



**Mining Association of Canada Submission to the Department of Foreign Affairs, Trade and Development Extractives Review  
Friday, November 15, 2013**

**Introduction**

The Mining Association of Canada (MAC) is the national voice of the mining industry in Canada, representing 38 member companies in iron ore, gold, diamonds, oil sands, metallurgical coal, base metals, uranium and other metal and non-metal products. MAC represents 45% of all base metal, precious metal, coal, diamonds, uranium and oil sands mines in Canada. Members are engaged in exploration, mining, smelting, semi-fabrication and supply.

The Canadian mining industry appreciates the Government of Canada seeking our views on how to best advance the interests and opportunities of the Canadian extractive industry abroad. MAC and its members had the opportunity to participate in the roundtable component of the consultation and we are pleased to share our perspective on the government's current trade-related policies and programs in this submission.

**Canadian Mining Industry's International Presence**

In 2012, Canadian mining companies accounted for approximately 37% of global exploration budgets, the largest share of all nations. More than 800 Canadian companies were actively exploring in over 100 countries, accounting for the largest share of exploration spending in the United States, Central and South America, Europe, and Africa. In many cases, Canadian mining investment is the largest foreign investment in the host country. In 2012, Canadian direct investment abroad from the metallic minerals and metals products sector accounted for 9.5% of Canada's total, or \$62.7 billion. Further, mining contributes to Canada's largest area of foreign investment--finance and insurance.

From an export perspective, mining accounted for 20.4% (\$92.6 billion) of Canada's total export value in 2012. From a finance perspective, of the \$10.3 billion in mining equity raised on the TSX and TSX-V in 2012, \$6.6 billion was for projects in Latin America, Africa, Asia and Australia.

These investments generate significant economic activities both domestically and in recipient jurisdictions abroad. The professional services supply side of Canada's mining industry (supporting the financial, legal, accounting, and other related components of international projects) represents considerable fiscal activity and employment here in Canada. Further, the engineering, construction, environmental and other related areas of expertise required for project development expand this impact further. All told, the Canadian mining supply sector

constitutes more than 3,200 companies, many of which support international mining projects in a myriad of ways from exploration to mine closure.

As an example of the economic benefits that can accrue from mining projects, the World Gold Council recently released a report surveying almost 100 gold mines around the world, including several from Canada. This report found that out of \$55.6 billion in total expenditures, at least \$44.7 billion (or 80%) was paid out in the country where the operation was situated.

Internationally, natural resource extraction can create jobs for local populations and business opportunities for direct and indirect suppliers. The industry also generates infrastructure, and supports training and skills development. In addition to job creation, business opportunities and local procurement, benefits also accrue via tax and royalty payments, which are made from companies to governments and then transformed into public investments like health and education services and physical infrastructure. Beyond mining-specific investments and associated benefits, companies frequently make private investments that promote and deliver education, health and other services to local communities.

It is important to note that the current policy with respect to Canada's extractive sector abroad is to address mining and oil and gas as one sector. In fact, the mining sector and the oil and gas sectors are very different. Mining stands out as being very capital intensive, not only through the construction phase, but right through the entire life cycle of a mine that results in significant horizontal value chain suppliers and service providers both locally and internationally. Mining is also much more labour intensive. For this reason, the Canadian mining industry recommends that DFATD considers the two sectors separately as it develops its trade strategy and the next generation of its Corporate Social Responsibility strategy.

While developing "win-win" scenarios – where companies and host communities mutually benefit from resource extraction – are the goals of every mining company investing abroad, challenges can and do arise that prevent these from being achieved. The Department of Foreign Affairs, Trade and Development (DFATD) plays an important role in facilitating ease of business in foreign jurisdictions. For example, the department can help remove barriers to trade, and assist companies as they navigate key relationships with host governments. While DFATD undertakes many of its functions very effectively, it is the view of the Canadian mining industry that increased activity and attention in certain areas would be beneficial to the extractive companies operating abroad.

