



Australian Government

Australian Government Response to the Joint Standing Committee on Treaties report 183:

Aspects of the Peru-Australia Free Trade Agreement Revisited

April, 2019

The Government thanks the Committee for its time and energy in undertaking this second review of the Peru-Australia Free Trade Agreement (PAFTA). The Government welcomed and supported the Committee's first review of PAFTA, and its recommendation in its August 2018 report that binding treaty action be taken to implement PAFTA. As part of securing support to deliver on the Committee's recommendation and in the spirit of bipartisanship the Government agreed to the Labor Opposition request for a second JSCOT review of PAFTA.

The Government welcomes and supports the Committee's final recommendation that binding treaty action be taken in relation to the PAFTA. The Government has tabled the necessary legislation to deliver on this recommendation in Parliament, and looks forward to Parliament supporting the JSCOT recommendation.

Labor's Additional Comments

Recommendation 1:

That the Australian government consider implementing a process through which independent modelling and analysis of a proposed trade agreement is undertaken by the Productivity Commission, or equivalent organisation, and provided to the Committee alongside the National Interest Assessment (NIA) to improve assessment of the agreement, and, further, that the projected benefits be subsequently assessed and reported on at appropriate intervals.

The Government notes the recommendation.

Economic modelling of trade agreements is only one tool to assess whether an agreement is in the national interest. The Government commissions economic modelling of trade agreements on a case-by-case basis.

Statistical and methodological limitations of current economic models make it difficult to estimate the total impact of an FTA on the economy. For example, it is difficult to model accurately the impact of changes to non-tariff barriers, trade facilitation, and increased regulatory certainty. PAFTA, and other FTAs, have in-built work programs and review arrangements that, depending on outcomes, and enable Australia to gain greater benefits over time.

It is self-evident that the new market access achieved in PAFTA is of significant benefit for Australian suppliers, particularly given the barriers that, without PAFTA, apply applied for certain commodities and services. For example, PAFTA provides Australian exporters with access to Peru's highly protected market for dairy, sugar, sorghum and rice, and secures Peruvian recognition for Australian university degrees.

In some instances, Australia has achieved market access beyond what Peru has provided in trade agreements with other countries. However, the competitive advantage which Australia has achieved for some products will diminish with the delay in ratification of PAFTA as the tariff phasing rates were negotiated to keep pace with the tariff rates to competitors.

Over the course of two inquiries into PAFTA, the Joint Standing Committee on Treaties (JSCOT) received 19 submissions from industry and industry organisations outlining the benefits of the agreement to them, including for the sugar, meat, education and mining industries.

Recommendation 2:

That the Australian government negotiate with the Peruvian Government to withdraw the proposed ISDS arrangements in the PAFTA as there is no clear benefit to such mechanisms, they bring well established and serious risks, and in any case there is no justification for having a second and different ISDS mechanism between Australia and Peru.

The Government does not accept the recommendation.

The Government decides on the inclusion of investor-State dispute settlement (ISDS) in trade agreements on a case-by-case basis in light of the national interest, including the protection of Australian investors overseas.

Investment is a major feature of the Australia-Peru economic relationship. Australian companies are amongst the largest foreign investors in Peru's mining sector, with an estimated \$5 billion worth of investment.

The PAFTA investment chapter contains robust procedural and substantive safeguards in relation to ISDS. PAFTA protects the Australian Government's right to regulate in the public interest, such as in relation to protecting public health and the environment.

Australia and Peru concluded a bilateral investment treaty in 1995 which contains an ISDS mechanism. Upon entry into force of either PAFTA, or the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (TPP-11) for Peru and Australia, this existing older-style bilateral investment treaty will be replaced with a modern FTA investment chapter that includes robust procedural and substantive safeguards.

The ISDS safeguards in PAFTA are among the strongest Australia has negotiated. They include all the safeguards of TPP-11 as well as additional safeguards, including on public health. In addition, the scope of investment obligations covered by ISDS in PAFTA is narrower than TPP-11.

The recommendation to withdraw the ISDS mechanism in PAFTA would not result in removing ISDS between Australia and Peru, as the existing mechanism signed in 1995 will continue to operate until either PAFTA or the TPP-11 enter into force for Australia and Peru.

During consultations on PAFTA, a range of stakeholders supported the inclusion of ISDS, including the Minerals Council of Australia, Rio Tinto and ITS Global. The Government of Peru submitted to JSCOT that ISDS is an important mechanism for Peru to attract investment. Additionally, the Peruvian Minister for Trade and Tourism, Edgar Vasquez, has stated publicly that Peru would not renegotiate the Agreement.

Dissenting Report – Senator Sarah Hanson-Young, the Australian Greens

Recommendation 1:

That the Peru Australia Free Trade Agreement not be ratified.

Response:

The Government does not accept the recommendation.

The Government notes that taking binding treaty action in relation to PAFTA is in the national interest, and that the Committee has twice recommended this.

Recommendation 2:

That the process for signing and ratifying trade deals and treaty agreements be radically overhauled to ensure genuine transparency and community consultation. The current system is opaque, outdated and no longer serves the public interest.

Response:

The Government does not accept the recommendation.

Australia's existing treaty-making system is working well and is sufficiently flexible to accommodate the different approaches needed for the wide variety of treaties to which Australia becomes a party. The existing system allows for extensive consultations and enables briefing of stakeholders where appropriate. In the course of PAFTA negotiations, DFAT ran an open consultation process and met directly with 37 stakeholders.

The Government keeps its consultation practices in relation to trade negotiations under active review, regularly considering whether there is scope for improvement. The Government will continue to explore new options for securing input from stakeholders and disseminating information on FTAs.

Recommendation 3:

A legislated ban on current and future Governments negotiating or signing any trade agreement or treaty that includes ISDS provisions.

The Government does not accept the recommendation.

For the reasons outlined earlier, the Government decides on the inclusion of ISDS clauses in FTAs on a case-by-case basis in light of the national interest.

The PAFTA investment chapter contains robust procedural and substantive safeguards in relation to ISDS. PAFTA protects the Australian Government's right to regulate in the public interest, such as in relation to public health and the environment.