



AFTINET
Australian Fair Trade &
Investment Network Ltd

**Submission to the Joint Standing Committee on Treaties
Inquiry on the Pacific Agreement on Closer Economic
Relations Plus (PACER Plus)**

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Summary

AFTINET is a network of 60 community organisations which advocates for fair trade based on human rights, labour rights and environmental sustainability. This submission provides an overview of our assessment of PACER Plus. Other organisations in our network will provide more detailed submissions on particular aspects of the agreement, including health impacts, gender impacts, environmental issues and labour rights.

PACER Plus was negotiated over nine years between the Pacific Island economies, Australia and New Zealand. The agreement differs from many other agreements in that Australia and New Zealand are the dominant economies and have responsibility to ensure that the agreement not only benefits them but also considers the development needs of very small and vulnerable Pacific Island economies.

PNG and Fiji, the two largest economies comprising over 80% of the combined Pacific Island economies' GDP, have not signed the agreement on the grounds that it does not sufficiently consider their development needs and would adversely affect their infant industries. This severely undermines claims that PACER Plus is an effective regional agreement.

Pacific Island economies already have tariff free access to Australia and New Zealand. The main impact of the agreement is to reduce and remove tariffs on Australian and New Zealand exports to the Pacific Islands, which means Australia and New Zealand will reap most of the benefits.

The agreement will result in a loss of tariff revenues for the Pacific Islands, which form over 10% of government revenue for some Pacific Island economies. Studies show that these cannot be fully replaced by consumption or other taxes. Most Pacific Island governments already struggle to fund essential services. This revenue loss could result in reductions in government services.

A World Bank study has shown that the one-size-fits-all predictions about benefits from trade liberalisation do not apply to the Pacific Islands. They have inherent geographic obstacles including small but widely dispersed populations and high transport costs which means they are unlikely to experience export-driven development and associated employment creation on the scale seen in the broader Asia Pacific region. This means the loss of employment in local industries and local farming from additional import competition is unlikely to be offset by other benefits.

Many Pacific Island women are employed in infant industries like clothing manufacturing and fish processing. Many are also involved in subsistence agriculture. As discussed above, these are the sectors which will be most affected by tariff cuts, which would therefore have a disproportionately severe impact on women's employment. Women employed in the public sector could also be affected if tariff cuts result in revenue losses and cuts to public services.

The services and investment chapters require national treatment and specific protections for foreign investors in listed services and sectors. The use of a positive

list and the exclusion of ISDS are welcome, but governments will have reduced ability to regulate listed services, and foreign investors will have greater protection than local investors.

Noncommunicable diseases like heart disease and diabetes are increasing all over the world because of consumption of processed foods containing high levels of fat and sugar. These diseases are already a problem in some Pacific Island countries. Reducing tariffs and other barriers in unhealthier products such as processed food, alcohol and tobacco has been shown to increase the availability and reduce the retail prices of these goods.

This means that imported processed unhealthy food becomes cheaper than local fresh healthy food, leading to increased consumption of unhealthy foods, the demise of local food production and greater adverse health impacts. As women do most of the caring work in Pacific Island countries, they may face additional care burdens due to adverse health effects on their families.

The Aid for Trade readiness packages and the Economic Cooperation and Development packages are not additional funding but will be “absorbed” by the existing official development assistance budget at no additional cost to Australia.

This means that this funding is not additional funding to the total aid budget for the Pacific Islands. In other words, funding may be diverted from other aid and development projects in the Pacific Islands.

Pacific Island countries are already experiencing the effects of climate change from rising sea levels, and have asked Australia for greater support in reducing climate change and mitigating its effects. Despite this, PACER Plus contains no environment chapter committing governments to implement international environmental agreements. This is a missed opportunity.

Thousands of Pacific Island workers come to Australia each year under the Seasonal Worker Program, expressed in a non-binding agreement which was negotiated separately from (but in parallel to) PACER Plus. Recent reports from the Fair Work Ombudsman, media and a Joint Parliamentary Inquiry have shown increasing incidence of exploitation of these workers. The lack of a labour rights chapter in PACER Plus is also a missed opportunity.