### **Key Areas of Focus**

As DFATD reviews the programs and service-based support provided to the Canadian mining sector operating abroad, we suggest that the following key areas guide collaborative discussion:

1. Continue enhancing industry competitiveness by enabling Canadian companies to efficiently access new markets, and the markets where they operate and to which they export products.
2. Address the current lack of economic and corporate social responsibility data available for mining companies operating abroad.

3. Support companies' efforts to develop and maintain the industry's social license to operate in international jurisdictions.

### **1. Support the Canadian mining industry through trade agreements and investment protections**

The federal government should continue aggressively expanding Canada's trade and investment regime. Since 2006, eight free trade agreements have come into force, while negotiations for another one have concluded, and the Canada EU agreement has been concluded in principle. Twelve sets of FTA negotiations remain ongoing. Since 2006, five FIPA's have come into force, twelve FIPA negotiations have been concluded, and thirteen negotiations remain ongoing. The Canadian mining industry supports this robust trade agenda, and recommends the government, in pursuit of new FTAs and FIPAs, consider the following points to enhance efforts even further:

- In the pursuit of FTAs, Canada should aggressively pursue meaningful labour mobility provisions, for both routine business entry and to help address the industry's ongoing skills crisis. The Mining Industry Human Resources Council forecasts the need to hire 145,000 new employees over the next decade for industry to maintain baseline production. The industry workforce is comprised of 66 core<sup>1</sup> occupations, many of which are technical skills obtained without university education, and all of which will require new workers to meet the domestic industry's hiring needs. DFATD should consider every effort to include these occupations in labour mobility provisions in their FTAs.
- While FIPAs play the crucial role of ensuring both a stable and transparent environment for investment, they are most effectively employed when paired with a Double Taxation Agreement (DTA). DTAs are critical for delivering immediate investment value, and can provide a significant competitive advantage in foreign jurisdictions where Canadian companies both operate and compete against foreign companies.

The implementation of FIPAs without a DTA has enabled some countries to negotiate taxation treaties in jurisdictions where significant Canadian business interests exist, in a manner that provides competitors with an advantage.

MAC acknowledges that DTAs fall under the purview of Finance Canada, and that significant government efforts from DFATD and Finance have and continue to propel the successful negotiation of each type of agreement. MAC also recognizes the potential for a stronger synergy among both departments to align respective negotiating strategies for both types of agreements to ensure dual coverage for target countries. It would be valuable for DFATD to liaise with Finance and industry to identify and prioritize these existing gaps and pursue a strategy to enable the greatest possible competitive advantage for companies in key mining countries abroad.

- From a jurisdictional perspective, there is a need to develop stronger trade ties with Asia and Africa through FTAs, FIPAs and DTAs.

---

<sup>1</sup>See pg 44-45: [http://www.mihr.ca/en/resources/Hiring\\_Requirements\\_Available\\_Talent\\_10\\_year.pdf](http://www.mihr.ca/en/resources/Hiring_Requirements_Available_Talent_10_year.pdf)

- Given the high capital costs associated with mining and general volatility in commodity markets, upward revisions to mining taxation can impair project economics if the fiscal regime is not sensitive to existing industry conditions. Natural Resources Canada (NRCan), along with the provincial mining ministries, has significant policy expertise in developing the stable fiscal, regulatory, and legal environment that is attractive to mining investment, and can play a positive role in assisting foreign governments that are undertaking reviews of their respective mining codes. DFATD can coordinate with host governments in order to ensure that NRCan's expertise is brought to bear on this kind of policy work. The Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), with DFATD as the secretariat, is an ideal venue to work with a broad range of host countries fiscal regimes.
- Finally, governments in developing countries are being pressured to increase mining sector taxes by the World Bank, International Monetary Fund, and European Union, (and this is particularly the case in Africa). DFATD could help convey the message in these forums that increasing mining taxes without fully assessing the impact such changes might have on attracting investment is not only harmful to the industry, but potentially sacrifices long-term economic goals for short-term gains. Further, DFATD can help convey additional messages regarding the importance of looking at the overall economic activity generated by mining, beyond taxes and royalties, when assessing the overall benefit to national economies. The relative stability in the regulatory environment and investment climate has a big impact on whether companies choose to invest in host countries. If DFATD can help host countries obtain an adequate level of stability in their regulatory and fiscal regimes, it will be easier to make significant investment decisions that have the potential to act as catalysts for increased economic development and growth in the horizontal value chain associated with mining.

