million, down from \$339 million in 2016. Other ores and concentrates (such as lead, zinc and manganese) represented Australia's

fifth largest goods export to Mexico in 2017 (valued at \$12.7 million). Iron and steel was Australia's second largest goods export to Peru (\$8.5 million) and aluminium was the fifth largest goods export to Mexico (\$11.5 million). Aluminium exports to Colombia were valued at \$40 million in 2016, accounting for nearly half of Australia's total goods exports to Colombia, but dropped to \$1 million in 2017. An FTA with the Pacific Alliance is an opportunity to lock-in the elimination of tariffs on Australian minerals commodities, including on base metals and coal as well as mineral fuels and oils.

Mining Equipment, Technology and Services

The importance of mining in Australia's economy means that thousands of mining equipment, technology and services (METS) businesses have emerged to support and supply the mining industry. Australia is recognised as a world-leader in innovative mining technologies and services. Exports are also a key component of Australia's METS industry, with over half of all businesses in the Australian METS sector exporting products, services or technologies.

A survey of METS companies by Austmine identified Chile as being amongst their most prospective export markets, with 36 per cent of respondents already exporting to Chile. There are also opportunities for Australian METS firms in Peru, Colombia and Mexico. Austmine, the industry body for the METS sector, is leading Australian METS trade missions to Chile and Peru during 2018.

Mining equipment

Mining-related equipment currently comprises the majority of Australia's merchandise exports to Chile, Colombia, Mexico and Peru. The sector has grown steadily over the past five years, including in measuring equipment, chemicals and machinery and civil engineering equipment.

Mining services and technology

Generally, by contrast with the position for mining commodities, barriers to exports of mining services, including non-tariff measures (NTMs), remain impediments to growing Australia's mining services exports. The MCA recommends that Australia seek national treatment commitments specifically related to improving market access for mining services as part of an FTA with the Pacific Alliance.

Australian METS' biggest export is our service capabilities, so being able to bring people delivering those services into export markets quickly and efficiently will save time and costs and improve export performance. Further, new commitments from Chile, Mexico and Peru in the TPP-11 and the Peru-Australia FTA on consulting, research and development, engineering, environmental, mining and technical testing and analysis services will support business opportunities for Australia's METS sector in those markets. This includes businesses ranging from those involved in exploration and geoscientific services, to those providing a range of equipment and supplies used in mining; from developers of innovative technologies, data analysis and software solutions, to those providing professional, financial, legal and business services to the mining industry.

Chile, Mexico, Peru and Colombia are undertaking significant investment and reforms of their resource sectors and have significant mining projects already in production or likely to be delivered in the future. Addressing remaining barriers to METS either in the services chapter of a Pacific Alliance FTA or in a mining-specific annex would help provide opportunities for Australian METS companies covering the full spectrum of these countries' resources sectors. Improved METS market access would not only help these countries to develop their resources sectors further, but would also apply Australian innovation and technology to help ensure that these sectors are sustainable and in line with best practice operational, environmental and health and safety standards.

Movement of persons

Australian mining and METS businesses will benefit from the TPP-11 provisions on movement of persons which will make it easier for Australian METS firms and Australian mining companies to deploy executives and skilled personnel to Chile, Mexico and Peru. The Pacific Alliance FTA negotiations will provide an opportunity to secure similar flexibilities from Colombia for business

visitors, intra-corporate transferees and investors. Feedback from MCA member companies indicates that flexible movement of persons provisions and streamlined visa processes are a significant priority for the Australian mining and mining services sector in Latin America, both for Australian businesses deploying personnel to those markets and to encourage Pacific Alliance nationals to take up opportunities for secondments, training and mining-related research and education in Australia.

Investment

As the Chile, Colombia, Mexico and Peru continue to develop economically there will be opportunities for Australian mining companies and mining services firms to partner with local businesses to invest in and develop those countries' resources sectors.

