MINERALS COUNCIL OF AUSTRALIA

AUSTRALIA-HONG KONG FREE TRADE AGREEMENT

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

Open markets and reduced barriers to trade are especially important to Australia's mining and Mining Equipment and Technology Services (METS) sector. Mining is by far Australia's largest export industry – and the resources sector generates more export revenue for Australia than all other sectors put together: in the 2018-19 financial year, resources accounted for 58 per cent of Australia's total export revenue, a record high of $278 billion.

The value of foreign direct investment in Australia's resources sector has increased tenfold between 2001 ($36.8 billion) and 2018 ($365.3 billion) – 38 per cent of FDI in Australia, and the number of Australians working directly in the mining sector tripled from 79,500 to around 240,000 in that period. Deloitte Access Economics estimates that in 2015-16 that the total economic contribution of the mining and METS sector together was $236.8 billion, which supported 1.1 million jobs across Australia or 10 per cent of total employment.

Hong Kong is an important trading partner for Australia, being Australia's 12th largest trading partner in 2018 with two way trade worth $17.8 billion in 2018, accounting for 1.7 per cent of Australia's total trade. Hong Kong currently takes around 3 per cent of Australia's merchandise exports and 3.3 per cent of Australia's services exports.

Australia's exports to Hong Kong, particularly since 2012, have been dominated by gold. Total gold exports were worth approximately $7 billion in 2018, or nearly 70 per cent of total exports to Hong Kong. Along with China, Hong Kong is expected to remain the principal market for Australian gold exports over the foreseeable period. Hong Kong remains a fast growing market – with Hong Kong accounting for 31 per cent of Australia's total gold exports in 2018. In part, this is due to Hong Kong's collaboration between the Shanghai Gold Exchange and the Chinese Gold and Silver Exchange, which has increased demand for gold imports. Furthermore, Hong Kong is the world's second largest gold exporter – behind Switzerland.

There were also sizeable resources exports to Hong Kong in 2018. Australia exported iron ore and concentrates ($66.9 million), refined petroleum ($62.7 million), coal ($17.6 million) and non-ferrous waste and scrap ($11.9) million in 2018.

Hong Kong currently does not impose tariffs on Australia's minerals or metals imports. However, it has the legal right under the World Trade Organization to impose tariffs on a range of imports, including gold. The Australia-Hong Kong Free Trade Agreement (A-HKFTA) therefore benefits Australia's mining sector, particularly the gold industry, by 'locking-in' duty free access into one of Australia's most important markets for gold. This also applies to Australia's other commodity exports to Hong Kong, including iron ore, coal and petroleum.

The services trade regime created by A-HKFTA will provide enduring certainty to Australian service suppliers as they explore growth opportunities in Hong Kong's large, lucrative and competitive market. Australia exported $3 billion in services to Hong Kong in 2018. Australia is recognised as a world-leader in innovative mining technologies and services. Sixty per cent of the world's mining computer software is already developed in Australia, and there is already a strong Australian METS sector presence in Hong Kong. METS exports, a subset of this trade, are difficult to quantify, as they can be classified as construction, engineering or business services or education.

Similarly, Hong Kong is also an important intermediary for Australian companies looking to invest in China. Hong Kong's share of total FDI flowing into mainland China is around 60 per cent, much of which is international FDI then transiting Hong Kong into China.

Australia and Hong Kong's investment relationship is substantial, and dominates the economic relationship. Hong Kong was Australia's fifth largest source of foreign investment at the end of 2018, with $118.8 billion of total investment. This includes $16.4 billion of foreign direct investment (FDI).[1]

[1] Department of Foreign Affairs and Trade, Hong Kong Economic Factsheet (accessed 19 August 2019)

Australia's total investment in Hong Kong was worth $52.2 billion at the end of 2018, including $52 billion in FDI.

The proportion of Hong Kong direct investment going to Australia's mining sector is unclear but is likely to be a significant proportion of the total. Data from the Foreign Investment Review Board identifies that between 2013-14 and 2017-18, there was around $1.5 billion in investment approvals into Australian mining projects from Hong Kong investors. A number of Chinese companies are listed on the Hong Kong Stock Exchange, so actual figure is difficult to determine.

The Investment Agreement contains protections for investments in Australia and Hong Kong. The agreement protects investors by providing for a minimum standard of treatment, a requirement to pay compensation in certain circumstances where an investment is expropriated, and protection against discrimination.

Finally, in the current global environment of rising protectionism – and where the rules-based global trading system is coming under ever increasing pressure – trade and trade agreements become fundamental to constructive engagement, regional stability, development and economic growth across our region. Trade is a force for stability, and the ratification of A-HKFTA is an important step to help promote continued trade liberalisation and cooperation in the Indo-Pacific region.

BENEFITS OF TRADE AND INVESTMENT LIBERALISATION

Benefits of trade and investment liberalisation to Australia's economy

Australia has long enjoyed the benefits international trade and investment. Trade now accounts for 42 per cent of economic output and one in every five jobs in Australia rely on trade.[2] Trade liberalisation over the past 35 years has increased the income of the average Australian family household by an estimated $8,448 a year.[3]

The increased income is a consequence of reduced tariffs on imported goods and services and the contribution of trade liberalisation to economic growth. Lower tariffs give greater purchasing power, and therefore benefit the living standards of lower income households.[4]

Open markets and reduced barriers to trade are especially important to Australia's minerals and its Mining Equipment and Technology Services (METS) sector. Mining is by far Australia's largest export industry – and the resources sector generates more export revenue for Australia than all other sectors combined: in the 2018-19 financial year, resources accounted for 58 per cent of Australia's total export revenue, a record high of $278 billion.[5]

Liberalised international investment arrangements have also been critical for Australia's economic development. With the annual gap between national savings and investment averaging around 4 per cent of GDP over the last four decades, Australia has relied on foreign investment to build and expand local businesses, create jobs and boost economic growth.[6]