PACER Plus will cover only 20% of the GDP of Pacific Island economies, with potential negative effects on small and vulnerable economies in the areas listed above.

Recommendation one:

The PACER Plus implementing legislation should not be approved, but instead should be delayed pending detailed studies of its impacts in each Pacific Island economy.

Summary of Recommendations

- 1. The PACER Plus implementing legislation should not be approved, but instead should be delayed pending detailed studies of its impacts in each Pacific Island economy.**
- 2. The implementation of the agreement should be delayed pending detailed, independent studies of the employment impacts of the proposed tariff changes in each Pacific Island economy.**
- 3. The implementation of the agreement should be delayed pending detailed studies of the impacts of the proposed tariff changes on government revenues and the capacity to deliver essential services in each Pacific Island economy.**
- 4. The impact of the implementation of services commitments should be assessed through independent studies in each Pacific Island country before governments commit to expanding those commitments**
- 5. There should be an independent assessment of the impact of investment provisions in each Pacific Island country before additional commitments on investment are made.**
- 6. There should be an independent assessment of the health impacts of PACER Plus provisions in each Pacific Island country before the agreement is implemented.**
- 7. There should be an independent assessment of the gender impacts of PACER Plus provisions in each Pacific Island country before the agreement is implemented.**
- 8. There should be an independent assessment of the impacts in each Pacific Island country of the absorption of the aid for trade programmes on the total aid budget before the agreement is implemented.**
- 9. PACER Plus should include an environment chapter that requires the adoption and implementation of International Environment Agreements, enforced through the government-to-government dispute processes contained in the agreement.**
- 10. PACER Plus should include a labour chapter that requires the adoption and implementation of agreed international standards on labour rights, enforced through the government-to-government dispute processes contained in the agreement.**

Introduction

The Australian Fair Trade and Investment Network (AFTINET) welcomes the opportunity to make a submission to the Inquiry on the Pacific Agreement on Closer Economic Relations plus (PACER Plus).

AFTINET is a network of 60 community organisations and many more individuals which advocates for fair trade based on human rights, labour rights and environmental sustainability. Our member organisations represent over two million Australians.

This submission provides an overview of our assessment of PACER Plus. Other organisations in our network will provide more detailed submissions on particular aspects of the agreement, including health impacts, gender impacts, environmental issues and labour rights.

AFTINET supports the development of fair trading relationships with all countries and recognises the need for regulation of trade through the negotiation of international rules.

AFTINET supports the principle of multilateral trade negotiations, provided these are conducted within a transparent framework that recognises the special needs of developing countries and are founded upon respect for democracy, human rights, labour rights and environmental sustainability.

In general, AFTINET advocates that non-discriminatory multilateral negotiations are preferable to preferential bilateral and regional negotiations that discriminate against other trading partners.

The current process for trade agreements is not consistent with the Australian values of transparency, democracy and accountability which underpin our parliamentary system.

Trade agreements now deal with a wide range of policy issues which would normally be decided through democratic parliamentary processes. This has led to a global movement for more open and accountable and democratic trade processes.

The current Australian trade practice is that trade negotiations are conducted in secret, and the text is not made public until after it has been agreed. The decision to sign agreements is a Cabinet process, only after which the agreement is tabled in Parliament and examined by the Joint Standing Committee on Treaties. The text of the agreement cannot be changed. Parliament only votes on the implementing legislation, not on the whole agreement.

The 2015 Senate Inquiry into the Australian trade agreement process summarised the faults in this secretive and undemocratic process in its report *Blind Agreement* (Senate Committee on Foreign Affairs Defence and Trade, 2015). AFTINET made a detailed submission to this inquiry (AFTINET 2015).