The TPP-11's investment chapter contains important disciplines for national treatment and non-discrimination by parties against each other's investors. This will encourage Australian outward investment to those markets by improving investment certainty and the broader business climate. It will maintain the legitimate role of national governments to regulate in the public interest while ensuring international investors are not discriminated against compared to their domestic counterparts (subject to specific exceptions and carve-outs taken by TPP-11 parties in their investment commitments). A Pacific Alliance FTA should reinforce the TPP-11 investment provisions and extend them to Colombia.

From the MCA's perspective, this is important in ensuring greater certainty and stability for Australian investors abroad and in reducing the risk of protectionist investment measures. In that regard, Investor-State Dispute Settlement (ISDS) provisions supplement substantive investment commitments by providing a mechanism for disputing parties to seek relief or compensation for breaches of these commitments, particularly in relation to expropriation of assets and investments. This provides greater investment certainty and reduces sovereign risk. Without ISDS provisions, investors would have to rely on state-to-state consultations to resolve any disputes about breaches of the investment commitments.

POTENTIAL MINING CHAPTER OR ANNEX

The MCA supports the Australian Government seeking to negotiate a mining-specific chapter or annex as part of a Pacific Alliance FTA.

A mining annex would provide an opportunity to deal with issues specific to mining and mining services that are not covered in the FTA's goods, services and investment chapters. It could also reinforce the goods, services and investment commitments as they relate to mining by including mechanisms for resolving issues or concerns that arise with the application of these commitments to mining. These could include emerging regulatory issues in Pacific Alliance nations affecting Australian mining and mining services trade and investment.

A mining annex could also be a vehicle for promoting greater cooperation and engagement between the governments and mining sectors of Australia and the Pacific Alliance countries. It could include pro-active commitments to share information and advance trade and investment promotion activities focussed on mining. Incorporating a mining annex into the agreement would highlight the strategic priority that the parties place on their mining sectors. In this way it would have a welcome 'head turning' effect of promoting the role of mining as a focus for greater Australia-Pacific Alliance economic engagement, commercial links and government cooperation.

Earlier MOUs with Pacific Alliance countries

In recent years, Australia has entered a number of bilateral Memoranda of Understanding with Pacific Alliance countries with on cooperation and information sharing in mining, energy and hydrocarbons. Some of these MOUs have now expired. They nonetheless provide a useful starting point for consideration of a mining annex to the FTA. The MCA suggests the following provisions from these earlier MOUs be considered for inclusion or updating in a Pacific Alliance FTA mining annex:

- 'facilitating administrative procedures for investment in major projects' (2005 Australia-Mexico MOU on energy cooperation, paragraph 2(c)(i)).
- 'fostering the development of partnerships among the business sectors of both countries for the exploration, development and processing of energy resources and the supply of services associated with the energy sector' (2005 Australia-Mexico MOU on energy cooperation, paragraph 2(c)(ii)).
- 'Aim to increase investment flows between Australia and Chile in the mining and mining related services and industries' (2006 Australia-Chile MOU on mining industry cooperation, paragraph 1).
- 'continuing to promote a positive environment for ongoing trade and investment' in the mining sector (2011 Australia-Chile MOU on mining industry cooperation, paragraph 1(f)).
- 'facilitate greater opportunities for trade and investment between the Parties through enhanced awareness of policy and regulatory frameworks *and addressing impediments in these areas* where appropriate' (2011 Australia-Chile MOU, paragraph 2(a), emphasis added).
- The list in paragraph 2(c) of the 2011 Australia-Chile MOU of areas for exchanging knowledge, to which the MCA suggests adding minerals exploration and mining innovation and technology.

Further issues for consideration

The MCA suggests that the Australian Government consider including provisions in a mining annex dealing with the following issues.

Commitment to liberalisation and removal of impediments

An objectives or scope clause in a mining annex should include positive commitments to open and liberalised trade and investment regimes for mining and mining services trade. The language from the MOUs of 'promoting a positive environment' and 'facilitating greater opportunities' for trade and

investment could be reinforced with references to ongoing liberalisation of trade and investment, and reduction of remaining impediments to trade and investment.