International investment has long funded the exploration, resources projects and technologies that make Australia a leading exporter of minerals. Importantly the money invested in Australia's mining sector stays in Australia. For example, 77 per cent of foreign investment in Australia's iron ore operations remains in Australia as payments to suppliers or taxes and royalties to governments.[7]

At the end of 2018, foreign economies had a total of $3.5 trillion invested in Australia, including $968 billion in foreign direct investment (FDI).[8] The value of foreign direct investment in Australia's resources sector has increased tenfold between 2001 ($36.8 billion) and 2018 ($365.3 billion) – 38 per cent of FDI in Australia, and the number of Australians working directly in the mining sector tripled from 79,500 to around 240,000 in that period.[9] The Reserve Bank of Australia estimates that entire resources industry will spend about $100 billion more over the next five years just to sustain those investments, not including further expansions.[10]

Increased global protectionism and importance of trade liberalisation

For these reasons, it is in Australia's national interest to support continued trade liberalisation, access to international investment and open markets, particularly in the current global environment of rising protectionism and where the rules-based global trading system is becoming under increasing pressure. The ratification of A-HKFTA is therefore an important step to help promote continued trade liberalisation and cooperation, and resist destabilisation and weakening economic growth associated with increased protectionism both in the Indo-Pacific and globally.

[2] Department of Foreign Affairs and Trade, *Composition of Trade 2016-17*, Canberra, January 2018; ABS, *Australian National Accounts: National Income, Expenditure and Product,* December 2017, Cat No 5206.0; Centre for International Economics, *Australian trade liberalisation: Analysis of the economic impacts,* Report prepared for the Department of Foreign Affairs and Trade, Canberra, October 2017, p. 8.
[3] Centre for International Economics, ibid. pp. 13-14.
[4] See World Trade Organization, About the WTO (accessed 19 August 2019)
[5] ABS Cat No 5368, *International Trade in Goods and Services*, September 2018
[6] Treasury, 'Foreign Investment into Australia', Treasury Working Paper 2016-1, January 2016, p 10.
[7] Port Jackson Partners, *Iron ore: the bigger picture,* policy paper commissioned by the Minerals Council of Australia, 7 July 2015, p. 22.
[8] Department of Foreign Affairs and Trade, Australian Industries and Foreign Direct Investment (accessed 19 August)
[9] ibid.
[10] Australian Bureau of Statistics, Private New Capital Expenditure and Expected Expenditure, Australia, Dec 2018, ABS cat. no. 5625 released 28 February2019; Keaton Jenner et al., 'Mining Investment Beyond the Boom', Reserve Bank of Australia Bulletin, March 2018, p. 10.

US actions such as pulling out of Trans-Pacific Partnership negotiations, renegotiation of the North American Free Trade Agreement and the Korea-US Free Trade Agreements, US s.232 national security investigations on steel, aluminium, uranium and auto parts and US-China trade tensions, have gained significant media coverage. And the current tensions will impact all players in the global trading system, including Australia. The International Monetary Fund has revised down global growth due to the ongoing trade tensions as well as a slowing global economy. In its latest World Economic Outlook, the IMF estimates that global growth will slow to 3.2 per cent this year, 0.1 percentage point slower than forecast in April, and down from 3.6 per cent last year and 3.8 per cent in 2017.[11]

Furthermore, these trade actions are likely to have direct impact on Australia's mineral exports, including to key trading partners in Asia. As the Reserve Bank of Australia identifies, there is a broad correlation between global economic growth and commodity prices, given their extensive use in global industrial production: so a drop in global economic activity usually results in reduced demand for commodities, and therefore lower prices.[12] This has further impacts for Australia's overall economic prosperity given resources are overwhelmingly Australia's largest exports.

Global trade and economic integration has slowed over the past decade, along with a decline in global trade (from a peak of 61 per cent of GDP in 2008 to 58 per cent in 2018).[13] Global flows of foreign direct investment also fell by 13 percent in 2018, to their lowest level since the global financial crisis.[14]

While geographical shifts in economic activity and changes in aggregate demand have contributed to the global slowdown in trade, part of this decline is due to a trend of increased global protectionism.[15] Developed and developing countries alike are already pulling back on the rapid globalisation that have dominated two decades of economic policymaking. According to the Global Trade Alert Database, discriminatory trade actions by G20 economies have risen steadily since 2012, with a surge in 2018.[16] Anti-dumping measures and import tariffs were the two most widely used instruments, together accounting for around 30 per cent of all of measures imposed.[17]

Trade agreements play an important role in boosting trade and maintaining trade liberalisation and market opening. The array of agreements to which Australia is a party extend across bilateral, multilateral and regional trade agreements and include the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) and Australia's network of more than a dozen bilateral free trade agreements. For example, in relation to the CPTPP, modelling[18] commissioned by the Minerals Council of Australia found that the agreement alone would:

- Increase Australia's national income by $15.6 billion
- Boost Australia's exports by $29.9 billion
- Generate additional direct investment into Australia of $7.8 billion and additional overseas investment by Australian businesses of $26 billion
- Lift real wages with higher wage gains for lower-skilled workers.

