



A Peoples' Guide to PACER-Plus

***Understanding what it is and what it means for the
people of the Pacific Islands***

Cover Image courtesy of Vanuatu Kaljoral Senta.

'Rahuana' by Edgar Hinge, Pentecost Island.

'Rahuana' is about our life as indigenous people and the challenges we face in life, it is about being able to stand up to these challenges as a people.

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Abbreviations

CTA – Chief Trade Adviser

EPA – Economic Partnership Agreement

FICs – Forum Island Countries

FTA - Free Trade Agreement

LDC – Least Developed Country

NCD – Non-Communicable Disease

NZCTU – New Zealand Council of Trade Unions

OCTA – Office of the Chief Trade Adviser

PACER – Pacific Agreement on Closer Economic Relations

PACER-Plus – Pacific Agreement on Closer Economic Relations Plus

PACP – Pacific Island Countries in the Africa Caribbean Pacific Groups of States

PICTA – Pacific Island Countries Trade Agreement

RoO – Rules of Origin

RSE – Recognised Seasonal Employer

SPARTECA – South Pacific Regional Trade and Economic Co-operation Agreement

SWP – Seasonal Worker Program

UNCTAD – United Nations Conference on Trade and Development

VAT – Value Added Tax

WTO - World Trade Organization

Introduction

A lot can change in thirteen years but a lot can also stay the same. In 2004 in the Peoples' Guide to PACER, PANG wrote regarding the announcement of PACER that *'The first glaring concern was the tremendous lack of public consultation and sharing of information on the negotiations by the Forum Secretariat and our own governments.'*

Thirteen years later the text of PACER-Plus is still negotiated in secret and consultations or rather the lack thereof is an ongoing problem. While research to inform Pacific island government negotiating positions and to address legitimate concerns of civil society groups remain notably absent and inaccessible.

In order to inform different stakeholders responses, actions and campaigns across the Pacific and to bridge the gap between negotiations and understanding its potential impacts, PANG has produced several reports, analysis, policy briefs and information materials.

PACER-Plus must be seen in the political and colonial context that it exists in. From its genesis, its intent (despite all the rhetoric) has always been to maintain Australia and New Zealand's dominant market position in the region and to further progress the interest of its service providers and foreign investors. Highlighting the imbalance is the lack of any binding commitments on the key areas of interest for the Pacific, namely Development Assistance and Labour Mobility, two areas where Australia and New Zealand have made concessions that offer no guarantees of delivering benefits to the region.

This 2nd Peoples Guide to PACER-Plus comes at a critical point in time. The problems of unfettered free trade and neoliberalism are reaching crisis point in many 'Western' countries with growing inequality and many angry that the lofty promises of such policies haven't benefitted them. The Trans-Pacific Partnership, one of the world's largest trade agreements covering 40% of the world's economy, lies in ruins largely on account of the concerted international grass-roots campaign against such a dumb deal.

Yet in the Pacific the push for PACER-Plus continues unabated, its proponents desperate to wrap up the deal in April 2017, put a feather in their cap and move on to the next one. The promises of 'development' and 'sustainable economic growth' continue the long song sung by the cheerleaders of neoliberalism, with little more than a hope that it will turn out ok for the people of the Pacific and their livelihoods.

Last year Papua New Guinea withdrew completely from PACER-Plus citing concerns for their domestic industries and an independent evaluation finding the deal a 'net loss'. Fiji has threatened to withdraw if their concerns around the infant industry protections and 'most favoured nation' clause are not addressed satisfactorily. While the Government of Vanuatu wants PACER-Plus to be independently scrutinised before the Council of Ministers can determine whether or not it is in the interests of Vanuatu to sign onto PACER-Plus. Australia and New Zealand's insistence, supported by the OCTA, on expedience to sign off on a bad deal confirms that Australia and Zealand are losing the political authority in the region and seek to maintain the status quo through a binding trade agreement in the region.

This Guide unpacks what PACER-Plus is, how we got into this mess, and what it means for Pacific people, our environment, our cultures and way of life. It is written with not just a desire that people will be able to move pass the false promises of riches or the technical language of the legal documents, but be compelled to act on this information. Given that the very ability of Pacific Island nations to be able to determine their own form of development is at stake, action is of the utmost importance.

A large thank you is owed to Professor Jane Kelsey again as this Guide incorporates some of her previous work on the PACER guide but also to the numerous technical experts who have continued to lend their expertise to the Pacific and its people. We also owe a debt of gratitude to grassroots activists across the Pacific who have revived a spirit of Pacific solidarity to fiercely defend and speak truth to power.

Maureen Penjueli
Coordinator
Pacific Network on Globalisation

Section 1: Historical Backdrop of PACER-Plus

'The first [objective] was political. We did not want the island countries, using the Forum label, developing a free trade agreement between themselves which ignored Australia and New Zealand. For reasons of state we thought, "We're members of the Forum; we deserve to be included in some way". Secondly, a practical or economic interest of ours was to ensure that, whatever trade liberalisation occurred between the island countries, if it were extended to other states such as the United States, Japan or the EU, it did not disadvantage our trading position.' - Australian Official to the Joint Standing Committee on Treaties looking into PACER, May 2002.

Why are Australia and NZ pressuring the Pacific Islands for a free trade agreement?

This is the latest phase in a relationship that has its roots in colonisation. Australia and NZ made various commitments and concessions to the Pacific Islands following political independence in the 1960s and 1970s. Recent developments in the name of 'globalisation' have changed their attitude and led to demands for equal treatment that would cement Australia and New Zealand's dominance over the Pacific.

How is the history of colonisation still relevant?

Colonisation created a mutual dependency that continues today. Australia and NZ wanted to protect their economic interests after independence. Both countries profited by exploiting the resources and labour of the Islands in many ways - through plantations in Fiji and Samoa; by literally stripping the landscape of Nauru and Banaba islands to fertilise their farms; mining PNG and Bougainville; and much more. And they dominated the transport, communications and financial infrastructure that serviced these interests. The Pacific Islands were also an important source of cheap unskilled migrants that Australia and NZ used to fuel their economic boom and then excluded or deported when unemployment grew.

Why didn't the Islands go it alone after independence?