Regulatory certainty for mining

Provisions in a mining annex could supplement provisions elsewhere in the FTA aimed at providing greater regulatory certainty for Australian exporters and investors. The annex could establish a framework for stability, certainty, transparency, information sharing and consultation on government regulations or proposed regulatory changes which have the potential to affect mining trade or investment. Areas where promotion of regulatory certainty would be most relevant for Australian mining businesses include: minerals exploration and the granting of exploration permits; granting of mining concessions or leases; mining project approval processes; regulations dealing with foreign investment in mining; environmental management of mining operations; and minerals royalty and taxation arrangements. Article 8.6 of Chapter 8 of the Japan-Australia Economic Partnership Agreement (JAEPA) contains provisions on regulatory measures which could be considered for a mining annex with the Pacific Alliance, in particular the requirements to take the commercial impact of regulatory changes into account and to implement such measures in an orderly and equitable manner.

Regulatory best practice in mining

A mining annex could include provisions committing the parties to pursuing regulatory best practice in mining and mining services. The MCA's approach to effective regulation in Australia is guided by the Council of Australian Governments' principles of best practice regulation.¹ Introducing commitments to regulatory best practice for mining regulation in Pacific Alliance FTA parties has the potential to improve the business environment for mining investment.

Non-discriminatory investment and business environment

A mining annex could reinforce commitments in the FTA's investment chapter by reiterating principles of non-discrimination and national treatment with specific reference to their application to investments in mining. For instance, by building on the 'positive environment for ongoing trade and investment' language of bilateral MOUs with terminology such as 'positive, open, competitive and non-discriminatory environment for trade, commerce and investment between the Parties in mining and mining services.'

Institutional mechanisms

The MCA would appreciate the opportunity for further consultation about possible institutional mechanisms to be included in a mining annex. The priority for the Australian mining sector would be effective mechanisms for Australia to resolve issues affecting trade and investment flows which arise after conclusion of the FTA. An issue for consideration is whether such issues would be dealt with most effectively under the FTA's broader implementation, consultation, review and dispute resolution provisions or by establishing a mining-specific institutional mechanism (noting that the two approaches are not mutually exclusive). An example of the type of issues which may need to be addressed are changes to coal standards and testing requirements introduced by Chinese authorities after the conclusion of the China-Australia FTA. In the context of Pacific Alliance countries, issues may be more likely to arise in areas such as investment, domestic regulation of the mining industry and services market access and regulation than in trade in physical commodities.

Services market access and services regulation

There would be merit in a mining annex containing provisions focussing on mining services. These provisions could include commitments to promoting cooperation and commercial links in mining services as well as provisions establishing a process to exchange information, identify issues with

¹ Council of Australian Governments, [Best practice regulation – A guide for ministerial councils and national standard setting](#), Department of the Prime Minister and Cabinet, October 2007.

implementation of FTA commitments, identify remaining barriers and impediments, and discuss ways of further reducing barriers to trade in mining services.

Operational issues

A mining annex could include commitments by the parties to promote operational efficiency and effectiveness of mining projects and investments. This could include a process for identifying and discussing regulations or administrative processes that may have negative operational impacts – for example, the impact of immigration, customs or other administrative processes on cross-border movement of personnel, equipment or technology for use in mining operations.

Work programs

A mining annex could include provisions for the parties to agree on specific work programs to implement the FTA commitments as they apply to mining, to examine remaining impediments to trade and investment in mining and to carry out research and information exchange activities relating to mining and mining services opportunities.

Education and research cooperation and exchange

A number of the existing or expired bilateral MOUs contain provisions for encouraging exchanges in education and research. MCA members and stakeholders have indicated that they would welcome similar provisions in the Pacific Alliance FTA. Suggested models for such exchanges include CSIRO and University of Queensland partnerships with Chilean educational and research institutions.²

Environmental, social and governance (ESG) standards

Provisions could be included in a mining annex to encourage cooperation and information sharing on environmental, social and governance standards. The MCA's members are committed to sustainable and responsible practices in areas such as environmental management, workforce health and safety, social and community relations, governance and transparency. These commitments are reinforced by government regulation in the countries in which Australian mining businesses operate and by domestic and international industry self-regulation, policies and standards through initiatives such as the MCA's Enduring Value framework and the International Council on Mining and Metals' 10 Principles. Provisions in a mining annex should support such initiatives while avoiding inconsistency with existing regulatory frameworks.