Our recommendations for change to this process are summarised briefly below:

- **Prior to commencing negotiations, the Government should table in Parliament a document setting out its priorities and objectives. The document should include independent assessments of the projected costs and benefits of the agreement. Such assessments should consider the economic, regional, social, cultural, regulatory and environmental impacts that are expected to arise.**
- **The Australian Government should release its proposals and discussion papers during trade negotiations. Draft texts should be also released for public discussion, as occurs in the WTO and is now the practice in some EU negotiations (EU, 2015).**
- **The final text should be released for public and parliamentary debate before it is authorised for signing.**
- **After the text is completed but before the decision is made to sign it, comprehensive independent studies of the likely economic, health and environmental impacts of the agreement should be undertaken and made public for public debate and review by parliamentary committees.**
- **Parliament should vote on the whole text of agreements, not just the implementing legislation.**

PACER Plus includes only 20% of the combined GDP of Pacific Island economies: Fiji and PNG have not signed

The Pacific Island Countries (PICs) originally envisaged as part of PACER Plus were the Cook Islands, Fiji, Kiribati, the Republic of the Marshall Islands, the Federated States of Micronesia, Niue, Palau, Papua New Guinea (PNG), Samoa, the Solomon Islands, Tonga and Tuvalu. Four of these are classified as Least Developed Countries: Kiribati, Solomon Islands, Tuvalu and Vanuatu (United Nations Committee for Development Policy, 2017).

Fiji and PNG, the two largest Pacific Island economies, representing over 80% of the combined GDP of the Pacific Islands, have not signed the agreement.

It is extraordinary that the DFAT National Interest Analysis of PACER Plus only mentions in passing that what is supposed to be a regional agreement does not include Fiji and PNG. Those governments which have signed represent less than 20% of the combined Pacific Island economies.

Without the two largest Pacific Island economies, PACER Plus can hardly be described as a regional agreement and perhaps should be called PACER Minus.

PNG and Fiji say that PACER Plus does not meet their development needs

Both PNG and Fiji have said that they are unwilling to participate because the agreement is heavily skewed towards the interests of Australia and New Zealand, and has not lived up to the early rhetoric that it would be as much about development as reducing trade barriers (The National 2017, Dornan, 2017).

The DFAT National Interest Assessment claims that:

“PACER Plus will support Australia’s national interest in a stable, secure and prosperous Pacific by promoting economic growth and development in PICs through strengthening their capacities to trade to benefit from trade to

“[PACER Plus will] maximise opportunities for them to use trade and investment as engines of growth by lowering the costs of imports and having more foreign investment” (DFAT 2017: 4).

However, this one-size-fits-all assessment of trade benefits ignores the specific size and geographical limitations of many Pacific Island countries that include limited population numbers, many small islands, wide geographic dispersal and high communication and transport costs.

In contrast, the World Bank 2014 report entitled *Well-being from Work* recognised these limitations and the barriers they create for success in export-driven development:

“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 Asia Pacific region.” (World Bank 2014:1)

Impacts on local industries and employment

Pacific Island economies already have tariff free access for their goods in Australia, and do not have developed services industries, so there are no direct market access gains for them. The main impact of PACER Plus is to reduce tariffs on Australian exports of goods and facilitate services exports to the Pacific Islands.

The National Interest Assessment recognises that lower tariffs and cheaper import competition could have a negative impact on Pacific Island local industries and jobs, but claims that this has been addressed through tariffs being lowered over a longer timeframe and by flexibility in implementation (DFAT 2017: 4).

However this is contested by PNG and Fiji. They argue that the agreement does not sufficiently recognise the need for special and differential treatment for them as developing countries. They have infant industries that they wish to foster as part of their plans for development. They claim that the rate and pace of tariff cuts will permit a rapid increase in cheaper imports that will undercut those industries and reduce employment (The National 2017, Dornan, 2017).

Apart from those employed in local infant industries, tourism and the public sector, many people in Pacific Island economies still live by farming and fishing. Most local farmers, fishers and other small businesses that are engaged in the cash economy sell their products locally and are also vulnerable to competition from cheaper imports.

There have been no detailed independent studies of the employment impacts of the proposed tariff changes in particular countries. We believe the implementation of the agreement should be delayed pending such studies.

Recommendation two:

The implementation of the agreement should be delayed pending detailed, independent studies of the employment impacts of the proposed tariff changes in each Pacific Island economy.

Impact on Pacific Island government revenues

Tariff revenues form a significant proportion of government revenues in the Pacific Islands.