[11] International Monetary Fund, World Economic Outlook, July 2019: Still Sluggish Global Growth, July 2019 (accessed 19 August 2019).
[12] See Michelle Cunningham and Emma Smith, Exploring the Supply and Demand Drivers of Commodity Prices, Bulletin – June 2019, Reserve Bank of Australia, (accessed 19 August 2019).
[13] See Vanessa Gunnella and Lucia Quaglietti, The economic implications of rising protectionism: a euro area and global perspective, European Central Bank, ECB Economic Bulletin, Issue 3/2019, 25 April 2019 (accessed 19 August 2019)
[14] United Nations Conference on Trade and Development (UNCTAD), World Investment Report 2019, 12 June 2019, p.3
[15] Vanessa Gunnella and Lucia Quagliett, op cit.
[16] Global Trade Alert Database (accessed 19 August 2019).
[17] Vanessa Gunnella and Lucia Quagliett, op cit.
[18] Peter A. Pertri, Michael G. Plummer, *Australia will Gain from Continued Asia-Pacific Trade Integration* commissioned by the Minerals Council of Australia, 5 September 2018, pp.10-14

The CPTPP's indirect regional economic benefits is expected to immediately lift Hong Kong's income and exports by $1 billion, which will increase to $8 billion by 2030.[19]

These trade liberalisation reforms including under the CPTPP and A-HKFTA directly benefit Australia's minerals industry – as well as the agriculture and processing sectors – as it 'further deepens Australia's relationship with Asia' and 'leads to higher net exports of primary goods and services and early processed goods'.[20]

These gains under the CPTPP would be further enhanced if more economies in the Indo-Pacific – including Indonesia, South Korea, the Philippines, Taiwan and Thailand – joined the CPTPP in the future so that the agreement becomes 'CPTPP-16'. Under this scenario, the income gains would be $22.1 billion for Australia and $584 billion globally.[21]

The same modelling found Australia's other regional free trade agreements, such as the A-HKFTA, would further enhance the CPTPP's trade and income benefits to Australia, as it would

> increase demand for inputs from Australia into production chains [including in] Vietnam and other ASEAN countries.[22]

and boost regional economic integration, as the two agreements work hand in glove to

> make it easier to meet their rules of origin and the costs of compliance can be spread over more trade.[23]

Hong Kong's economy has consistently maintained a growth rate of 3-3.5 per cent over the past decade, largely due to its significant inwards and outwards investment, private consumption and access to China.[24] Trade and logistics – including its role in accessing China – and finance are fundamental to Hong Kong's economy, contributing 22 per cent and 19 per cent respectively.[25]

Hong Kong's stock exchange is the world's seventh largest exchange. Hong Kong declared in 2009 its ambition to build on its business infrastructure and proximity to China, the world's largest producer and consumer of many core commodities, and become one of the key listing venues for international resource companies.[26] Around 150 metals, mining and energy companies are listed on the HKSE, including a number of major international and Chinese mining companies with their primary listings on that exchange. This includes United Company Rusal (world's largest aluminium producer), China Coal Energy Company Limited, China Shenhua Energy Company Limited, Zijin Mining Group Company Limited, China Northern Rare Earth Group High-Tech Co. Ltd, Shaanxi Coal Industry Co., Ltd and Jiangxi Copper Co. Ltd.[27] Vale, Glencore and Kazakhmys – and Australian company Minerals and Metals Group (MMG) Ltd – have their secondary listings on the HKSE.[28]

A-HKFTA will boost the value of Australia's economic relationship – including for Australia's minerals industry – with one of the most important economic gateways to China and the wider Indo-Pacific. This is reaffirmed in the Government's 2017 Foreign Policy White Paper which states that the finalisation of the FTA with Hong Kong will 'enhance access for Australia's exports to a major financial centre and a gateway to the larger market in mainland China'.[29]

Similarly, Hong Kong is also an important intermediary for Australian companies looking to invest in China. Hong Kong's share of total FDI flowing into mainland China is around 60 per cent, much of which is international FDI transiting Hong Kong to China. This applies in particular for Australia's METS sector. In its 2015 Australian Equipment, Technology and Services survey, 16 per cent

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19 Peter A. Pertri, Michael G. Plummer, *op cit*, pp.20-22
20 Peter A. Pertri, Michael G. Plummer, *Australia will Gain from Continued Asia-Pacific Trade Integration* commissioned by the Minerals Council of Australia, 5 September 2018, pp.10-14
21 ibid
22 ibid
23 ibid
24 The International Monetary Fund, People's Republic of China-Hong Kong Special Administrative Region : 2018 Article IV Consultation-Press Release and Staff Report, 24 January 2019 (accessed 21 August 2019)
25 The Economist, Hong Kong remains crucially important to mainland China, 8 August (accessed 21 August 2019)
26 PwC, Executing a successful listing Markets for miners, February 2012 (accessed 21 August 2019)
27 Charltons Law, Listing mineral companies in Hong Kong (accessed 21 August 2019)
28 ibid
29 Australian Government, 2017 Foreign Policy White Paper, p.41

Australia's METS companies surveyed export to China – with an additional 10 per cent saying that they were planning to export to China in the next two years.[30] Major Australian METS companies are basing themselves in Hong Kong to work with Chinese and international resource companies undertaking exploration or production in China.[31]

Many Chinese companies access finance intermediated through Hong Kong, much of which is then used to support their international investments. Most Chinese foreign direct investment flows through Hong Kong. Chinese stock domiciled in Hong Kong has roughly doubled in the last decade, to US$2 trillion. Hong Kong is also a means of giving Chinese companies access to international financial and trade markets, including access to investment in Australia.

Although the protests that have affected Hong Kong since the beginning of June have had impacts on Hong Kong's economy, on tourism and financial institutions, the impact is expected to be short lived as temporarily suspended operations cone back online. Hong Kong will remain an important source of investment into Australia in the medium and long term.

In addition to these direct and immediate benefits, A-HKTA can deliver broader and longer-term strategic benefits for Australia and its economic, political and cultural links with China and the wider Indo-Pacific. In terms of the evolving Asia-Pacific trade architecture, A-HKTA will be a building block, along with the CPTPP and a possible Regional Comprehensive Economic Partnership, towards the long-term goal of a Free Trade Area of the Asia-Pacific (FTAAP).