The Islands became politically independent, but their economies weren't sustainable without outside support. Almost all major businesses were foreign owned and there was little local money for investment. This meant governments became the main source of new economic activity and the main employer. To survive, they needed to build a sustainable local economy. Tariffs (border taxes)

on imports helped protect small local producers from cheaper outside competition. Tariffs were also the main source of income for governments and, along with aid, were essential to maintain public services, utilities and employment. The Islands also needed to earn foreign exchange from exports. This depended on preferential access to richer countries who had a historical obligation to them as former colonisers - and who wanted to keep the Islands from siding with the communists during the Cold War.

What form did the special relationship with Australia and NZ take?

Australia and NZ's acceptance of real ongoing obligations underpinned their inclusion in the South Pacific Forum when it was established in 1973. In 1981 Australia and NZ guaranteed that 13 Pacific Island countries would have special access for a long list of exports under the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA). This was critical to the birth of the textile and garment industry in Fiji, wire-harness manufacturing in Samoa and survival of small export sectors in most of the Islands.

Did the Pacific start discussing a trading agreement amongst themselves first?

The Pacific Island nations in the Pacific Islands Forum negotiated the Pacific Island Countries Trade Agreement, known as PICTA, an agreement only for the Forum Island Countries (FICs) as a way to practice trading amongst themselves first before opening up to larger developed markets. Initially PICTA applied only to trade in goods but it has recently expanded to include trade in services. There has been little appetite for PICTA, in particular the trade in services component, with many countries still yet to ratify or implement their commitments.

What about Australia and New Zealand, aren't they members of the Pacific Islands Forum? Why weren't they included initially?

Australia and New Zealand were annoyed that the FICs were negotiating amongst themselves and insisted on being part of PICTA. After a campaign of bullying and cheque-book diplomacy by Australia and New Zealand the Pacific reluctantly agreed to have Australia and NZ included in some way. What resulted was parallel to negotiations on PICTA, the Forum Island Countries plus Australia and New Zealand were negotiating the Pacific Agreement on Closer Economic Relations (PACER) - a framework agreement.

PACER requires Forum Island Countries to negotiate a trade liberalisation and economic integration arrangement with Australia and NZ no later than 8 years after PICTA came into force (2003) - or earlier if negotiations are triggered in one of several ways. The most important trigger involves negotiations for a Pacific Economic Partnership Agreement (EPA) with the EU. At the least, Australia and NZ wanted to ensure that any commitments the Islands offer to the EU are also given to them - which could go way beyond trade in goods to include services, investment and more.

What has happened with the Economic Partnership Agreement? Was PACER triggered?

The commencement of negotiations on the EPAs in 2004 was seen by Australia and New Zealand to have triggered PACER-Plus although that was further compounded by some legal issues, namely Fiji's exclusion from the Pacific Islands Forum in 2007. Regardless the EPA negotiations were used as leverage and a pressure point to push the Pacific nations into launching negotiations on PACER-Plus somewhat prematurely.

Were the Pacific interested in launching negotiations for PACER-Plus?

The Pacific are interested in a genuine development agreement with Australia and New Zealand and some may have bought in to the free trade rhetoric that surrounded discussions in the lead up to PACER-Plus negotiations. For Australia and New Zealand, the Pacific represents the 13th biggest market of goods exports valued at USD\$3.4billion in 2014.

Numerous FICs however were aware of what Australia and New Zealand were after and what the reality of PACER-Plus would turn into for the

Pacific and as such were wary of rushing into any negotiations without a clear roadmap and assurances of benefits for the FICs.

So why did the Pacific agree to launch negotiations?

It has been documented in PANG's "Speaking Truth to Power" report but the manner in which a decision was taken to launch negotiations was plagued with bully tactics and pressuring from Australia and New Zealand. Even as Pacific leaders were saying they wanted more time to consult with their constituencies, Australia and New Zealand pushed and succeeded in getting a decision to launch negotiations at the 2009 Pacific Islands Forum Leaders Meeting in Cairns, Australia. That the region's two bigger neighbours are the largest aid donors to the Pacific is a fact not lost on Pacific leaders who may not have felt they could upset or jeopardise any aid money they receive.

Were the Pacific ready to negotiate?

Given the size of what the Pacific had just been pressured into, they knew they needed support and required funding for an independent Office of the Chief Trade Adviser (OCTA) to support them prior to any negotiations. After numerous attempts to undermine its independence, Australia and New Zealand reluctantly handed over the initial AUD\$500,000 and NZD\$650,000 respectively over 3 years for the OCTA but with strings attached. However, even with the OCTA's secretariat to provide some assistance, the small size of many FIC trade departments represents an ongoing capacity issue especially in contrast to the trade teams from Australia and New Zealand focussed only on PACER-Plus.



Section 2: What 'Free Trade' means for the Pacific

'Due to inherent geographic obstacles, Pacific Island Countries are unlikely to experience export-driven development and associated employment creation on the scale seen in the broader East Asia Pacific region.' - World Bank 2014 Report - *Well Being from Work*

What does 'free trade' involve?

Traditionally 'free trade' is applied to food and goods. It requires all countries (including the Pacific Islands) to open their doors to every other country's products and remove any protections for their own. Binding and enforceable free trade agreements are designed to lock governments into that approach and can impose penalties on their exports if they break the rules.

This theory also believes that there should be minimal outside interference and allow buyers and sellers to interact directly. Free trade theory argues that government support for industries or taxes on imports artificially changes the price of goods or services and ultimately make everyone worse off by protecting inefficient industries.

How does this affect the Pacific Island economies?

There are several layers to Island economies. A majority of people (between 45-85%) live by subsistence in what is called the 'informal' economy. At the other extreme, many important economic activities such as mining, forestry, banking, fisheries, tobacco, brewing and garments are controlled by foreign firms. Most local farmers, fishers, shopkeepers and other businesses in the formal economy sell their produce within the country and rely on the government to protect them from being overrun by cheaper foreign products. Some producers can also export fruit, fish, taro, coffee, palm oil, timber or clothing to Europe, Australia, NZ and the US because they have preferential access to those countries under historical agreements such as SPARTECA, Lomé, and the Compact of Free Association. This means they don't face the same level of tariffs (border taxes) that are imposed on similar products from other larger countries. It is these protections that are stripped away in the name of 'free trade' and in fact given to Australia and New Zealand under PACER-Plus.

What changes do 'free trade' rules require?