A 2007 report by Nathan Associates Inc. found that Fiji, Papua New Guinea, Samoa and Vanuatu could lose more than \$10 million in revenue each year and the total revenue for the Cook Islands, Kiribati, Samoa, Tonga and Vanuatu could be reduced by more than 10% (Nathan Associates, 2007).

While it may be possible in some cases to replace revenue generated from tariffs with excise or consumption taxes, these taxes are more resource intensive to collect and can be difficult to enforce in developing countries (Legge et al, 2013). Pacific Island economies already struggle to fund essential services.

Australia and New Zealand have recommended the introduction of, or increases in, consumption taxes to replace tariff revenues. But studies show that consumption taxes replacing tariffs in developing countries compensate for only 30% of lost revenue (Baaunsgaard & Keen, 2005: 22).

Moreover, tariffs can be targeted to discretionary items purchased mainly by those on higher incomes, whereas value added taxes are generally distributed across the whole population. They have a regressive and inequitable effect on incomes, since those on lower incomes spend most or all of their incomes on consumption, meaning that consumption taxes take up a higher percentage of their total incomes. Higher income groups spend less on consumption and save more, with the result that consumption taxes take up a lower percentage of their income. (Chernick and Reschovsky, 2000).

There have been no detailed studies of the impacts of the proposed tariff changes on government revenues and capacity to deliver essential services in Pacific Island countries. We believe the implementation of the agreement should be delayed pending such studies.

Recommendation three:

The implementation of the agreement should be delayed pending detailed studies of the impacts of the proposed tariff changes on government revenues and the capacity to deliver essential services in each Pacific Island economy.

Trade in services and ability to regulate services

DFAT's National Interest Analysis claims that the commitments on trade in services in PACER Plus establishes a framework which reflects "the rights obligations and modes of supply under the WTO General Agreement on trade in Services (GATS)" (DFAT: 9).

The GATS framework is problematic because it treats government regulation of services as if it were a tariff to be frozen at current levels and then reduced over time. In fact, governments need flexibility to increase regulation to address changed circumstances like climate change or financial crises.

The GATS framework claims to exempt public services, but the definition of public services is "any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers" (PACER Plus Article 1).

This is ambiguous, since many public services are increasingly supplied in a competitive environment, and the aim of GATS is to encourage greater private investment in services, including services like health and education which compete with public services.

This does not automatically lead to privatisation of services, but creates a framework which enables privatisation. If privatisation of a listed service occurs but proves a failure, as happened with the privatisation of vocational education in Australia (Conifer, 2016), the rules make it more difficult for governments to re-regulate or recommence public provision.

Like GATS, the agreement has a positive list structure, which means that each government nominates the list of sectors and services to which the rules of the agreement apply. This is preferable to a negative list approach.

For listed services, the agreement commits governments to apply market access and national treatment to foreign service providers, meaning that they cannot limit the number of service suppliers, regulate the numbers employed in those services, or limit the share of foreign ownership in a particular service (PACER Plus article 7.5).

Governments also commit that domestic regulation of measures relating to the qualification requirements, technical standards and licensing requirements for listed services shall be based on objective and transparent criteria, not more burdensome than necessary to ensure the quality of the service, and not in themselves a restriction on the supply of the service (PACER Plus article 7.10)

Governments can choose not to list services where they wish to retain full powers to regulate in these areas. However, in the negotiation process governments are pressured to list as many services as possible.

The PACER Plus text shows that the scope of commitments made by several countries goes beyond the services and sectors commitments they made in GATS.

WTO members Samoa, Solomon Islands, Tonga and Vanuatu have made GATS-plus commitments in areas including maritime passenger transportation, maritime freight transportation and air transport services (DFAT: 3).

On health sector commitments, Vanuatu and Tonga have made more extensive commitments (GATS-plus) on health-related services than they made in GATS. In addition, some of the smallest Pacific Island countries which have not joined the WTO have made GATS-plus commitments on health and other services .

The Cook Islands, Federated States of Micronesia, Niue and Marshall Islands, none of which are WTO members, have made extensive commitments for health-related services, beyond the WTO GATS commitments of any Pacific Island country.

