



10 Reasons to Challenge the Pacific Agreement on Closer Economic Relations (PACER-Plus)

Key Points:

>> PACER-Plus will lead to a substantial loss in government revenue

>> PACER-Plus could lead to higher taxes for the poor

>> PACER-Plus will lead to business closures and job losses

>> PACER-Plus could undermine access to essential services

>> PACER-Plus could undermine indigenous rights to land

>> PACER-Plus will strip Pacific governments of policy options they could use to stimulate industry and employment

>> PACER-Plus offers a lot more for Australia and NZ than it does for the Pacific

>> Pacific Island Countries are in no way ready to engage PACER-Plus negotiations

Fact sheet:

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April, 2009

Why a free trade agreement with Australia and New Zealand poses dangers for Pacific economies and peoples

PACER-Plus will lead to a substantial loss in government revenue

Many governments in the Pacific are struggling to provide public services paid for through taxes (like health, education, water, electricity, police and emergency services). One of the ways Pacific countries collect these taxes is through a tax on imported goods (often luxury goods). PACER-Plus will force Pacific governments to stop collecting some of these taxes, which means governments will have difficulty supporting already struggling public services.

A report commissioned by the Pacific Islands Forum Secretariat, and completed by Washington-based consultants *Nathan Associates*, found that under PACER-Plus, Pacific countries stand to lose tens of millions of dollars each year. That report found Vanuatu stands to lose around 17% of its annual government revenue, as does Tonga, while Samoa and Kiribati stand to lose around 14% of their revenue. Even bigger countries like Fiji and PNG stand to lose more than \$10 million each year¹.

It is unclear how Pacific governments would continue to provide services to their people if they lose this much revenue. One of the ways they might save money is to downsize their public sector – putting more people out of work. Any loss of jobs for nurses, teachers and public servants would place an added burden on women who work in these sectors and increase the push to migrate.

PACER-Plus could lead to higher taxes for the poor

If Pacific governments sign on to PACER-Plus they will have to look for other ways to raise money they need to provide public services. This usually means introducing a new tax in the form of a value-added tax (VAT) or goods and services tax (GST). Governments that already have these taxes will be forced to raise them.

Taxes on goods and services unfairly penalise the poor. This is because everybody pays the same tax on what they buy, regardless of how much income they earn. A poor person buys bread, cooking oil or other basic goods (and pays tax on it), just as much as a rich person.

Even if these taxes are introduced, it is unlikely that Pacific governments will be able to recover the revenue lost through PACER-Plus. Studies by the International Monetary Fund have found that over the past 25 years, low income countries have completely failed to recover government revenue lost from the reduction of import taxes (and that introducing VAT has little impact on meeting the shortfall)². There are recent examples of this in our region – when the Asian Development Bank forced Vanuatu to lower tariffs and introduce a VAT as part of conditions for a new loan in the late 1990s for example, the country suffered massive revenue losses that it took many years to recover from.

¹ Nathan Associates. 2007. *Pacific Regional Trade and Economic Cooperation – Joint Baseline and Gap Analysis*. Pacific Islands Forum Secretariat, November 2007.

² International Monetary Fund, 2005. *Tax revenue and (or?) trade liberalisation*. (prepared by Thomas Baunsgaard and Michael Keen). June 2005.

PACER-Plus will lead to business closures and job losses

Businesses and industries in the Pacific Island Countries face considerable constraints to doing business (distance from markets, cost of inputs, small economies of scale, lack of human resources etc). Opening Pacific markets to large well established corporations in Australia and NZ who do not operate within these constraints may not necessarily make Pacific businesses more efficient – it may instead wipe them out.

Dr Wadan Narsey, Economics Professor at the University of the South Pacific, predicts that under PACER-Plus three quarters of Pacific manufacturing would close down, leading to unemployment for thousands of workers³.

Pacific countries have little or no social 'safety nets' to retrain these unemployed workers or support them with welfare benefits while they look for other job opportunities, and have even less revenue to fund them.

PACER-Plus could undermine access to essential services

Services like health, education, water, electricity, post, waste management etc. are important services that should be available to everybody in society. These services play a *social* role, and it's only recently that they have been thought of as ways to make profit. Some of these services (like health and education) represent basic human rights, and under international treaties governments are obliged to provide these services to everybody at accessible prices.