There are two basic rules:

1. Products from all countries must be treated the same.

2. The Islands can't discriminate against foreign produced goods and must treat them like they would similar local products. So the Islands have to stop protecting their local producers.

What does this really mean for the Islands?

'Free trade' theory assumes that the global marketplace is a level playing field where the Islands will get access to new markets for their exports in return for opening their own borders. In reality, 'free trade' agreements are a new form of colonisation. Signing up to these rules under PACER-Plus will allow rich countries like Australia and New Zealand and their corporations to further their domination of economic life in the Islands. It will force many local producers to close, people in paid work will lose jobs and the Islands will become even more dependent on imports, including essentials such as food. There will be very few - if any - benefits for their exports in return.

What kind of 'protections' would have to go?

There is a standard list of unacceptable 'trade barriers' that the Islands will have to reduce or abandon under PACER-Plus:

- Tariffs, which are a tax that makes imports more expensive than locally produced goods so as to protect local producers who can't otherwise compete, and to provide governments with revenue;
- Import quotas, which restrict the amount of a particular food or good that can be imported;
- Import licenses, which restrict who is allowed to import food or goods and the kind and amount that they can import;
- Subsidies to exporters that make their products cheaper on the international market (export subsidies) or that help local producers compete against imports or guarantee them a minimum price (domestic support);
- Bans on imports because of health, sanitary, cultural or conservation reasons where they are not backed by clear-cut scientific evidence.

What is meant to be achieved by removing these 'barriers' and will it do that?

People who support 'free trade' argue that:

Competition from imports will force local firms to become more efficient.

But we know that few local producers will be able to compete with cheaper food and goods from countries that have bigger scale and higher-tech producers. Instead of becoming more efficient,

many local business, farmers and workers are likely to lose their livelihoods.

If Islands have to stop producing what they can't produce as efficiently as other countries they can refocus their resources on what they can produce better than any other country (known as their 'comparative advantage').

But there are very few high-value foods and goods that Pacific Islands can produce more efficiently than other countries. They are too small scale and remote with high transport costs and lack the necessary skilled workers, technology and capital. Realistically, few foreign investors will bring those inputs to the Islands. Unrestricted global competition means most Islands will be left selling unprocessed natural resources like fish, timber or minerals to other countries that make the big profits out of 'adding value'. And a natural disaster can wipe out those natural resources overnight.

It is a better use of the world's scarce resources for the Islands to import food and goods that are produced more efficiently and cheaper than locals can produce them.

But if local producers are driven out of business and an Island becomes dependent on imports, especially of food, it has no guarantee of food security. This is especially serious if it can't earn the foreign currency from exports that it needs to pay for those imports.

The cost of business closures and job losses is outweighed by benefits to consumers, because foreign food and goods will be cheaper once tariffs have been removed.

But in practice foreign producers and 'middle men' tend to increase their prices when tariffs are removed, so they take the benefit rather than passing it to consumers. Even if imports do become cheaper, they may be undesirable replacements for healthier local products - as with mutton flaps turkey tails, and milk powder.

Tariff cuts force governments to raise revenue in ways that don't disrupt trade.

But this usually involves a value added tax (VAT) and/or 'user charges' on public services that hit poorer people harder than import taxes that tend to be highest on luxury items. New taxes also increase poor people's need for cash in Islands where most

people live from the land and the sea, supported by remittances from overseas. More dependence on cash incomes will increase the drift to the towns, and associated problems of unemployment and squatting.

Does this argument only relate to food and goods?

Similar arguments are made in favour of 'importing' services from foreign firms (ranging from banks, telecoms and electricity to education, health and water supply) rather than the Islands supplying their own services. This assumes that all those services can be run by private (foreign) firms based on a commercial user-charge. Free trade rules on services mean removing restrictions on foreign firms that want to provide those services and treating them as well as local providers, including state-owned firms, are treated. That can include rights to public subsidies.

The two basic free trade rules now apply to the complex areas of services and investment by removing 'barriers' for foreign service firms and investors to do business. These barriers can take the form of national laws, policies, regulations, subsidies, local preferences, monopolies and other measures that governments use to manage the provision of services and regulate investment.

Isn't this a recipe for economic and social chaos?

Free traders agree that unemployment and business closures are inevitable costs of 'adjusting' to the global marketplace, but they insist that these costs are short term until new economic growth occurs. They ignore the real social, economic and political costs to the Islands and their people or what happens if - when - their theory fails.

Section 3: When a 'Development Agreement' Undermines Development

'Our co-operative efforts must be geared towards empowering our peoples, communities and countries. We must put self-determination and economic independence into reality, and not pay lip service to such aspirations, while we just happily continue to pander to aid donors.' - Dr Transform Aqorau, former CEO of the Parties to the Nauru Agreement Office.

How is PACER-Plus supposed to be different to other free trade agreements?

PACER-Plus has been sold as a development agreement, in the words of Australia's then Trade Minister Simon Crean: "PACER Plus is not just a trade agreement: it is fundamentally concerned with developing the capacity of the Pacific region".

Australia's approach is to push for reform at the border (lowering taxes, streamlining imports) and structural reform behind the border (changing regulations, limiting government support etc). To do this, Australia and New Zealand will provide assistance to help countries implement the commitments they undertake. Whilst this financial assistance is seen as a key platform in the argument that PACER-Plus will not just be a standard FTA, other trade agreements like the Australia/New Zealand/ASEAN trade agreement also contain such assistance.



Despite there being some assistance available under PACER-Plus, the key failure to support Pacific centred development comes from the fact that PACER-Plus is a standard FTA with all the normal constraints that such agreements place on negotiators and countries. Had it been free from this framework, PACER-Plus could have looked very different.

Is PACER-Plus aiming to support Pacific countries to develop?

PACER-Plus is aiming to further integrate the Pacific into the global economy, an outcome that in no way guarantees development of Island states. Whilst trade is important and can help countries

grow it is by no means a magic solution and must be done in very specific ways. For many countries, development takes a long time and involves a protracted approach to opening up their economies. This also includes the ability to nurture and protect local developing industries, the increased capacity to regulate services and investment as countries develop, and for countries to determine for themselves their economic future. This approach was used by both Australia and New Zealand and allowed them to build their economies. Sadly, since the Pacific is seen as a profitable market for corporations they have forgotten their history and instead now argue that the best 'development' for the Pacific is to open themselves up to Australian and New Zealand

businesses. PACER-Plus will lock the Pacific out of a development that is based on its own terms.