Export barriers

The MCA would support inclusion of provisions on export restrictions and export licensing and administrative procedures for minerals resources in the Pacific Alliance FTA. Articles 8.4 and 8.5 of Chapter 8 of JAEPA provide examples of such provisions. The MCA suggests that in addition to referencing consideration of the impact of export restrictions on parties' resource security (as with JAEPA Article 8.4(2)(a)), such provisions could also require consideration of issues such as maintaining open and competitive domestic and international markets for minerals commodities and promoting and encouraging investment in minerals resource development.

Trade and investment promotion

The MCA suggests that a mining annex's provisions on cooperation could include specific references to cooperating on trade and investment promotion activities for mining and mining services. These could include organising and resourcing government-supported and/or industry-led mining trade and investment missions, business information seminars, conferences, trade fairs, and exchanges of commercial and investment specialists between Australia and Pacific Alliance countries. Trade and investment promotion activities which bring together the four Pacific Alliance countries and Australia would be attractive for industry participants and could improve the effectiveness of such programs in developing the economic relationship in mining and mining services.

² CSIRO: <https://www.csiro.au/en/Research/Mining-manufacturing/CSIRO-Chile>. University of Queensland: <https://global-engagement.uq.edu.au/latin-america/chile> and <https://smi.uq.edu.au/ice-chile>.

APPENDIX: MINING TRADE WITH PACIFIC ALLIANCE

The following Australian Bureau of Statistics data provide an overview of Australia's two-way trade in minerals commodities and mining-related equipment with the four Pacific Alliance countries.³

Chile

Minerals commodities exports and imports (\$'000)

Rank	Commodity	2012	2013	2014	2015	2016	2017
Top merchandise exports							
Total merchandise exports		427,096	360,619	267,444	331,705	478,240	390,034
1	321 Coal	108,826	93,196	87,203	176,824	339,489	277,992
14	685 Lead	0	0	0	0	0	2,539

Top merchandise imports							
Total merchandise imports		1,195,201	1,003,817	943,597	873,781	532,704	453,883
1	287 Other ores & concentrates	75,395	86,085	89,008	42,957	96,522	151,132
4	283 Copper ores & concentrates	0	0	0	81,267	28,035	37,315
17	671 Pig-iron	8,812	3,063	771	158	1,500	2,573

Mining related equipment exports (\$'000)

Rank	Commodity	2012	2013	2014	2015	2016	2017
Top merchandise exports							
2	874 Measuring & analysing instruments	24,178	17,687	14,786	13,290	11,698	13,888
3	728 Specialised machinery & parts	8,544	8,534	8,806	11,576	9,711	8,665
4	723 Civil engineering equipment & parts	20,729	17,073	27,845	11,910	27,053	8,494
5	772 Electrical circuits equipment	1,714	4,120	4,702	7,155	3,398	5,509
7	748 Transmission shafts & parts	6,659	6,152	5,731	1,721	2,457	3,329
8	773 Electrical distributing equipment	319	900	1,947	230	475	3,093
9	597 Prepared additives for mineral oils	6,004	7,533	8,721	6,611	3,314	3,082
11	744 Mechanical handling equip & parts	1,249	5,364	2,745	2,060	3,300	2,630
17	742 Pumps for liquids & parts	3,001	3,671	3,095	2,052	2,190	2,213

³ Australian Bureau of Statistics, [International Trade in Goods and Services](#), ABS cat. no. 5368.0, released on 5 April 2018.