PACER-Plus will require Pacific governments to open service 'sectors' – allowing Australian and NZ companies to compete to provide certain services in their country. There are two main reasons why this could undermine access to services (especially for vulnerable people, like the unemployed, or the rural poor).

Firstly, opening service 'markets' could allow foreign companies to pick and choose where they provide services, and who they provide them to. Companies might provide water, health, education, or power services to wealthy people in the cities and towns, but not extend these services to rural areas or to outer islands. This is especially a concern in the Pacific, where in some countries there are no regulations in place to ensure everyone has a right to access these services.

³ pp.85 Institute for International Trade (University of Adelaide). 2008. *Research Study on the Benefits, Challenges and Ways Forward for PACER Plus – Final Report*. Institute for International Trade, June 2008.

Secondly, opening service 'markets' can lead to two levels of services in the country, where the rich get good services, but most people don't. Listing health services for example, would allow the building of foreign hospitals, clinics and dental clinics. This could lead to an internal 'brain drain', where the most skilled health staff are drawn away from the public sector (by means of higher pay) leaving poor or remote areas without the people they need to run essential healthcare facilities.

Negative social impacts arising from the liberalisation of services have already been recorded in the Pacific. For example, the privatisation of water supply in Port Moresby, Papua New Guinea, during the 1990s was marked by allegations of bribery and corruption. There have been improvements in the efficiency of water supply to the capital, but higher water rates put the cost of water out of reach for many poorer urban dwellers.

There are also many cases of 'two-tiered' provision of services in the region. In Vanuatu a subsidiary of the world's largest private water utility corporation (French-based *Suez*) provides water at some of the highest prices found anywhere in the Pacific, to people in the capital Port Vila. While Suez is making healthy profits delivering water to the better-off in Vila, provision of safe drinking water to the majority of ni-Vanuatu remains a responsibility of government (who cannot cross-subsidise the extension of water services into rural areas with money made from water provision in the capital).

PACER-Plus will strip Pacific governments of policy options they could use to stimulate industry and employment

PACER-Plus is likely to prevent Pacific governments from making a range of policy choices that could be used to stimulate Pacific industry, tourism and agriculture, and create local jobs.

PACER-Plus would make it very difficult for Pacific governments to favour local companies or agricultural producers. Under the terms of a new deal, Pacific governments may not be able to support local firms with things like time-bound tax breaks, preferential credit, input subsidies, or duty exemptions *without extending those same treatments to an Australian or NZ corporation interested in establishing a similar enterprise*.

A free trade agreement would also force Pacific governments to bind their tariff rates at a low level – removing *forever* the ability to protect local producers from foreign competition while they become established. This removes the right of Pacific governments to use development strategies that have been implemented successfully by developed nations and other developing countries around the world.

Mauritius, a small island state similar to some of the countries in the Pacific, has used a mixture of import taxes, quotas and investment incentives to govern the market in a way that added value and stimulated development. Many of the policy options that have been used by Mauritius would be banned under PACER-Plus.

The same would apply to services. Pacific governments may want to support local landowners to develop tourism services in a rural area, or on 'offshore' islands. This may be important for preventing rural-urban drift, promoting culturally sensitive development, and providing appropriate sustainable livelihoods for villagers. However, 'national treatment' provisions under a free trade agreement could mean Pacific governments cannot support those landowners with preferential credit (to build new tourist accommodation for example), duty exemptions on imports, subsidised fuel (for operating vehicles and dive/fishing boats), time-bound tax breaks, or training grants to send young people to hospitality courses, *without offering the same treatment to Australian and NZ tourism companies.*

Providing support to farmers (through subsidised fertilizer, seeds, machinery, equipment etc) could become even more important in the future, as Pacific countries look to improve domestic food security in the face of world-wide price rises for key staples like rice.

But it is likely to be more difficult to support farmers as well. Many Pacific countries have provided price subsidies in recent years to stabilise fluctuations in the price of key commodities like copra. PACER-Plus may ban certain supports and subsidies to the agricultural sector in Pacific countries.

PACER-Plus will give unprecedented rights to foreign corporations

Free trade agreements restrict the ability of governments to regulate the activities of foreign businesses interested in investing, or supplying services, in their countries.