What does PACER-Plus offer the most vulnerable countries?

PACER-Plus offers the smallest economies of the Pacific very little yet demands a lot. Many already have duty free access to their major markets (like the US, EU and Australia/ New Zealand) and are in little danger of losing that so they are under no obligation to conclude PACER-Plus to preserve their industries (unlike PNG and Fiji in the interim-EPAs).

It is argued that PACER-Plus will help integrate the Pacific into the global economy, this is especially true for the majority of FICs who aren't members of the WTO, the smallest of the Pacific countries. Yet the most vulnerable economies are being asked to not only integrate into minimum global standards but under PACER-Plus to go beyond them! This is evident through the shorter timeframes for implementation, missed mandatory flexibilities for Least-Developed and Developing Countries, and a failure to explicitly carve out fewer commitments for LDCs.

The main benefit would come from any possible additional aid money that would come under

PACER-Plus, yet this would soon be overcome by the considerable ongoing cost of implementing their commitments.

What does 'Development Assistance' mean in PACER-Plus?

The FICs had argued that any 'development assistance' must help them to trade under any PACER-Plus outcome. The then FIC Lead Spokesperson, Robert Sisilo, stated that what the FICs are in dire need of is "effective trade-related assistance which would enable us to address the supply-side constraints that have prevented us from taking advantage of trading opportunities under trade agreements." For the FICs this includes helping address issues around infrastructure, meeting quarantine standards, supporting infant industries, and export promotion amongst others. The Pacific see development assistance as addressing these trade related needs, a position reluctantly accepted by Australia and New Zealand.

Australia and New Zealand had long held out that 'development assistance' would only be assistance to help the FICs implement PACER-Plus. This would include trainings for government officials on technical issues, quarantine facilities (for import), and assistance in making things more pro-business. The implementation support would ensure that the Pacific maintained the promised market access to Australia and New Zealand, something that won't directly help the Pacific to gain greater exports under PACER-Plus. Under PACER-Plus there is a chapter titled "Development and Economic Cooperation" and it details the process for establishing a Work Programme to direct the implementation assistance given under PACER-Plus. The crucial type of assistance of most value to the FICs will however sit outside PACER-Plus and be distributed through the existing bilateral aid channels between countries.

How will any money under 'Development Assistance' be decided upon?

The current proposals under the Work Programme have any projects funded needing to include at least two FICs plus Australia and/or New Zealand. Despite it aiming to meet the needs as decided by the FICs themselves, Australia and New Zealand have ensured that they can veto any proposal as any component has to meet the needs as "mutually prioritised and determined" by all involved. Even though the FICs can provide a list of their priorities at the end of the day the paternalistic nature of the aid relationship stays intact.

The relationship is exacerbated by the use of bilateral aid to address the supply-side concerns of

the FICs. By resorting to the existing mechanisms for aid delivery it raises many questions about the ability of the FICs to decide for themselves just exactly what they need and will have funded. Further to this is the entrenching of the dependence of the FICs on aid from Australia and New Zealand.

Are Australia and New Zealand making binding commitments on this assistance?

No. They have surrounded all their statements on development assistance with carefully crafted language about their commitment to development but as it is

currently placed they are making no legal commitments under PACER-Plus to the level of funding and how long it will be available. The Pacific wanted binding commitments in this area to ensure that the promised assistance couldn't be changed whenever Australia or New Zealand felt like it.



Section 4: Ensuring the Pacific can Determine its own Development

'Pacific Parties are being pushed to give away their policy space, especially the right to regulate. The Chapters on Investment and Service and General Exceptions, for example, seek to constrain our policy space to the extent that we no longer are in control of our development.' Hon. Faiyaz Siqqiq Koya, PACER-Plus Intersessional key note address 4th December 2015.

What role has free trade had in other country's development?

Free trade is often argued as a vital tool to increasing economic growth and also development. Whilst trade is important in supporting the economies and development of many countries the critical aspect is in how it does this.

Whilst many industrialised nations now champion that developing countries adhere to free trade policies their histories are quite different. As the former Head of the Macroeconomics and Development Policies Branch, United Nations Conference on Trade and Development (UNCTAD) notes, no country (except Hong Kong, China) has managed to industrialise without going through the infant-industry-protection phase. This use of non-'free trade' policies has been integral for many industrialised countries to build and support their industries to move to more valuable production and not just be reliant on raw materials.

For Australia and New Zealand, free trade is more about growing their economies than it is about supporting the ability of the Pacific to use similar policies to determine their own development.

How does PACER-Plus affect a country's regulations?

PACER-Plus, like all free trade agreements, sets out the limits to what government's can and cannot do. This doesn't just apply to the level of taxes on imports but rather it can encompass the majority of the economic life of a country. Since PACER-Plus includes commitments on Investment and Trade in Services it will impact the ability of countries to determine what regulations apply to foreign investors and service suppliers.

This may sound benign but it can be crucial to allowing the Pacific to determine and shape their economies to meet their unique development needs. Under PACER-Plus, Pacific government's will be restricted in the amount of support they can provide to domestic exporters, leave them unable to mandate that investment incorporates local resources or people, hamper attempts to nurture

key industries and threaten their ability to regulate to protect people, its cultures and the environment.

A clear example was the insistence on Samoa to remove its ban on turkey tails, a high fat content food that was linked to the epidemic of non-communicable disease. Recent studies have shown that almost 70% of Samoan women and almost 50% of men are obese, with NCDs being a leading cause of death. Turkey tails contribute to this problem yet the United States insisted Samoa drop its import ban as a key condition for it to successfully join the World Trade Organization.

To worsen this scenario under PACER-Plus, Pacific governments will be forced to answer to Australia and New Zealand (and their corporations) if they think any possible or proposed regulation may impact their commitments. If Pacific governments are trying to legislate to ensure that local workers are included in any investment or introducing environmental protection then they may have to explain to Australia or New Zealand why they are doing so.

Why is it important to maintain the right to regulate for Pacific governments?

Regulating is the way in which governments control and intervene in the economy – this happens for a wide variety of reasons. It can be to stimulate the economy, to provide incentives for a specific outcome (local jobs etc) but most importantly it is the way governments act to protect people, culture, customary land tenure or the environment for current but also future generations.