These more extensive health service commitments could limit the ability of governments to regulate those services in future (Gleeson 2016).

Article 7.18 commits PACER Plus to “reviewing their lists of commitments with the aim of improving the overall commitments within three years of entry into force of the agreement.”

The implementation of services commitments should be assessed through independent studies in each Pacific Island country before governments commit to expanding those commitments.

Recommendation four:

The impact of the implementation of services commitments should be assessed through independent studies in each Pacific Island country before governments commit to expanding those commitments.

Investment

PACER Plus does not include provisions for investor-state dispute settlement (ISDS) by international tribunals.

However, it does provide additional specific protections for foreign investors including minimum standard of treatment, fair and equitable treatment and compensation for both direct and indirect expropriation of assets (PACER Plus Articles 9.9 and 9.13).

Indirect expropriation includes actions or actions by a government that “has an effect equivalent to direct expropriation without formal transfer of title or outright seizure” (PACER Plus Annex 9C).

These provisions are to be enforced through local courts and a state-to state dispute process (PACER Plus Article 9.13.4 and Chapter 14).

The concept of indirect expropriation is not recognised under Australian law or most other national court systems. It therefore constitutes an additional legal right for foreign investors which is not available to domestic investors. It has been extremely controversial, as it can be argued that domestic laws designed to protect the public interest constitute indirect expropriation (French 2014).

It remains to be seen how these provisions will be used and enforced in the state-to state disputes system.

Recommendation five:

There should be an independent assessment of the impact of investment provisions in each Pacific Island country before additional commitments on investment are made.

Health impacts

Noncommunicable diseases like heart disease and diabetes are increasing all over the world because of high consumption of processed foods containing high levels of fat and sugar. These diseases are already a problem in some Pacific Island countries. Reducing tariffs and other barriers in unhealthier products such as processed food, alcohol and tobacco has been shown to increase the availability and reduce the retail prices of these goods. This means that imported processed unhealthy food becomes cheaper than local fresh healthy food, leading to increased consumption of unhealthy food and to the demise of local food production, and increased adverse health impacts (Legge *et al*, 2013).

In addition, limitations on technical barriers to trade can prevent or limit government attempts to regulate in these areas. For example, when Samoa joined the WTO, it had to remove its ban on imported turkey tails, a food with high fat content linked to noncommunicable diseases (ABC, 2013).

Recommendation six:

There should be an independent assessment of the health impacts of PACER Plus provisions in each Pacific Island country before the agreement is implemented.

Gendered Impacts

Many Pacific Island women are employed in infant industries like clothing manufacturing or fish processing, where they form the majority of employees. Many are also involved in subsistence agriculture. As discussed above, these are the sectors which will be most affected by tariff cuts, which would therefore have a disproportionately severe impact on women's employment. Women employed in the public sector could also be affected if tariff cuts result in revenue losses and cuts to public services.

As women do most of the caring work in Pacific Island countries, they may face additional care burdens due to adverse health effects on their families.

Recommendation seven:

There should be an independent assessment of the gender impacts of PACER Plus provisions in each Pacific Island country before the agreement is implemented.

Aid for trade

The Australian and New Zealand governments have exerted pressure on Pacific Island countries to join PACER Plus using the Aid for Trade and Development and Economic Corporation and Development packages which they received in exchange for signing the agreement.

The National Interest Analysis says that Aid for Trade readiness packages comprise AU\$4 million dollars and NZ\$4 million, while the Economic Cooperation and Development packages are AU\$19 million and NZ\$7 million.

In the case of Australia this is not additional funding but will be “absorbed” by the existing official development assistance budget (DFAT 2017:14). This means that funding is not additional funding to the total aid budget for Pacific Islands and will be of no additional cost to Australia. In other words, funding may be diverted from other aid and development projects in the Pacific Islands.

Recommendation eight:

There should be an independent assessment of the impacts in each Pacific Island country of the absorption of the aid for trade programmes on the total aid budget before the agreement is implemented.