## **2. Address the industry's current international data gap**

There is currently a significant data gap related to both the value of Canadian mining investment by country, and the corporate social responsibility performance of Canadian companies operating abroad. By developing data in these areas, a more accurate assessment of mining can be presented. The Canadian mining industry recommends the government consider the following points to address this gap:

- Currently, much of the debate about Canadian mining companies' performance overseas is based on specific events and cases: negative stories are used by some to reinforce their assertion that Canadian mining companies operate without any sort of oversight overseas, while industry points to positive case studies as evidence that they in fact do the right thing overseas. The government should consider compiling actual performance data that goes beyond stories and case studies, and can be used for an informed discussion of performance. This database could leverage companies' GRI and other disclosures about environmental / social / governance performance, as well as other sources of information such as media and social media, and the Canadian International Development Platform.
- This type of performance data could help advance discussions about the role of Canadian mining companies in developing economies. For example, the World Gold

Council recently released a report surveying almost 100 gold mines around the world, including several from Canada (eleven of the fifteen companies who participated in the report are Canadian companies). This report found that out of \$55.6 billion in total expenditures, at least \$44.7 billion (or 80%) was paid out in the country where the operation was situated. This type of information is critical as it will help national governments realize the size of the opportunity for economic development beyond just taxes and royalties. It would be very valuable to be able to work with DFATD and NRCan to help fill this data gap.

### **3. Linking Canada's Trade Strategy and CSR Strategy for the Extractive Sector**

Canada's mining industry is one of the country's most active outward investors, responsible in 2012 for 9.5% of Canadian direct investment abroad. Much of this investment flows to the developing world in Latin America, Africa and Asia. This investment provides much needed economic activity, offering the potential for poverty alleviation and economic diversification. Indeed, the federal government's recent efforts to collaborate with the mining industry and non-governmental organizations in development partnerships are a clear demonstration of its understanding and appreciation of the positive contribution our industry can make in the developing world.

#### **The Future of the Government of Canada's CSR Strategy**

When the Government of Canada launched its CSR strategy in 2009, *Building the Canadian Advantage: A CSR Strategy for the Canadian International Extractive Sector*, it sent an important message that, while the government was supportive of the industry, it was also keen to work to improve mining practices internationally. Today, as the government seeks to build greater support for the industry through a new trade strategy, there is an opportunity to further enhance the reputation of Canadian miners abroad by creating greater alignment between the government's trade strategy and its CSR strategy.

It is the view of the Canadian mining industry that:

- The federal government must link the extractive sector trade strategy with the next iteration of the CSR strategy. This will help the mining sector by sending a clear signal that the Government of Canada is willing to strongly support and promote the Canadian mining sector abroad, but that it does so with the expectation that Canadian companies will perform responsibly wherever they operate.
- The federal government's engagement in responsible mining practices already extends far beyond the current four pillars of the CSR strategy. As the government seeks to broaden its support for the industry, it must take stock of all it does in order to tell a more complete story. Below are just a few examples of actions taken by the government outside of the CSR strategy that should be considered:
  - Establishing and supporting the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF);

- Creating the Canadian International Institute for Extractives Industries and Development;
- Enhancing Canada's anti-bribery legislation through recent amendments to the *Corruption of Foreign Public Officials Act*;
- encouraging collaboration and partnerships between mining companies and development-oriented NGOs;
- Participating in the Devonshire Initiative, a network of mining companies, development oriented NGOs and federal government observers;
- Funding pilot projects with partnerships between IAMGOLD and Plan Canada in Burkina Faso, Rio Tinto and the World University Service of Canada in Ghana, and Barrick and World Vision in Peru;
- Implementing the Andean Regional Initiative for Promoting Effective CSR to strengthen the capacity of local governments and communities to implement sustainable development projects for the well-being of people living near extractive operations;
- Committing to partnerships with Peru and Tanzania to further strengthen transparency in their extractive industries; and
- Committing to implement mandatory disclosure of payments to governments derived from mineral extraction activities.