There have been many examples where governments have introduced regulation to ensure that industries adopt environmentally safe practices, to enforce safe work practices, to ban products or activities that harm peoples health (like banning high fat foods).

Ensuring that countries have the right to regulate is about ensuring that countries maintain their sovereignty over their economy and development.

Proponents of PACER-Plus such as the Chief Trade Adviser (CTA) argue that there are protections to allow governments to regulate?

PACER-Plus adopts many of the same forms of protections that are included in other FTAs and the WTO. These 'General Exceptions', both for trade in

goods and services, within the WTO states that provided regulations don't discriminate between countries or are disguised barriers to trade, "...nothing in this Agreement shall be construed to prevent the adoption or enforcement" by any Member of measures that are "necessary to protect public morals or to maintain public order" or "necessary to protect human, animal or plant life or health"

Do these protections work though?

No. Since PACER-Plus is adopting the same language from the WTO and its general exceptions, we can look to its application to see how effective they have been.

In WTO cases in which the respondent country has tried to use these protections as a defense, the Respondent has lost both the defense and the case more than 97 percent of the time. Only once in the 44 times that a general exception has been used as a defence has it been upheld in the WTO.

Whilst such language sounds like a solid defence of the right of governments to take the regulatory action necessary, the long list of its failures to defend such regulation at the WTO is proof that it doesn't support the right to regulate.

Does PACER-Plus protect the Pacific government's right to regulate?

No. Given the near complete failure of the general exception it is clear that any defence of a Pacific governments right to regulate based on such a defence is illogical. Instead it highlights the ineffectual nature of such an exception and the dangers that it leads to governments of the Pacific.

What does this mean for Pacific government's regulations?

It means that it cannot rely on the exceptions to protect any regulations a Pacific government introduces if challenged under PACER-Plus. If it is worried about losing that ability it should not cede its sovereignty under PACER-Plus.

It also means that regulating within the confines of the agreement becomes even harder.

Under Trade in Services, domestic regulations in committed sectors must be "administered in a reasonable, objective and impartial manner". Whilst what is "reasonable" is not defined, "objective" will require clear scientific cause and effects between a measure and what it is trying to prevent, and "impartial" requires an independent authority or ombudsman, something that isn't always present amongst FIC service sectors.

Further any licencing or technical standards (this includes requirements for environmental approvals etc) "does not constitute unnecessary barriers to trade in services". Proving the necessity of such a standard above any other less trade restrictive action is notoriously difficult and places the burden of proof on FICs.

If it's hard to regulate will that scare of Pacific governments from doing so?

Yes. It's called the "chilling effect" and has been noted as a result of many challenges by private investors and other countries to put off government action on the chance that they may have to go through a lengthy and expensive legal challenge.



Section 5: Pacific Workers and Labour Mobility

'It is not possible to achieve a good outcome for Pacific workers without the voices of these workers at the table...People are not commodities and the NZCTU does not support immigration being linked to trade and investment agreements.'
- New Zealand Council of Trade Unions Secretary Sam Huggard

What is labour mobility?

Labour Mobility refers to discussions within PACER-Plus that look into the issues of moving workers around the region. This includes the existing seasonal labour programs in Australia and New Zealand, the Seasonal Worker Program and the Recognised Seasonal Employer scheme respectively. They also include all countries making offers that will allow employment access for workers from other countries, including Australia and New Zealand, in PACER-Plus.

Why are the Pacific asking for it in PACER-Plus?

Many Pacific countries are dealing with issues of unemployment and demographic shifts such as large youthful populations and are looking for employment opportunities in other countries. The importance of this to the Pacific made it an essential component to any outcome on PACER-Plus.

Since Pacific goods already have duty-free market access to Australia and New Zealand, any further market access offers that would come under PACER-Plus would be coming from the Pacific for the benefit of businesses and investors from Australia and New Zealand. The Pacific negotiators knew this and saw binding commitments from Australia and New Zealand on labour mobility as a point of leverage and litmus test of their interest in meeting the Pacific's needs.

What is the Pacific hoping for out of Labour Mobility?

The Pacific had long argued that they wanted a binding legal commitment on the seasonal employment schemes to match the commitments that the FICs were undertaking in the areas of interest to Australia and New Zealand (namely services and investment) under PACER-Plus. The Pacific are wanting a legal commitment to balance out the level of commitments they are undertaking in PACER-Plus.

In addition to this they wanted to see the caps limiting the numbers on the programs removed

and have them expanded to other areas of interest to the Pacific that provide additional skills.

What is being offered in PACER-Plus?

Currently under PACER-Plus the chapter on Labour Mobility is offering an annual meeting called the "Pacific Annual Meeting on Labour Mobility". This meeting will discuss a range of issues relating to labour mobility in the region and will report back to Trade Ministers.

Further to this is a chapter called "Temporary Movement of Natural Persons". This builds on what is normally covered in a Trade in Services chapter, although in that chapter it usually only applies to business executives. Whilst these commitments will be binding they won't apply to the seasonal employment schemes. In addition, the Pacific are also having to make commitments in this area, allowing greater access to their employment markets and making it harder for Pacific Islanders to gain skilled employment.

Why aren't Australia and New Zealand matching the binding commitments of FICs?

Australia and New Zealand have argued that if they were to make binding commitments on this under PACER-Plus then they would have to offer the same to other countries they have FTAs with (or negotiating with like India). This argument has been adopted by the OCTA, who is meant to be negotiating under direction of the Pacific, as well. It appears that some FICs who were concerned about losing their existing access under the seasonal schemes pushed to have this position accepted by the FICs.

Australia and New Zealand have shown little interest in addressing the issue of legal commitment in any way other than refusing to do so.

What are the seasonal employment programs?

The seasonal employment schemes sit outside PACER-Plus but aim to address temporary labour shortages in Australia and New Zealand within specific industries. The RSE in New Zealand allows businesses in the horticulture and viticulture industries to, if they are unable to find local workers, recruit workers from outside New Zealand for a specified time period. New Zealand introduced the RSE program in 2007.

Australia's Seasonal Worker Program is similar to

the RSE in that Australian companies can apply to bring in workers from the Pacific and Timor Leste if they cannot find domestic workers. It also applies to the horticulture and viticulture industries. The SWP pilot scheme began in 2008 and became an ongoing program in 2012.

Have there been any problems with the programs?