[30] Austmine, New Realities, Bigger Horizons: Australian Mining Equipment, Technology and Services (METS) National Survey, June 2015
[31] Austmine, Plenty of Asia Upside as Commodity Downturn Eases, 4 April 2018 (accessed 21 August 2019)

TRADE OPPORTUNITIES

Australia-Hong Kong trade relationship

Hong Kong is an important trading partner for Australia. It was Australia's 12th largest trading partner in 2018 with two way trade worth $17.8 billion in 2018, or 1.7 per cent of Australia's total trade.[32] This is despite a drop in two-way trade of 5.3 per cent from 2017. Hong Kong currently takes around 3 per cent of Australia's merchandise exports and 3.3 per cent of Australia's services exports.[33]

The two-way goods trade was dominated by Australia's exports of gold (examined in the next section).

Table 1: Australia's trade with Hong Kong, 2018

	Merchandise (A$ billion)	Services (A$ billion)	Total goods and services (A$ billion)
Exports from Australia	10.4	3.0	13.4
Imports from Hong Kong	1.0	3.4	4.4
Two-way trade	11.4	6.4	17.8

Source: Department of Foreign Affairs and Trade, Hong Kong economic factsheet 2018.

Role of mining in trade with Hong Kong

As outlined in Table 2, Australia's exports to Hong Kong, particularly since 2012, have been dominated by gold. Total gold exports were worth around $7 billion in 2018, or nearly 70 per cent of total exports to Hong Kong. Hong Kong – along with China – is expected to remain the principal markets for Australian gold exports over the foreseeable period.

Table 2: Australia's gold exports to Hong Kong (2012-2018) $billion

Year	Value
2012	5.03
2013	8.20
2014	7.23
2015	6.04
2016	6.61
2017	8.72
2018	6.99

Source: Resources and Energy Quarterly, June 2019

While there was a 29 per cent decrease in the volume of gold exports to Hong Kong from 2017 to 2018, this was offset by the increase in global gold prices in the same period.[34] Nonetheless, despite this drop, Hong Kong remains a fast growing market – with Hong Kong accounting for 31 per cent of Australia's total gold exports in 2018 (with China accounting for 37 per cent) – in part due to Hong Kong's recent collaboration between the Shanghai Gold Exchange and the Chinese Gold and Silver

[32] Department of Foreign Affairs and Trade, *Australia's trade in goods and services: by top 15 partners* (accessed 21 August 2019)
[33] Department of Foreign Affairs and Trade, *Hong Kong – Special Administrative Region of the People's Republic of China Economic Factsheet* (accessed 21 August 2019)
[34] Department of Industry, Innovation and Science, Resources and Energy Quarterly, June 2019, p.82 (accessed 21 August 2019)

Exchange, which has increased demand for gold imports. Furthermore, Hong Kong is the world's second largest gold exporter – behind Switzerland.[35]

There were also sizeable resources exports to Hong Kong in 2018. Australia exported iron ore and concentrates ($66.9 million), refined petroleum ($62.7 million), coal ($17.6 million) and non-ferrous waste and scrap ($11.9) million in 2018.[36]

Removal of mining-related tariffs under A-HKFTA

Hong Kong currently does not impose tariffs on Australia's minerals or metals imports. However, it has the legal right under the World Trade Organization to impose tariffs on a range of imports, including gold. A-HKFTA therefore benefits Australia's mining sector, particularly the gold industry, by 'locking-in' duty free access into one of Australia's most important markets for gold.[37] This also applies to Australia's other commodity exports to Hong Kong, including iron ore, coal and petroleum.

Opportunities for Australia's METS sector

The importance of mining in Australia's economy means that thousands of METS businesses have emerged to support and supply the mining industry. Australia is recognised as a world-leader in innovative mining technologies and services. Deloitte Access Economics estimates that in 2015-16 the total economic contribution of the mining and METS sector together was $236.8 billion, which supported 1.1 million jobs across Australia or 10 per cent of total employment.[38] The mining and METS sector account for more than 15 per cent of Australia's GDP.

Austmine estimates that the METS sector generates around $90 billion of revenue each year. Exports are a key component of the METS industry, with over half of all businesses operating in the METS sector exporting products, services or technology to mines around the world.

Mining services trade with Hong Kong

The services trade regime created by A-HKFTA will provide enduring certainty to Australian service suppliers as they explore growth opportunities in Hong Kong's large, lucrative and competitive market. Similarly, Hong Kong is also an important intermediary for Australian companies looking to invest in China. Hong Kong's share of total FDI flowing into mainland China is around 60 per cent, much of which is international FDI then transiting Hong Kong into China.

This applies in particular for Australia's METS sector. In its 2015 Australian Equipment, Technology and Services survey, 16 per cent Australia's METS companies surveyed export to China – with an additional 10 per cent saying that they were planning to export to China in the next two years.[39] As a consequence, Australian major METS companies are based in Hong Kong to work with Chinese and international resource companies undertaking exploration or production in China.[40]

Australia is recognised as a world-leader in innovative mining technologies and services, and there is already a strong Australian METS sector presence in Hong Kong. For example, 60 per cent of the world's mining computer software is already developed in Australia.[41]

Australia exported $3 billion of services to Hong Kong in 2018. However, METS exports are difficult to quantify, as they can be classified as construction, engineering or business services or education.