Colombia

Minerals commodities exports and imports (\$'000)

Rank	Commodity	2012	2013	2014	2015	2016	2017
Top merchandise exports							
Total merchandise exports		28,551	46,772	32,721	30,610	48,845	51,531
9	684 Aluminium	66	63	5,875	6,645	21,156	1,291

Top merchandise imports							
Total merchandise imports		45,222	53,508	69,233	81,415	76,196	100,384
2	321 Coal	0	0	6,180	7,789	2,573	9,847

Mining related equipment exports (\$'000)

Rank	Commodity	2012	2013	2014	2015	2016	2017
Top merchandise exports							
2	772 Electrical circuits equipment	8,422	6,362	4,563	3,976	2,649	4,719
3	778 Electrical machinery & parts, n.e.s.	1,517	435	237	200	546	4,056
4	744 Mechanical handling equip & parts	611	1,268	522	90	654	2,451
5	593 Explosives & pyrotechnics	0	2,287	1,167	1,172	1,498	1,714
6	723 Civil engineering equipment & parts	3,251	3,885	2,166	2,164	1,536	1,590
7	728 Specialised machinery & parts	1,955	1,647	273	1,726	3,133	1,341

Mexico

Minerals commodities exports and imports (\$'000)

Rank	Commodity	2012	2013	2014	2015	2016	2017
Top merchandise exports							
Total merchandise exports		878,619	393,385	516,350	547,209	464,200	223,266
5	287 Other ores & concentrates (c)	9,383	22,282	22,443	24,814	14,419	12,799
6	684 Aluminium	63,179	3,066	2,617	70,569	29,054	11,520

Mining related equipment exports (\$'000)

Rank	Commodity	2012	2013	2014	2015	2016	2017
Top merchandise exports							
4	745 Non-electrical machinery & parts	6,920	5,418	4,688	5,233	10,006	13,277
8	874 Measuring & analysing instruments	2,582	3,743	2,709	2,486	4,771	6,535
10	728 Specialised machinery & parts	10,194	7,261	5,024	3,916	2,077	4,120
12	772 Electrical circuits equipment	7,913	10,679	13,090	7,036	6,390	3,877
14	749 Non-electric parts for machinery	1,060	2,262	3,657	2,550	1,644	2,857
17	723 Civil engineering equipment & parts	4,660	6,201	4,251	2,934	832	2,367

Peru

Minerals commodities exports and imports (\$'000)

Rank	Commodity	2012	2013	2014	2015	2016	2017
Top merchandise exports							
Total merchandise exports		140,839	107,814	82,939	80,721	61,795	66,296
2	676 Iron & steel bars & rods	0	239	77	77	34	8,515
8	684 Aluminium	129	578	1,754	2,112	4,518	2,252

Top merchandise imports							
Total merchandise imports		100,600	137,270	139,722	139,604	352,515	355,570
1	287 Other ores & concentrates	17,792	33,355	6,409	32,493	191,786	233,014
3	283 Copper ores & concentrates	10	0	0	0	31,031	14,940

Mining related equipment exports (\$'000)

Rank	Commodity	2012	2013	2014	2015	2016	2017
Top merchandise exports							
1	597 Prepared additives for mineral oils	3,466	3,001	7,335	22,366	10,326	14,743
3	874 Measuring & analysing instruments	3,513	5,507	6,777	3,146	3,679	7,093
5	723 Civil engineering equipment & parts	9,548	4,097	5,264	2,791	1,904	3,856
6	744 Mechanical handling equip & parts	11	172	1,531	751	1,440	3,766
7	728 Specialised machinery & parts	3,759	13,066	7,562	5,469	4,159	2,790
9	772 Electrical circuits equipment	1,170	1,139	660	4,906	1,267	1,356
12	745 Non-electrical machinery & parts	65	1,039	450	96	749	1,236
13	742 Pumps for liquids & parts	3,001	3,121	1,699	1,336	3,573	1,043
14	695 Hand or machine tools	274	258	312	719	449	783
15	778 Electrical machinery & parts, nes.	482	820	167	269	193	678
16	699 Manufactures of base metal, nes.	1,609	3,366	1,010	2,653	1,789	616
18	598 Miscellaneous chemical products, nes	342	96	44	89	78	559
20	735 Machine tools parts	85	6	0	46	0	453