The temporary migration of workers is a complex issue and raises many questions about the impact on the workers and the communities they come from as well as how best to ensure the benefits are shared around.

The RSE has been recognised by the International Labour Organization as 'best practice' but that doesn't mean that there haven't been any issues with it. There have been a number of instances of exploitation of the workers.

The SWP in Australia however has had many issues. There are ongoing issues about exploitation of workers who are afraid to speak up out of fear of losing their employer sponsored visa. There are ongoing investigations into claims that workers were being paid as little as \$10 a week after deductions, and claims of employers charging absurd rates for accommodation and food etc.

Whilst there are benefits to the schemes the lack of enforceability of labour rights leaves them open to exploitation.

What do the new changes made by Australia and New Zealand mean?

In 2015 Australia announced that it was removing the cap on the SWP and expanding across the agricultural sector as well as into other sectors like tourism and hospitality in Northern Australia. Australia has also proposed a 5-year pilot program for up to 250 citizens from Kiribati, Nauru and

Tuvalu for a multi-year work visa. Whilst announcing these changes Australia also shifted more of the cost burden onto those employed under the SWP and removed the minimum length of stay, replacing it with a minimum financial benefit of AUD\$1,000. Broader changes to tax rates for working holiday makers in Australia are aimed to promote the SWP however it appears that those changes will be undone.

Australia has also now mandated that the SWP will only be available to Cook Islands, Palau, Federated States of Micronesia, Niue, and Republic of Marshall Islands if they sign PACER-Plus.

New Zealand has recently announced the lifting of the RSE cap from 8,000 up to 9,500 and trialling the scheme in fisheries and construction.



Image Source: Apple and Pear Australia Limited

Haven't the FICs demands been met?

No. Whilst the schemes have been increased in number and expanded across sectors they are still non-binding commitments. Further since both schemes are employer-driven there is no guarantee that there will be

uptake of the scheme over the years or during economic downturns. This leaves one of the main interests for the FICs vulnerable to not only government change of policy but employer interest.

The FICs have long seen labour mobility as a test of whether or not PACER-Plus was in their interest, the changes may be welcome but don't address the imbalance and development needs of the FICs.

Section 6: Can Pacific Governments Afford PACER-Plus?

'How that will affect the local industry is more specifically on the fact that Vanuatu does not have income tax so we depend on import duties...Our revenue comes from that import and if we agree to zero duty then the revenue is under threat.' - Vanuatu Director of Trade, Sumbue Antas

How does a trade agreement affect government revenue?

Trade agreements aim to limit the actions that governments may take and that includes the use of certain taxes associated with trade. The most obvious example are 'tariffs' – taxes on imported products - with many Pacific nations applying tariffs on imports from Australia and New Zealand.

An updated analysis shows that tariff revenue losses will actually be more than previously calculated: Pacific countries are set to lose more than USD \$200 million per year, based on imports during the years 2012-2014.

PACER-Plus will impact the ability of Pacific governments to raise revenue from licensing fees and other duties.

Why would government's use trade taxes for revenue?

Trade taxes are easy to apply and easy to collect. For countries with limited bureaucratic resources, like most Pacific Islands, this becomes a simple way to raise government revenue. Tariffs can also be applied in a progressive manner and raise revenue from more luxury imported items, those normally consumed by wealthier residents.

Are they going to have to cut trade taxes under PACER-Plus?

Yes and lots of them. Australia has been demanding that the Pacific cut between 90-95% of their import taxes – despite Australia calling PACER-Plus a development agreement, they are demanding similar tariff cuts to what they have received from major economies like Japan (97%), China (96%) and within ASEAN (96%).

To put this in perspective, the interim-EPAs had the Pacific cutting 80% of their tariff lines and that was with a much lower level of imports from Europe.

How much revenue will they lose?

For the individual countries the biggest losses will be Fiji: USD\$71 million; PNG: USD\$95million; Samoa and Solomon Islands: USD\$11 million; Vanuatu and Tonga USD\$6million. This means Vanuatu will lose the equivalent of the annual budgets for ministries of land and ni-vanuatu business, PNG will lose nearly 40% of its budget for agriculture and SMEs, and Fiji will lose almost a quarter of its roads budget.

The commitments will also include other fees associated with trade which are important for government revenue. According to IMF figures, PNG relies on trade related taxes (tariffs and other fees) for over 9% of its government revenue – much of this will no longer be allowed under PACER-Plus.

What happens if they lose some revenue?

Many Pacific countries struggle to raise the revenue needed to provide the services that are required. The Pacific faces many challenges with service provision, often across many islands or to communities that are hard to access. This places an additional cost to the provision of those services.

By losing significant amounts of revenue under PACER-Plus it will make it harder for Pacific governments to provide funds for services like health, education, infrastructure etc. Ironically these are the very services that contribute to the development of a country.

Can't they just raise the money elsewhere?

Not really. According to IMF economists, if low income countries, like most FICs, cut their tariffs they are at best likely to recover 30% or less of this lost tariff revenue from other taxation sources. So even when Australia and New Zealand recommend applying or increasing Value Added Taxes this won't retrieve the same level of revenue pre-PACER-Plus. Further to this it shifts the tax burden across the entire population away from those who were importing higher end, luxury items.

Section 7: Loss of Pacific livelihoods under PACER-Plus

'PACER-Plus is a threat to our local industries. PNG is concerned that the development of our local industries will be threatened by heavily subsidized and technologically advanced industries in Australia and New Zealand. This will create negative impacts for our Government which is already trying to grow our economy in parallel with growing local industries, through transformation of primary industries into secondary and tertiary industries and create new jobs for our unemployed population.' - Papua New Guinea Ambassador Max Rai

How will PACER-Plus affect Pacific producers?

PACER-Plus is aimed to further open the Pacific economies to the competition from Australian and New Zealand producers. This means that they will have to compete either with firms that come and set up in the Pacific or through goods that are imported at cheaper rates due to tariff cuts.

What are the potential impacts on Pacific livelihoods?

Initial studies into the impacts of PACER-Plus estimated that there would be the loss of 75% of Pacific manufacturing jobs as they couldn't compete with cheaper goods from Australia and New Zealand. It's not just manufacturing jobs that are threatened, Australia and New Zealand are both aggressive exporters of fruit and vegetables and will be looking to increase their exports to the region under PACER-Plus.