Firms doing business in Hong Kong including MCA members such as Thiess (part of the CIMIC Group, Downer EDI and Orica which exports explosives and blasting services – although these

[35] Department of Industry, Innovation and Science, *op cit.*, p.118
[36] Department of Foreign Affairs and Trade, *Australia's trade in goods and services 2018*, Last updated May 2019 using ABS catalogue 5368.0 and 5368.0.55.003 (March 2019 data).
[37] Department of Foreign Affairs and Trade, Australia Hong Kong Free Trade Agreement, Outcomes: Goods (accessed 21 August)
[38] Deloitte Access Economic, Mining and METS Engines of economic growth and prosperity for Australians, prepared for the Minerals Council of Australia, 29 March 2017
[39] Austmine, New Realities, Bigger Horizons: Australian Mining Equipment, Technology and Services (METS) National Survey, June 2015
[40] Austmine, Plenty of Asia Upside as Commodity Downturn Eases, 4 April 2018 (accessed 21 August 2019)
[41] Austrade, Mining Software and Specialised Technologies, September 2013 (accessed August 2019)

operations are also related to construction services. Australian METS companies include RPM Global (geological and mine planning services, as well as geotechnical analysis and resource estimation). RPM Global supported China Molybdenum's (CMOC) purchase of two mining assets from Anglo American Plc and Freeport-McMoran Inc totalling approximately USD$4.1 billion.[41]

There are also a number of niche firms that provide highly specialised services such as fuel management, environmental management, mines communications and mining software. Table 2 shows some business services that could be provided by METS firms. However, this data represents transactions between Australian residents and non-residents and fails to capture services delivered by commercial presence (as when a contract miner, or a METS firm specialising in environmental solutions for mines, supplies mining services through a locally incorporated enterprise).

Table 2: Selected Australian Services Exports to Hong Kong ($million)

	2015-16	2016-17	2017-18
Maintenance and repair services, n.i.e.	3	2	3
Construction services	0	-	-
Financial services	191	226	280
Intellectual property charges, n.i.e.	4	-	-
Telecom, computer and information services	46	46	77

Source. Department of Foreign Affairs and Trade: Trade in Services Australia, 2017-18

Outcomes in services trade

A-HKFTA will deliver some useful outcomes on services for Australian services exports, which has indirect and direct benefits for Australian METS suppliers. These are largely contained in provisions of the principal services chapter include general commitments:

- Article 7.3: market access (ruling out limits, such as on the number of service providers or the value of services transactions)
- Article 7.4: national treatment (that is no less favourable treatment than to its own service suppliers in like circumstances)
- Article 7.5: local presence (ruling out a requirement to establish a representative office as a condition for supplying a service by a method other than commercial presence).
- Article 7.6: most-favoured-nation treatment (no less favourable treatment than accorded to any non-party in like circumstances)
- Article 7.9: recognition (either party can recognise education and experience requirements – including licences or certification – for service suppliers, including in professional services such as legal, accounting, engineering services). [42]

Movement of natural persons

Australian METS' biggest exports are service capabilities, so being able to easily bring people in and out of countries quickly and efficiently will save time and money. The MCA welcomes some improvements to the movement of business persons, which will benefit from enhanced lengths of stay and certainty of approvals to work in Hong Kong. This includes:

Movement of natural persons – approval categories

[42] Department of Foreign Affairs and Trade, Australia-Hong Kong Free Trade Agreement, Chapter 7: Cross-border services (accessed 21 August 2019)

Categories	Commitment
Business Visitors	90 days
Intra-corporate transferees (For sectors listed in Annex 10-A)	One year plus extension of up to five years
Installers and servicers (For sectors listed in Annex 10-A)	Three months in any 12-month period
Spouses and dependants (Intra-Corporate Transferees granted entry and temporary stay for a period longer than 12 months)	Linked to the length of stay of the primary applicant (sponsor)

Source: Department of Foreign Affairs and Trade: Australia-Hong Kong Free Trade Agreement: Outcomes in Services.

E-Commerce Provisions

Australia is recognised as a world-leader in innovative mining technologies and services. For example, 60 per cent of the world's mining computer software is developed in Australia.[43] With future minerals operations increasingly using automation, robotics, artificial intelligence and data analytics – the MCA welcomes the A-HKFTA's commitments to preserve valuable intellectual property, including to:

- Article 11.7: movement of information (each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is in connection with the conduct of the business of a covered person)
- Article 11.8: local of computing facilities (neither Party shall require a covered person to use or locate computing facilities in the Party's Area as a condition for conducting business in that Area)
- Article 11.9: protection of personal information (maintain a legal framework that ensure the protection of personal information for users of electronic commerce)
- Article 11.12: treatment of source code (as a condition for the importation, distribution, sale or use of software, or of products containing such software, require the transfer of or access to the source code of such software owned by a person of the other Party).[44]

[43] Austrade, Mining Software and Specialised Technologies, September 2013 (accessed August 2019)
[44] Department of Foreign Affairs and Trade, Australia-Hong Kong Free Trade Agreement, Chapter 11: Electronic Commerce (accessed 21 August 2019)

INVESTMENT OPPORTUNITIES

Australia-Hong Kong Investment Relationship

At the end of 2018, foreign economies had a total of $3.5 trillion invested in Australia, including $968 billion of FDI. Australia, on the other hand, at the end of 2018, Australia had invested $2.5 trillion overseas, including $461 billion in FDI.

Australia and Hong Kong's investment relationship is substantial, and dominates the economic relationship. Hong Kong was Australia's fifth largest source of foreign investment at the end of 2018, with $118.8 billion of total investment. This includes $16.4 billion of foreign direct investment.[45] Australia's total investment in Hong Kong was worth $52.2 billion at the end of 2018, including $52 billion in FDI.[46]

Hong Kong investment in Australia's mining sector

The MCA has consistently called for a liberal and orderly international investment regime in Australia, with consistent application of rules and thresholds, in order to instil public and investor confidence. In that regard the MCA welcomes the raising of the screening threshold for private investment in non-sensitive sectors from $261 million to $1.13 billion for consideration by the Foreign Investment Review Board, as an important step to encouraging and streamlining international investment in Australia.[47]

The proportion of Hong Kong direct investment going to Australia's mining sector is unclear but is likely to be a significant proportion of total investment. Data from the Foreign Investment Review Board identifies that the following number of approvals for its 'mineral exploration and development' category of investment from Hong Kong:

- 2013-14: 692 total approvals from Hong Kong (all categories), with $528 million in mineral exploration and development
- 2014-15: 1,292 total approvals from Hong Kong (all categories), with $91 million in mineral exploration and development
- 2015-16: 120 total approvals from Hong Kong (all categories), with $82 million in mineral exploration and development
- 2016-17: 649 total approvals from Hong Kong (all categories), with $509 million in mineral exploration and development
- 2017-18: 610 total approvals from Hong Kong (all categories), with $256.7 million in minerals exploration and development.