PACER-Plus is likely to lead to changes in law in the Pacific that would allow Australian and NZ companies to establish new enterprises with reduced obligations to the countries in which they invest. Under PACER-Plus Pacific governments will face pressure to remove restrictions on foreign investments. They may also no longer be able to regulate investment in a way that creates local employment – by requiring Australian and NZ investors hire local workers and managers, train local workers, partner with local businesses or use local inputs and suppliers. It is likely that Australian and NZ companies will also be able to remove all their profits whenever they like (instead of being required to re-invest into the local community).

In some cases, businesses can complain about government decisions if they feel they are getting in the

way of making profits. In some cases they can even take the government to a form of international court to demand money in compensation.

This has previously happened in Bolivia and Argentina, where transnational water companies demanded massive damages from government when their contracts were terminated because price hikes had put water beyond the reach of local people. The companies had also failed to continue to invest in infrastructure. The total claims brought against Argentina were enormous. In 2006 a number of foreign companies had filed law suits in relation measures taken by the Argentinean government that they claimed affected the profitability of their provision of utilities, totaling claims for \$16 billion in damages. Argentina lost a case to a subsidiary of the US corporation Enron, and was forced to pay \$165 in damages⁴.

Most free trade agreements signed by Australia and NZ include binding investor-state arbitration procedures that allow Australian and NZ companies to sue other governments for damages if they breach certain investment conditions. Pacific governments can expect Australia and NZ will want PACER-Plus to contain similar commitments.

Under PACER-Plus, Pacific governments may not be able to introduce new regulations affecting services and investment that are 'more burdensome than necessary' – that is, burdensome for foreign businesses. This may include regulations which aim to keep prices low, regulations aimed at sharing the benefits of investment with local landowners, or regulations to ensure services are available to everybody in the community.

There is a history of Australian and NZ business behaving in a poor manner in the Pacific. The involvement of the Australian mining company BHP in the massive poisoning of Papua New Guinea's Fly River system is a well known example. More recently, unscrupulous real estate agents in Vanuatu have flouted that country's laws to lease indigenous land to Australian investors looking for a retirement home in the islands⁵.

It is important Pacific governments maintain the ability to regulate business activities for social, cultural and environmental reasons.

PACER-Plus could undermine indigenous rights to land

⁴ See Dow Jones Newswires, 2006. *Azurix wins \$165 million vs Argentina in latest ICSID ruling.* www.bilaterals.org/article.php3?id_article=5535

⁵ Slatter, C. 2006. *The Con/Dominion of Vanuatu? – Paying the price of investment and land liberalisation – a case study of Vanuatu's Tourism Industry.* September 2006. Oxfam New Zealand.

Indigenous peoples across the Pacific island countries have a distinctive physical and spiritual relationship with their land based on the concept of custodianship. Most Pacific land is owned communally.

Free trade agreements can have implications for indigenous rights and land tenure, particularly if they contain provisions to allow foreign ownership of land. At the World Trade Organisation, the European Union has already asked Papua New Guinea and the Solomon Islands to remove restrictions on the ownership of land by foreign companies and investors. During Vanuatu's initial bid to join the World Trade Organisation, the United States demanded Vanuatu allow private (and foreign) ownership of land.

A study on PACER-Plus commissioned by the Pacific Islands Forum Secretariat found that "possibly the most significant conflict between the indigenous peoples of Forum Island Countries and regional trade integration arises in the economic uses of communally held land and resources."⁶ Pacific governments must be aware that any investment chapter in PACER-Plus could undermine indigenous Pacific rights to land.

Pressure to allow foreign ownership of land, even through a fixed term lease, could allow foreign business to control that land permanently, because they can't afford to repay the 'improvements' such as hotels or apartments that were built on the land. This could take land away from future generations of indigenous people. This is already happening in Vanuatu, where foreign investors are leasing land at low prices, sub-dividing the land for new development and on-selling it at large profits, in the expectation that they can keep it forever.

PACER-Plus could lead to more expensive medicine and education materials

Free trade agreements often include rules regarding 'intellectual property rights'. These rules protect the 'rights' of companies that produce new inventions – meaning only they, or people they license, are allowed to sell that invention, and they can sell it for whatever price they like. 'Inventions' include things like new medicines and education materials (like books, magazines and online journals).