The impacts on livelihoods are compounded by the nature of Pacific life. With many still living a subsistence lifestyle and engaging partially with the cash economy, any loss of incomes for family members or wantoks that arise from PACER-Plus will have flow-on affects to many others.

Won't cheaper goods make the Pacific more competitive?

Not necessarily. In Vanuatu the United Nations found that after tariff cuts the prices to consumers of many goods remained the same, leaving only the middle-men with their increased share better off.

It is far from guaranteed that lower import taxes will lead to cheaper goods. In the Pacific, where there are limited distribution channels, it's less likely that price cuts will be passed on. This means that Pacific producers may be left with high costs whilst other competing imports may be cheaper.

What safeguards are available to protect jobs in the Pacific?

At the time of writing this guide there are a number of proposals on the table regarding safeguards. The leaked texts have shown that there will be transitional safeguards available for use for 3 years or until the tariffs are eliminated. These will also prohibit the use of simple remedies like import bans or quotas and require proof of serious injury. As currently proposed the safeguards are completely inadequate and will be useless in practice, especially for farmers.

What will help decide the safeguards?

Australia and New Zealand have insisted that the strength of any safeguard will be determined by the level of tariff cuts that the Pacific make. This position makes a mockery of any claim that PACER-Plus is a development agreement especially since Australia and New Zealand already enjoy safeguards that the Pacific nations don't have.

Ultimately it will depend on the willingness of the FICs to stand their ground on this issue.

How do the current protections fail FIC producers?

The real test of any protections are whether or not they can be used to effectively protect those they are intended for. The current proposals by Australia and New Zealand will offer very limited protection for Pacific producers in practice. The short time frames are insufficient to ensure adequate support for Pacific producers whilst the immediate requirement for compensation acts as a deterrent for their use.

What about farmers, how are they protected?

Pacific farmers would be covered by the current 'bilateral safeguard mechanisms' whatever they may end up being. The chapter currently fails to list the inclusion of any outcome from discussions at the WTO on the "Special Safeguard Mechanism" - an agricultural safeguard for developing and least developed countries. Including such an outcome would have acted as an insurance for Pacific farmers to give them better protections.

Section 8: How PACER-Plus can impact Customary Land?

'In Melanesia in general and in Vanuatu in particular, people have a special relationship with their land because they know that it is their only safety net and social and food security system. They are also aware that it is traditional land tenure that enables them to be self-reliant, because traditional land is always available if and when a ni-Vanuatu cannot find a cash-paying job in town.' - Joel Simo, Coordinator of the Land Desk at the Vanuatu Kaljoral Senta

What is customary land?

Custom land is the stewardship of land in the Pacific and the traditional processes for which land usage is decided. It refers more to the usage of land as opposed to the 'Western' notion that land can be owned either individually or collectively. Whilst land may be used and stewarded by tribes or communities, custom land embodies the notion that the land is a provider and must be cared for now and for future generations.

Custom lands importance comes from its central role in Pacific life. Land, and its accessibility, not only provides essential resources for Pacific Islanders such as shelter, livelihoods, medicines, and food but also is key in allowing for the practice and reproduction of culture and cultural practices. Many traditional systems and rituals rely on access to traditional wealth items found only on custom land. It is commonly, and correctly, held in the Pacific that "Land is life".

How can PACER-Plus affect custom land?

At first glance PACER-Plus won't affect custom land as it appears no government is committing to removing custom land through such an agreement. Instead the impacts on custom land can come in more subtle and complex ways, some of which will be discussed below. The restrictions placed on governments by PACER-Plus, often through the Trade in Services and Investment Chapters, also relate to the regulations that impact decisions on land usage (zoning, supporting local initiatives etc) or access.

Why isn't PACER-Plus and custom land compatible?

The theory and beliefs that underpin free trade and PACER-Plus rely on people acting in their individual self-interest. This also applies to the broader organisation of the society and economy by placing a greater focus on individual decisions and less on communal responsibility. Custom land however acts as a medium to bring people together and nurture social systems and relations that support at the communal level.

What is Trade in Services?

Trade in services relates to the use or supply of a service across a border. Using the example of education, trade in services can mean 1) studying remotely from a foreign university in your country; 2) going overseas to study; 3) setting up a university in a foreign country; or 4) moving abroad to teach.

How do governments make commitments in services?

When it comes to free trade agreements, the commitments that governments make relate to the regulations concerning those service sectors and determining the limits of government involvement. This includes things like levels of qualifications needed, minimum requirements for local employment, or restrictions

on the number and size of foreign service providers. These commitments include a large number of things but a central component to trade agreements is ensuring foreign service providers aren't treated worse than local businesses. This may mean, as is the case in Vanuatu, that support cannot be offered to local burree operators or other tourist accommodation without providing the same to foreign companies invested in that country.

How does trade in services relate to custom control of land?

Trade in services includes rules relating to setting up a business overseas, as such this can relate to how companies access land to establish themselves. The commitments that governments make relating



to how companies set up in a country can have far reaching and unforeseen impacts. For example some countries, due to what they may not have planned on committing, can see them unable to prevent an investment in ecologically or culturally sensitive areas, restrict the amount of land leased by foreigners for hunting, agriculture etc, or restrict the number or location of waste/toxic dumps. All of these land-usage issues come in to play when the rights of communities and land stewards conflict with the commitments made in free trade agreements

Have there been issues where governments have made errors in their commitments?

Sadly this has happened. Fiji in its commitments in the World Trade

Organization didn't include an exemption to uphold reservations regarding the ownership of indigenous land and they then made commitments in tourism services. Problems usually surface when a country or foreign company claims that new government regulations have impacted upon their investment and a court case follows.

Why can't governments just regulate against this?

PACER-Plus provides a general clause that says governments aren't prevented from taking action to prevent harm to human health or the environment. In theory this sounds fine but the sad reality is that even those general clauses don't work. As mentioned in Section 4, when such a general clause has been used as a defence by governments it has lost an astonishingly 96% of times applied. So even though governments may still try and regulate they may then find themselves on the losing side of trade arbitration.

What is Foreign Direct Investment?

Investment is often also referred to as 'Foreign Direct Investment', that is foreign entities establishing themselves in another country. This investment can take the form of buying or building

factories/resorts/shops etc as well as establishing services like banks/law firms/private hospitals etc, or even in the purchasing of land. There are many factors that go into deciding where companies invest but common ones are: political stability, closeness to consumers, rules and regulations regarding setting up a business, and a productive domestic sector.