Notable investments in Australia's mining sector from Hong Kong-based investors include:

- CITIC Pacific Mining, which is a wholly-owned subsidiary of Hong Kong listed company CITIC Limited, with its operation of the Sino Iron Project at Cape Preston, Western Australia[48]
- Golden Gateway, a joint venture between China's fourth biggest gold miner, Zhaojin Mining (also listed on HKSE), and Perth-based advisory firm PCF Capital Group, as a means to acquire gold assets in Australia.

As mentioned previously, there are a number of Chinese mining companies that are listed on the Hong Kong Stock Exchange, which makes identifying the original source of investment in Australia difficult. For example, major Chinese mining company Yancoal – which has significant coal assets in Australia through Yancoal Australia Ltd - acquired Rio Tinto's Coal & Allied Hunter Valley thermal coal business for $4 billion in 2017. While Yancoal's major shareholder is Yanzhou Coal Ltd – owing to

[45] Department of Foreign Affairs and Trade, Hong Kong Economic Factsheet (accessed 19 August 2019)
[46] ibid
[47] Department of Foreign Affairs and Trade, Australia-Hong Kong Free Trade Agreement, Outcomes: Investment (accessed 21 August 2019)
[48] CITIC Pacific Mining, About CPM (accessed 21 August 2019)

Yancoal's dual listing on the Australia Securities Exchange and Hong Kong Stock Exchange determining exact ownership is difficult.[49]

Australia's uncertain investment environment

Despite the importance of Hong Kong as an investor in Australia, uncertainties in Australia's foreign investment approvals process in relation to a number of recent Hong Kong investment proposals can act as deterrent in future investments in Australia, including in the minerals sector. Uncertainty in foreign investment approvals could have broader implications and raise questions about Australia's openness to foreign investment more generally, potentially dissuading inbound investment to other sectors such as mining and METS projects.

For example, a number of recent decisions from the Foreign Investment Review Board – and the Australian Government – reportedly on national security grounds - were widely reported in Hong Kong. Moreover, these rejections occurred late in the negotiation process, with significant time and capital already invested in the acquisition proposals. These included the rejection of Hong Kong investment proposals in the energy sector and the gas infrastructure sectors, including:

- Cheung Kong Infrastructure's bid for a majority stake in NSW's energy company Ausgrid
- CKI's bid for pipeline company APA (despite being approved by the Australian Competition and Consumer Commission if CKI divested its existing stake in WA's gas pipeline).[50]

Table 5: Comparison of commitments between A-HKFTA and Australia-Hong Kong BIT

Issue	Safeguards	Investment Agreement[51]	BIT[52]
Non-Discriminatory Treatment with party's own investors (national treatment)	Each Party shall accord to investors of the other Party treatment no less favourable than it accords its own investors in relation to investments in their territories.	Article 4 (1-3)	Article 3 (1)
Non-Discriminatory Treatment with party's own investors (most-favoured nation treatment)	Each Party shall accord to investors of the other Party treatment no less favourable than it accords other countries in relation to investment in their territories.	Article 5 (1-3)	Article 3 (2)
Minimum standard of treatment	Guarantee investors and their investments are accorded a minimum standard of treatment in accordance with applicable customary international law, including an obligation to provide due process in court proceedings and provide "fair and equitable treatment" and 'full protection and security'.	Article 2 (1-3)	Article 2(2)
Treatment in Case of Armed Conflict or Civil Strife	In the event of armed conflict or civil strife, each Party shall accord to investors of the other Party, treatment no less favourable than that it accords, in like circumstances, to its investors.	Article 9 (1-2)	Article 5 (1)

[49] Australian Mining News, Yancoal makes bid for Hong Kong listing with public offer, 26 November 2018 (accessed 21 August 2019)
[50] See Glenda Korporaal, China losing appetite for large investments in Australia, The Australian, 21 August 2019 (accessed 21 August 2019)
[51] Department of Foreign Affairs and Trade, Australia-Hong Kong Free Trade Agreement, Outcomes: Investment (accessed 21 August 2019)
[52] Department of Foreign Affairs and Trade, Investment Agreement Between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China (accessed 21 August 2019)

Expropriation and nationalisation	The right to compensation for certain types of expropriation and protection against discrimination – with payment to be made without delay and equivalent to fair market value of the investment immediately before the expropriation took place (but exempts licence in relation to IP rights). Also allows payment of any accrued interest	Article 10 (1-5)	Article 6 (1-2)
Transfers	Require that investment-related capital transfers should be allowed to occur freely and without delay (subject to a country's legal requirements).	Article 11 (1-3)	Article 8 (1-3)
Subrogation	If a Party makes a payment to an investor of that party under a guarantee, insurance or other form of identity – then the other Party who territory covered the investment must recognise the subrogation.	Article 12	Article 12 (1-3)

New investment commitments

The MCA welcomes commitments in A-HKFTA outlined in a new investment agreement[53] – and summarised in Table 5 above that provide greater certainty for both Australian and Hong Kong investors.[54] These are improvements to the existing bilateral investment treaty – *1993 Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments* – which will be repealed and replaced by a new investment agreement and reduces sovereign and political risk for investors from both Australian and Hong Kong.