Each of these initiatives has one thing in common that is very important to the mining industry – they build capacity in host countries to help them better govern natural resource development for the benefit of local citizens. The mining industry encourages the government to continue to build on these and other initiatives that contribute to skills training, anti-corruption, stable regulatory and fiscal regimes, and greater recognition of the economic value (beyond taxes and royalties) that a mine can bring to a region.

DFATD should also consider making better use of the Centre of Excellence on Corporate Social Responsibility by turning it into an advisory panel to provide expert, multi-stakeholder advice on policy related to extractive activities abroad. This approach would provide value to the mining sector by providing a mechanism for dialogue with civil society on how best to foster responsible mining practices abroad. Such a body would set an example for other countries to follow with respect to multi-stakeholder engagement, reinforcing Canada's place as a leader in responsible mining practices.

### Host Country Capacity Building

From a capacity building perspective, efforts must focus on helping to raise the capacity in host countries. This would better equip them to effectively manage their natural resources and attract additional investment opportunities. It would also benefit the Canadian mining industry through more conducive investment climates, stable regulatory and fiscal regimes, and better relationships with communities. The Canadian mining industry views these capacities in host countries as competitive advantages as we prefer to operate where there is regulatory stability (including fiscal regimes), strong values of transparency, robust anti-corruption regimes, and willingness to collaborate with communities of interest.

The Government of Canada has demonstrated strong leadership in this area through the support for the IGF, the creation of the CIIEID, the focus on partnerships for development with DFATD and other initiatives mentioned above. The IGF, in particular, is already contributing significantly to host country capacity building and is gaining additional momentum as participation increases year over year. This year, MAC was invited to participate in the annual

general meeting in Geneva and observed over one hundred and sixty participants from more than fifty countries engaged in mining policy discussions. Specifically, these discussions were focused on how to find the right balance in tax and royalty regimes and about how to enhance the value of mining as an economic driver through local procurement. Based on our observations at the meeting, Canada is getting significant credit from the international community for supporting the IGF and for creating a unique forum for mining specific dialogues between countries.

The Canadian mining industry strongly supports these efforts and recommends further action in the following areas:

- The Government of Canada and the Canadian mining sector should work together to quantify and communicate the impact the horizontal value chain of a mine has on local communities and national GDP. This is significant as this value chain dwarfs the taxes and royalties generally paid to governments. In a recent presentation given to the IGF by Ross Gallinger, Executive Director of the PDAC, it was estimated that between 60% and 80% of all money spent in building and operating a mine remains in the host country through wages and local procurement. This estimate is further backed up by the recently released report by the World Gold Council, *Responsible Gold Mining and Value Distribution: A global assessment of the economic value created and distributed by members of the World Gold Council*, which found similarly high levels of spending remaining in the country.
- Given the potential that local procurement practices have to help alleviate poverty and stimulate economic growth in host countries at both the national and community levels, the Canadian mining sector recommends that the Government of Canada support initiatives that prepare local entrepreneurs in host countries to take advantage of business development opportunities. This should be combined with support for initiatives that help mining companies adjust their procurement practices to give preference to local suppliers.
- The Government of Canada has made significant improvements to the *Corruption of Foreign Public Officials Act* to help combat bribery. This piece of legislation is a strong tool that prevents corruption by addressing the supply side of the bribery equation through tough penalties for companies that engage in bribery. The Government of Canada should encourage host countries to implement their own anti-corruption measures to penalize their own officials who demand illicit payments from Canadian companies. This would reduce the demand side of the bribery equation and help to create a level playing field when Canadian companies compete with companies of other nationalities that are not subject to similar anti-corruption measures or do not operate to the same standards.