Australia and NZ are likely to want PACER-Plus to include new rules on intellectual property at least as strong as the rules at the World Trade Organisation (WTO). The WTO rules grant pharmaceutical companies 20 years exclusive rights to a patented invention. In countries that have joined the WTO, drug

companies can sell their drugs – without any competition, and at high prices, for 20 years – even if that means poor people who need those drugs cannot buy them.

In the Pacific, most countries are not members of the WTO and so these rules don't apply. If they were introduced under PACER-Plus Pacific governments may not be able to import certain cheaper drugs, and would have to buy the expensive 'protected' medicine. There are already examples of this in the region. In Fiji, the anti-psychotic drug Olanzapine is a patented drug that is costing the Fiji government considerably more to procure than generic versions that used to be available – due to Fiji's intellectual property rights commitments at the WTO⁷. It can be expected that moves to patent indigenous remedies would also rise if PACER-Plus contains commitments relating to intellectual property rights.

If PACER-Plus contains rules similar to other free trade agreements around the world, it might be more difficult for teachers and students in the Pacific to access education material – by restricting photocopying and sharing of books and journals, or by restricting access to information on the internet with digital 'locks' on some information.

Other things that are important for development, like herbicides and pesticides, diverse cultural content or new computer hardware and software, may also be more expensive or unavailable if PACER-Plus contains rules on intellectual property. PACER-Plus might even include new rules that restrict the traditional rights of farmers to save, re-use, exchange and sell seeds produced from their harvests!

PACER-Plus is not necessary for Pacific countries to benefit from international trade

International trade can be an important way to develop job opportunities and lift people out of poverty. If Pacific governments want to encourage trade by lowering tariffs on imports, opening service sectors to increased competition, or offering incentives to foreign investors, they can do so at any time they like – according to national development priorities, and in consultation with the wider community.

However, PACER-Plus would have the effect of *forcing* Pacific governments into a particular development model, and tying their hands if something went wrong or they wanted to change their policies as circumstances change. In recent years, Pacific governments have had to intervene directly in the market following major natural disasters (as when Samoa paid farmers to replant crops following cyclones in the 1990s), or when the privatisation of a government service has gone wrong (as happened when Tonga decided to re-nationalise elements of its electricity

⁶ Nathan Associates. 2007 *Pacific Regional Trade and Economic Cooperation: Joint baseline and gap analysis*. Nathans Associates, December 2007.

⁷ For details, see: Meads, S. 2008. *Trade, Medicines and Human Rights: Protecting Access to Medicine in Fiji and the Pacific*. Masters Thesis, Victoria University of Wellington.

services). PACER-Plus could remove some of this important policy flexibility.

There *are* a number of ways Australia and NZ could help to develop trade in the Pacific – but none of these need to be linked to a potentially harmful free trade agreement.

Australia and NZ could provide assistance to Pacific exporters trying to meet their strict quarantine standards, or help to meet key infrastructure challenges (improving roads and access to port facilities), or introduce programmes to improve the marketing of Pacific tourism and niche agricultural exports (in Australia and NZ). Australia and NZ could review the Rules of Origin requirements under SPARTECA so Pacific nations qualify for exporting more finished products to Australia and NZ duty-free. Australia could also review the impact of Australian non-tariff barriers to trade. Any such review could look at the public health restrictions on imports of commercial quantities of kava to Australia, which have damaged a key export opportunity for countries like Vanuatu and Fiji.

Australia and NZ can also continue to open their labour markets to unskilled and semi-skilled Pacific workers under temporary labour mobility schemes (as they have done under the Recognised Seasonal Employers scheme in NZ, and the Pacific Seasonal Worker Pilot Scheme in Australia). Again, this shouldn't be done in the context of a regional free trade deal.

PACER-Plus offers a lot more for Australia and NZ than it does for the Pacific

A free trade agreement with the Pacific has long been a dream of Australian and NZ trade officials. Australia and NZ are interested in securing new access to Pacific markets for their exporters, service suppliers and potential new investors.

Businesses in Australia and NZ want to see tariffs reduced on their exports to the Pacific, and changes to laws in the region to allow corporations to establish new enterprises (and take profits home) with very few obligations to the countries in which they invest. Australian and NZ exports to the region are already worth \$AUD5 billion each year, and a free trade agreement could add to that value considerably.