The new Investment Agreement contains protections for investments in Australia and Hong Kong. The agreement protects investors by providing for a minimum standard of treatment, a requirement to pay compensation in certain circumstances where an investment is expropriated, and protection against discrimination. The MCA supports commitments under the agreement regarding national treatment (Article 4) which ensures

> Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the expansion, management, conduct, operation, and sale or other disposition of investments in its Area.[55]

[53] Department of Foreign Affairs and Trade, Investment Agreement Between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China (accessed 21 August 2019)
[54] ibid
[55] ibid

INVESTMENT DISPUTE SETTLEMENT PROVIDES INVESTMENT CERTAINTY TO AUSTRALIA AND HONG KONG

A-HKFTA's Investment Agreement Text contains investment dispute settlement provisions (Section B: Settlement of Disputes between the Parties). These provisions will allow investors to seek mediation and arbitration where they claim that a government has breached the investment commitments it has made under the agreement. The dispute settlement mechanism provides greater comfort and investor certainty for both Hong Kong and Australian investors alike by reducing sovereign and political risk. This is particularly important for sectors such as mining where large (often in the billions) capital investments are sunk or at the risk of stranding.

Anti-trade activists frequently argue that investment dispute settlement provisions allow foreign investors to challenge government policies in areas such as the environment or healthcare. However, these provisions do not create a wide-ranging ability for foreign investors to challenge any government policies. In fact, the dispute settlement provisions provide greater certainty to both Australia and Hong Kong.

However, arguments mounted by anti-trade groups over investment dispute settlement – including investor state dispute settlement (ISDS) – often use examples from investment disputes under older investment dispute settlement provisions in agreements to which Australia is not a party, such as the North American Free Trade Agreement (NAFTA) negotiated in the early 1990s. Compared to these older provisions, the modern ISDS provisions of agreements like A-HKFTA – as well as the CPTPP and the updated Singapore-Australia Free Trade Agreement include extensive safeguards and protections for public policies.

The Committee can be satisfied that the investment dispute settlement provisions are state-of-the-art in terms of safeguards to protect public policy, to ensure investment disputes are resolved in a transparent, accountable and fair manner and to address community concerns over investment dispute settlement.

In evaluating arguments against ISDS, the Committee should also consider Australia's actual experience with ISDS. Australia is already covered by ISDS provisions in investment treaties which date back to 1988[56] (Australia is a party to a BIT with each of Argentina, China, Czech Republic, Egypt, Hong Kong, Hungary, Indonesia, Laos, Lithuania, Pakistan, PNG, Peru, Philippines, Poland, Romania, Sri Lanka, Turkey and Uruguay).[57]

Australia has already entered into a number of investment treaties with some of its key trading partners through recently completed FTAs. The CPTPP (entered into force in December 2018), Korea-Australia FTA (entered into force December 2014), China-Australia FTA (entered into force in December 2015) – as well as FTAs with Thailand, Chile, Singapore and ASEAN – all contain ISDS mechanisms.

In the 30 years Australia has been subject to these provisions, no Australian law, regulation or public policy has had to be changed due to ISDS. In fact, in all that time under all those agreements, there have only been two ISDS claims against Australia. The first of these claims was the Phillip Morris challenge to Australia's tobacco plain packaging legislation under the 1993 Australia-Hong Kong Investment Promotion and Protection Agreement. This claim was unsuccessful and legal costs were awarded against Phillip Morris[58] (although Honduras and the Dominican Republic since appealed to the WTO Appellate Body in August 2018[59]).

[56] Senate Foreign Affairs, Defence and Trade Legislation Committee, Additional Estimates 2015, 26 February 2015, Answers to Questions on Notice/In Writing, Question No 131
[57] Department of Foreign Affairs and Trade, Australia's bilateral investment treaties (accessed 19 August 2019)
[58] Permanent Court of Arbitration, *Phillip Morris Asia Ltd v Commonwealth of Australia*, Final Award Regarding Costs, 8 March 2017.
[59] Department of Foreign Affairs and Trade, WTO Disputes - Tobacco Plain Packaging, updated October 2018 (accessed 19 August 2019)

Therefore, with the termination of the old Bilateral Investment Treaty (BIT) – and replaced with the updated investment agreement – will further ensure that neither party will be able to initiate dispute settlement procedures on the basis of a party's own decisions in relation to health measures. In fact, the updated investment agreement specifically excludes claims against a party's control measures on tobacco.[60]

The second claim was initiated in 2017 by APR Energy and a number of other US investors. This case involved a commercial dispute (arising out of the ANZ Bank's seizure of the claimants' power turbines, which were leased to Forge Group and recovered by ANZ as property for payment of Forge's debt upon its insolvency) rather than Australian policies or regulations. APR Energy dropped its claim against the Australian Government in April 2019.[61]

On the other hand, ISDS provisions also protect Australian investments internationally. And for the minerals industry, the capital commitments can run into billions of dollars. Since 2010, at least three disputes in the public domain have been initiated by Australian claimants under a BIT: one against each India, Pakistan and Indonesia.[62] In these cases, arbitral tribunals found in favour of White Industries against India and Tethyan Copper against Pakistan, but in the case of Churchill Mining and Planet Mining, the International Centre for Settlement of Investment Disputes found in favour of Indonesia.[63]

As mentioned above, Australia already has ISDS provisions in the existing Australia-Hong Kong Bilateral Investment Treaty – *1993 Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments*[64] – which entered into force in 1993. In fact, as Table 6 outlines below, A-HKFTA's investment rules provide greater certainty to both Australia and Hong Kong compared to an investment treaty that is 26 years old.

However A-HKFTA's investment chapter strengthens safeguards, which are not specifically outlined in the BIT. A-HKFTA contains significant and procedural safeguards that protect both Australian and Hong Kong governments from any challenges to public policies regarding health (including Medicare and Pharmaceutical Benefits Scheme), environmental protection, social welfare, education, social services, welfare policy, government service delivery, cultural and heritage protection and conservation policies and the decisions of the Foreign Investment Review Board.[65]

The procedural safeguards ensure that any claims, disputes or arbitrations under A-HKFTA's investment dispute provisions will be conducted in an open and transparent manner and will be subject to clear procedural rules and legal standards.