The Canadian mining sector believes that host country capacity building must happen at both the national and sub-national levels. With the creation of the CIIEID and other initiatives like the Andean Regional Initiative, the Government of Canada has clearly taken significant steps to address capacity building needs at the national level. However, capacity building at the local level is equally critical for countries to be able to transform mineral resources into revenues that support sustainable social and economic development. Local governments can and must play a leadership role in facilitating resource development to promote greater self-reliance and resilience in mining communities, but they need help to build the capacity necessary to play this role.

The Canadian mining industry recommends that community-level capacity building initiatives be developed through the type of partnerships currently being encouraged by DFATD between mining companies and development NGOs and that they focus on the following three elements:

1. Strengthening the accountability, transparency and effectiveness of local governance in mining communities;
2. Promoting economic development and diversification of those communities; and
3. Reinforcing regional collaboration and knowledge sharing of best practices, tools and lessons learned.

#### *Increasing Understanding within the Trade Commissioner Network on the Mining Industry*

It would be valuable for DFATD's "on the ground" personnel who liaise with foreign governments, and the extractive sector in those jurisdictions, to enhance their understanding of certain technical and economic elements of the mining industry. Mining is a highly complex business, and it has been the experience of some companies that DFATD staff lack the depth of understanding necessary to provide the type of "on the ground" intelligence companies require to navigate regionally-specific dynamics before challenges arise. Further, ensuring adequate staffing capacity relative to workload in key international mining jurisdictions is imperative. The following identifies areas where improvements can be made:

- On a regional or national level, a knowledge gap limits DFATD staff from providing key information about the dynamics that need to be navigated by companies. This includes understanding the permitting processes, knowing who the key public sector and community-level decision makers are in these processes; and the politics between decision makers and project stakeholders.
- It is felt that DFATD activities on the ground could better reflect the federal government's CSR Strategy. There are situations where host governments are unhelpful in supporting a company's effort to build its social license to operate. The Government of Canada has a role to play in facilitating these relationships as the presence of DFATD personnel will generally pre-exist company presence in most countries.
- Greater coordination should be established between NRCan and DFATD. NRCan holds considerable expertise within its department related to mining that could be of great benefit to trade commissioners serving in countries where mining is a high priority. While it is important for trade commissioners in these countries to gain a good base level of knowledge of mining, they should also be made aware of how to find expert advice and knowledge within the federal government through NRCan. It would also be valuable to establish a formal role with the necessary resources for NRCan to support the trade commissioners in countries where mining is a priority by providing their expertise.
- One of the challenges mining companies face in managing host community expectations about the benefits of mining is contingency planning for when the mine closes. Given that the Trade Commissioner Service already has a network designed to help facilitate Canadian business opportunities internationally, the service is ideally positioned to identify strategic business partnerships that can help with local economic diversification. By identifying potential opportunities for mining communities in host countries for Canadian businesses that operate outside the extractive sector, further social and economic development can be integrated that creates a greater level of community independence, and increases the

longevity of community economic activity. Typically, mining companies invest in infrastructure that may include roads, bridges, ports, power and telecommunications, and skilled workforces among other physical and non-physical infrastructure depending on the community. These developments can be used to harness the attractiveness of mining communities and create business synergies that have the potential to create wealth and prosperity beyond the direct and indirect benefits of mining.

### *The Office of the CSR Counsellor, National Contact Point and Dispute Resolution*

Unfortunately, while capacity building is critical and needs to form a cornerstone of Canada's extractive strategy abroad, some of the jurisdictions in which the industry invests in have weak local and national governments. This can, among other factors such as social and environmental challenges, lead to conflicts with communities. Although most companies operate successfully in these jurisdictions, in some circumstances, even best efforts to work with local communities can prove insufficient to avoid conflict. In these circumstances, trusted and independent dispute mechanisms play an important role in mediating and resolving disputes. While most companies have established internal dispute resolution mechanisms or grievance procedures for communities to raise and resolve concerns, there are times that, from a credibility perspective, publicly funded, independent mediation services are necessary to resolve disputes. Such mechanisms help to support the good reputation that Canadian mining companies have fostered overseas as responsible operators.