Climate change is more of a threat than trade barriers: internationally-recognised environmental standards

Pacific Islands have more urgent priorities than reducing trade barriers. The World Bank and other global agencies have identified them as most vulnerable to climate change and rising sea levels. Kiribati, Tuvalu and Marshall Islands are already facing land loss and water pollution because of rising sea levels caused by climate change (World Bank 2013, Ives 2017).

Pacific Island countries have repeatedly asked Australia and other governments for more active support in their efforts to combat climate change and mitigate its effects, most recently though through implementation of the Paris Agreement (Pacific Island Forum Leaders 2017)

It is therefore surprising that the PACER Plus agreement contains no environment chapter. This is a missed opportunity.

Protection of the environment is a fundamental value which should underpin trade policy. Trade agreements should require full compliance with Multilateral Environmental Agreements, with effective sanctions for non-compliance.

At the same time, trade agreements must ensure that other provisions, such as investment protection or deregulation of services, do not undermine the ability of governments to regulate in the interest of protecting the environment.

Trade policy must also work cohesively with measures to address climate change. Trade agreements should not restrict governments’ ability to adopt measures to address climate change.

Recommendation nine:

PACER Plus should include an environment chapter that requires the adoption and implementation of International Environment Agreements, enforced through the government-to-government dispute processes contained in the agreement.

Internationally-recognised labour rights should be enforced

PACER Plus contains no labour rights chapter. This is a missed opportunity.

Labour rights are relevant because growing numbers of Pacific Island workers now work temporarily in Australia under the Pacific Island Seasonal Worker Program (SWP), and there have been increasing reports about the violation of their labour rights.

The program was established separately from the PACER Plus agreement but expansions to the scheme have been announced in parallel with the PACER Plus negotiations, through a separate Labour Mobility Arrangement document which is not legally binding. (DFAT 2017: 5).

The program has allowed up to 4000 Pacific Island workers per year to do seasonal work in Australia, under the sponsorship of specific employers, mostly in horticulture and agriculture, and more recently in other sectors.

The program was supported by unions and many community organisations as a means by which Pacific Island workers can find work opportunities in Australia and contribute to the support of their communities in the Pacific Islands. However, there is growing evidence of exploitation of those workers (Unions Aid Abroad APHEDA 2017).

Over the past 3 years there have been increasing numbers of reports of the exploitation of Pacific Island workers in the SWP. These are similar to ongoing reports of the exploitation of other temporary migrant workers on various visa schemes which tie them to one employer, meaning they can be deported if they complain (Senate Standing Committee on Foreign Affairs and Trade 2015).

Exploitation of workers in the SWP has been documented more recently by media reports, investigations by the Fair Work Ombudsman, and most recently by the Joint Standing Committee on Foreign Affairs and Trade, in a report entitled *Hidden in Plain Sight: an inquiry into establishing a Modern Slavery Act in Australia* (ABC 2016, Doherty 2017, Fair Work Ombudsman 2017, Joint Standing Committee on Foreign Affairs and Trade 2017).

Complaints about exploitation of Pacific seasonal workers include:

- lack of payment or payment of less than the minimum wage
- long hours of work in extreme heat conditions, exceeding laws on maximum hours of work
- sub-standard and overcrowded accommodation

- exploitation by migration agents through misrepresentation and deduction of large sums from wages
- employers violating rights to Freedom of Association and collective bargaining by banning union membership

(ABC 2016, Fair Work Ombudsman, 2017, Doherty, 2017, Joint Standing Committee on Foreign Affairs and Trade 2017)

The Australian Government should ensure that trade agreements include commitments by all parties to implement their own labour laws on minimum wages and conditions such as hours of work, and agreed international standards on labour rights, including the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work and the associated Conventions. These include:

- the right of workers to freedom of association and the effective right to collective bargaining (ILO conventions 87 and 98)
- the elimination of all forms of forced or compulsory labour (ILO conventions 29 and 105)
- the effective abolition of child labour (ILO conventions 138 and 182)
- the elimination of discrimination in respect of employment and occupation (ILO conventions 100 and 111)

Recommendation ten:

PACER Plus should include a labour chapter that requires the adoption and implementation of agreed international standards on labour rights, enforced through the government-to-government dispute processes contained in the agreement.

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