Investment dispute provisions provide investment certainty for international investments. This makes Australia a more attractive destination for investors, and provides greater certainty for investment overseas, which in the case of the minerals sector can be significant. It is important to ensure that foreign investors are broadly treated the same as domestic investors, subject to specific exceptions and carve outs. From the MCA's perspective, this is crucial in ensuring greater certainty and stability for Australian investors abroad. This will help reduce the risk of protectionist investment measures, such as discrimination and expropriation and ensuring a minimum standard of treatment.

In that regard, investment dispute provisions including under A-HKFTA are important, as they provide a mechanism for disputing parties to seek relief or compensation, particularly in relation to

[60] Department of Foreign Affairs and Trade, Investment Agreement Between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China (accessed 21 August 2019)
[61] The Adelaide Advertiser, APR Energy fails to sue Australian Government, taxpayers left to foot the bill, 19 April 2019 (accessed 19 August 2019)
[62] White Industries Australia Limited v. Republic of India, UNCITRAL; Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan, ICSID Case No. ARB/12/1; Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia, ICSID Case No. ARB/12/14 and 12/40;
[63] The Times, Indonesia row topples Churchill Mining, 31 March 2019 (accessed 19 August 2019)
[64] Australian Treaty Series 1993 No 30, Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments (accessed 21 August 2019)
[65] Department of Foreign Affairs and Trade, Australia-Hong Kong Free Trade Agreement, Outcomes: Investment (accessed 21 August 2019)

expropriation of assets and investments. This provides greater investment certainty and reduces sovereign risk. Without investment dispute provisions, investors would have to rely on state-to-state consultations to resolve any disputes about breaches of the investment commitments.

Disputes under investment dispute provisions must involve breaches of the substantive investment commitments made under the relevant agreement such as the commitments not to expropriate property without adequate compensation or not to discriminate against foreign investors compared to domestic businesses. Furthermore, as noted above, Australia has listed an extensive series of non-conforming measures or exceptions covering a wide range of existing public polices, legislation and regulations. Investment dispute provisions cannot be used to challenge such non-conforming measures.

Table 6: Comparison of safeguards between A-HKFTA and Australia-Hong Kong BIT

Issue	Safeguards	A-HKFTA [66]	BIT [67]
Consultations	Either Party may request consultations with respect to any dispute arising under this Agreement. And in the event of an investment dispute, disputing parties will as far as possible resolve the dispute through consultation. The Responding Party shall accord due consideration to a request for consultations	Article 23 (1-3)	Article 9
Submission of a claim to arbitration	If the dispute cannot be resolved within six months, the disputing Party may seek arbitration	Article 24 (1-6)	Article 10
Selection of Arbitrators	The tribunal shall comprise one arbitrator appointed by each of the disputing parties and a third presiding arbitrator agreed to by both parties. A-HKFTA: If a tribunal has not been constituted within 75 days after the date that a claim is submitted to arbitration under this Section, the Secretary-General, on request of a disputing party, shall appoint the arbitrator or arbitrators not yet appointed. BIT: each Party shall appoint one arbitrator. A national of a State which can be regarded as neutral in relation to the dispute, who shall act as President of the tribunal, shall be appointed as the third arbitrator by agreement between the two arbitrators	Article 28 (1-2) Article 28 (3)	Article 11 (2)
Arbitrator independence	An ISDS mechanism which provides investors with access to an independent arbitral tribunal to resolve disputes for breaches of these investment rules	Article 28 (4)	X
Awards	When a tribunal makes a final award, the tribunal may award separately or in combination only monetary damages (plus interest) and restitution of property	Article 35	X
Costs	A-HKFTA: A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceeding, and shall determine how and by whom those costs and attorney's fees shall be paid BIT: Each Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally	Article 35 (3)	Article II (8)

[66] Department of Foreign Affairs and Trade, Investment Agreement Between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China (accessed 21 August 2019)
[67] Australian Treaty Series 1993 No 30, Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments (accessed 21 August 2019)

Transparency of proceedings	In relation to arbitration, requirement that hearings are open to the public, and documents filed in arbitration, as well as the tribunal's decision, will be made public (except commercially sensitive information).	Article 30 (1-6)	X
Merit	The tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties with a reasonable opportunity to comment	Article 29 (6)	X
Time limit	In relation to arbitration, time limits (of 3 ½ years) on bringing a claim	Article 27 (1)	X
Public services – health and environment	No can claim be made that is 'designed and implemented to protect or promote public health' – which includes the Pharmaceutical Benefits Scheme, Medicare Benefits Scheme, Therapeutic Goods Administration and Office of the Gene Technology Regulator	Section C (footnote 13)	X
Tobacco products	No claim may be brought under this Section in respect of a Party's control measures of tobacco products (including products made or derived from tobacco), cigarettes, imitation smoking products, and other smoking products	Section C (footnote 14)	X
Social services and education	Australia and Hong Kong have an inherent right to regulate on social services established or maintained for a public purpose, such as social welfare, public education, health, transport, housing and public utilities	Annex I – Schedule of Australia	X
Communication services, cultural and sporting services	Limitations on claims with the creative arts, cultural heritage and other cultural industries, including audiovisual services, entertainment services and libraries, archives, museums and other cultural services	Annex I – Schedule of Australia	X
Indigenous people or organisations	Limitations on claims with measure according preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation in relation to acquisition, establishment or operation of any commercial or industrial undertaking in the service sector	Annex I– Schedule of Australia	X
FIRB screening	Limitations on claims against Australia's foreign investment framework, including decisions of the Foreign Investment Review Board.	Annex I– Schedule of Australia	X