A recent study commissioned by the Australian aid agency (AusAID) found that PACER-Plus could increase trade in the region by up to 30 per cent⁸. However, that study did not say in which *direction* that increase in trade

⁸ Institute for International Trade (University of Adelaide). *Research Study on the Benefits, Challenges and Ways Forward for PACER Plus – Final Report*. Institute for International Trade, June 2008.

would be. As Pacific countries already have 'duty-free and quota-free' access to Australia and NZ markets for most of their products, it seems that nearly all of this increase would be an increase in Australian and NZ exports to the Pacific (at the same time as Pacific industries close and Pacific governments lose much needed revenue).

Some argue that PACER-Plus will lead to lower prices for consumers in the region, but experience suggests that in many cases exporters and distributors ('middle men') tend to increase their prices almost back to the same level after tariffs are removed, and fail to pass on the benefits to consumers. Certainly this has happened before in the Pacific. Following tariff reductions on consumer items in Vanuatu, a report commissioned by the United Nations Development Programme found that a fall in retail prices *was not evident*, attributing this to "domestic market imperfections and high cost inter-island transportation"⁹. Consumers may also face a higher sales tax that is likely to cancel out much of any possible price decreases in any case.

A free trade agreement with Australia and NZ offers many gains for business in those countries, and very few (if any) gains for development in the Pacific – as well as posing very serious risks.

Pacific Island Countries are in no way ready to engage PACER-Plus negotiations

Countries that have opened up their markets to foreign competition have tended to do so only when their local industries can compete on the world stage. Certainly all of the now-developed countries have protected their industries in the early stages. Pacific countries, with relatively few developed industries and firms, are not at a point where open competition with developed nations would be wise.

Pacific countries are currently engaged in controversial free trade negotiations with the European Union (negotiations for an 'Economic Partnership Agreement') and are negotiating to extend a trade agreement among themselves called the Pacific Island Countries Trade Agreement (PICTA) from just goods to include services. While negotiating these complex trade agreements, Pacific governments cannot even begin to consider all the ramifications of a new deal with Australia and NZ.

The Deputy Secretary General of the Pacific Islands Forum Secretariat, Peter Forau, has said Pacific Island Countries do not have the technical capacity to negotiate PACER-Plus at this time¹⁰. Pacific countries often have very small trade and foreign affairs departments, and

⁹ Wagle, S. 2007. *Leveraging Trade for Human Development in Vanuatu – Summary of Issues*. Asia-Pacific Trade and Investment Initiative UNDP Regional Centre in Colombo.

¹⁰ *Ibid*

negotiations on the range of complex issues contained in PACER-Plus should only be undertaken when trade officials, and even ministers, have full training regarding the issues involved. But instead of building genuinely independent capacity in the region, Australia and NZ are channeling their funds into training, research and technical assistance that is designed to meet their own needs.

To properly evaluate a free trade agreement with Australia and NZ, Pacific governments need access to a range of information. Studies are needed to assess the social costs and revenue implications of a new deal and to assess what regulations currently in place in the Pacific would have to be changed under the terms of a new free trade agreement (and where regulations protecting things like indigenous land rights or access to essential services might be missing). Research is needed identify which businesses and industries would be most affected by a new deal – especially if some businesses will be forced to close. Research is also needed to assess the implications of reducing the ‘policy space’ available to governments when they are setting their own trade and development policy. Finally, assessments should be made of *alternatives* to PACER-Plus, building on existing trade arrangements and allowing for the special and differential needs of Pacific countries. All of this research should be undertaken *well before* entering into free trade negotiations with Australia and NZ.

Despite all these reasons why the Pacific isn’t ready to negotiate a free trade agreement, it seems likely that Australia and NZ will continue to push the Pacific to begin negotiations in mid-2009.

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Further information:

This ‘Fact Sheet’ was prepared by PANG Information, Education and Communications Officer Wesley Morgan.

Further resources on trade and economic justice issues in the Pacific are available at www.pang.org.fj.

PANG was established in 2000 by regional NGOs concerned that Pacific civil society was being left out of the debate on trade liberalisation. PANG aims to improve effective and democratic governance in the Pacific, by empowering Pacific civil society and private sectors to engage the decision making process around trade and economic planning.

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