Why do countries want FDI?

It is argued that for the receiving country, foreign direct investment brings infrastructure, transfer of skills and experience, as well as revenue, the investor benefits by taking the profits and royalties back home. Some governments believe that foreign investment will not only create jobs for locals it will

also boost the private sector and provide much needed government revenue. There is a common theory that making binding commitments related to investment in a free trade agreement like PACER-Plus will see a boost in investment, however there is a significant body of research to say this isn't the case.



How does FDI and PACER-Plus affect land in the Pacific?

Custom land has long been labelled a 'barrier to investment' by critics and global institutions like the World Bank. The richness and value of what custom

land provides to Pacific peoples is dismissed and instead the focus is what monetary value could be derived from large-scale investment. It is argued that investors find there to be too much uncertainty surrounding custom land so governments are encouraged to either modify custom land or sign up to free trade agreements to lock in governments and certainty for investors. Further to this, PACER-Plus could also have the impact of allowing companies to challenge any changes made to regulations surrounding land, so if changes were made to lease or tenure systems this could result in investors demanding compensation.

Section 9: An unbalanced agreement is not the Pacific's Future

'While the FICs will be making legally binding commitments in trade in goods, trade in services and investment, ANZ do not want to make legally binding commitments on development assistance and labour mobility. We want the same treatment for all issues and will not accept merely voluntary commitments as being proposed by ANZ. It is simply not fair.' - Robert Sisilo, former Solomon Islands Trade Envoy and Lead Spokesperson for the FICs on PACER-Plus.

Do Australia and New Zealand really have much to gain from this agreement?

Yes. PACER-Plus has long been sold as an agreement about the Pacific but this has conveniently hidden the very real economic interests that Australia and New Zealand have in the Pacific. Taken as a whole region, the Pacific represents that 13th biggest export market for goods from Australia and New Zealand, a market that in 2014 was worth USD\$3.4 billion.

On the other hand, Australia and New Zealand are relatively not so important export markets for the FICs, with the exception of certain products. Australia and New Zealand only buy around 28% of total FICs exports (measured in value), most of it in the form of pearls and precious stones. If precious stones are excluded, Australia and New Zealand only account for 15% of Pacific exports.

This doesn't even count the billions of dollars of investment in the Pacific from Australia and New Zealand, a very clear interest for pushing the Pacific to make binding commitments on how much they can regulate foreign investment.

Why are the Pacific taking on the burden of commitments under PACER-Plus?

Trade agreements are usually built around the binding commitments that are made by governments, so commitments in areas like goods, services and investment. It is generally thought that there is some 'balance' to the levels of commitments made by all the members to the agreement, some may make greater commitments in one area as a trade off for another making more commitments in an area of interest.

Australia and New Zealand have already made extensive commitments in other trade agreements and as such PACER-Plus requires very few additional commitments from them.

For the Pacific, PACER-Plus represents going beyond any existing commitments and for the six FICs who aren't members of the World Trade Organisation, it represents an enormous undertaking of commitments.

PACER-Plus was initially sold as an agreement to help integrate the Pacific into the global economy but it is asking for FICs to go beyond the global minimums and commit more than other developed countries have in some areas.

If this is such an unbalanced deal why did the Pacific continue negotiating?

There's a mix of reasons why the Pacific continued at the table.

Firstly they all didn't. PNG walked away from the talks as they believed there will be a 'net loss' for PNG. Fiji has threatened to walk away if their concerns aren't reflected in the agreement. Whilst the two biggest FICs have taken these stands, it is very hard for other Pacific Island countries to walk away from these talks even if they wanted to. The dynamic of aid dependency makes it hard to annoy the regions two biggest donors when they are insisting the talks to continue.

Secondly there was the desire to see where the negotiations end up. Whilst all the signs aren't looking good, the Pacific continued to negotiate in good faith in the hope that the final outcome will be in their interest.

Finally is the misguided belief that PACER-Plus will bring much-needed foreign investment to the FICs. Even though the Investment chapter states as an objective to "encourage and promote" investment this is based on the notion that there is a link between commitments made in trade agreements and inflows of foreign investment. An extensive survey of investors and government officials has found "given the minuscule impact [FTAs] typically have on investment flows, arguments by developed countries that wide-ranging treatment and protection standards will help developing countries attract foreign investment would be misguided."

What happens next with PACER-Plus?

The negotiations were concluded in April 2017 and the signing of the agreement has been scheduled for June.

At the time of writing Fiji has expressed concerns about being locked-out of the final negotiations and will still continue to try negotiate a final outcome that is in Fiji's interests.

Only at this point now will the text of PACER-Plus be released to the public, after it has all been concluded.

Once signed, PACER-Plus would need to be ratified by each country signing up to it. This process varies from country to country. Once ratified by a majority of countries it would come into effect on a specified date.

Do all countries have to sign up?

No. As the former Australian Trade Minister stated in 2009, "if any country is unhappy, they don't have to sign on".

Can PACER-Plus be stopped?

Yes but it will involve people from across the Pacific, Australia and New Zealand making sure their governments know that this is a bad deal. Trade agreements have been stopped in the past and there is no reason why PACER-Plus can't be added to that list.

Australia and New Zealand will push hard to conclude PACER-Plus and use their usual tactics of bullying and cheque-book diplomacy to try get

what they want. It's not inevitable though and if the Pacific communities stand against PACER-Plus then it can be stopped.

If we don't have PACER-Plus how does that impact the Pacific?

There is nothing within the 'benefits' of PACER-Plus for the Pacific that actually require PACER-Plus to come into effect. The Pacific already has duty-free and quota-free access to Australia and New Zealand, the seasonal worker schemes remain as they were, and any development assistance money could be given without requiring legally binding commitments from the Pacific.

How can the Pacific determine its own economic future?

It can start by walking away from PACER-Plus. The Pacific's economic future should be based on its strengths and uniqueness – so building on its customs, land systems, etc to start a new discussion about how the economy supports those aspects of the Pacific that define it. Trade agreements like PACER-Plus don't value the richness of the Pacific and instead only see wealth and development happening when more Australian and New Zealanders are profiting from the Pacific.

A new conversation about the economic futures of the Pacific is needed, PACER-Plus is distracting us from that very real and urgent need.





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