The Canadian mining industry believes that, wherever possible, disputes should be solved through local level mechanisms; however, these mechanisms are not always effective in every circumstance. When such mechanisms fail, the Government of Canada can play a strong role in providing neutral dispute resolution mechanisms to overseas communities where access to facilitated dialogue and dispute resolution cannot be effectively provided by the industry itself. The OECD National Contact Point (NCP) offers one avenue for addressing and resolving disputes. Some of our members have had experience with the Canadian NCP and can attest to its professionalism and value. The NCP, however, is underpinned by the OECD Guidelines for Multinational Enterprises and includes all industries.

The CSR Counsellor, in contrast, is underpinned by a broader array of standards that includes the OECD Guidelines, but also the IFC Performance Standards, the Voluntary Principles on Security and Human Rights and the Global Reporting Initiative. These standards are highly relevant to the extractive sector. Further, the CSR Counsellor's mandate is focused on the extractive sector only, allowing the office to develop a particular expertise that is also highly relevant for a country like ours, which has large, internationally-active mining and oil and gas industries. The Counsellor's mandate also provides the opportunity for a company to bring a case forward when it believes it is the subject of unfounded allegations.

The Canadian CSR Counsellor's Office and Canada's NCP through the OECD are viewed by the mining industry as important tools to help resolve disputes between mining companies and local communities. In particular, the CSR Counsellor has contributed to a broader and deeper understanding of the standards to which the Government of Canada expects the mining industry to conform, and has contributed to an appreciation of the value of grievance and dispute resolution mechanisms.

The Canadian mining industry recommends that:

- The Government of Canada appoint a new CSR Counsellor to fill the vacancy following Dr. Marketa Evans' departure to carry this important work forward;
- Greater alignment should be established between the National Contact Point and the Office of the CSR Counsellor. Each of these mechanisms has specific strengths, as mentioned above. While each has its role, greater efficiencies could be realized if these two offices were more closely coordinated;
- The mandate for the CSR Counsellor be amended so the Counsellor's role in dispute resolution includes the identification and retention of an independent mediator mutually agreed to by a company and a community. A truly independent mediator, retained by the Counsellor, would be better positioned to run an impartial process that is focused on resolving disputes between parties rather than fact-finding and trying to find guilt or exonerate parties involved. This change in the focus of the mandate would require an allocation of adequate resources to the Counsellor's Office to hire mediators as cases come forward.
- With the dispute resolution part of the CSR Counsellor's mandate being delegated to independent mediators, the Counsellor would be freed up to focus on the advisory component of the mandate. There is value in helping to raise the awareness in Canadian mining companies of the importance of having site-level grievance mechanisms and participating in independent third-party processes. There is also value in working with the industry to improve practice and understanding of dispute resolution mechanisms. To this end, the Mining Association of Canada is currently working with the CSR Counsellor to develop guidance to overcome common implementation barriers related to the development of site-level grievance mechanisms.
- When cases are brought forward to either the CSR Counsellor or the OECD, it would be helpful for these two mechanisms to be able to rely on the trade commissioner from the country that the case is coming from to provide intelligence on the conditions on the ground. Trade commissioners likely have the language and cultural knowledge to provide important context that will be helpful in resolving a complaint. The trade commissioners may also be able to play a role in gaining and sharing important insights into the local conditions between the community raising the complaint and the mine in question. Using the trade commissioners in this way would reduce the costs for the CSR Counsellor and the OECD and could also avoid these two mechanisms being drawn into complaints that are either unwarranted or outside of their mandates.

## **Conclusion**

DFATD's programmatic support and services for the extractive sector operating abroad aid in the facilitation of business engagements. Taking stock of the existing programs offered in support of the extractive sector presents an opportunity to enhance and improve on a strong foundation. Further, better government coordination in certain areas could substantially enhance trade and investment opportunities for Canadian companies, in addition to improving market access.