PACER-Plus: plus for whom?

Analysis of the PACER-Plus Trade in Goods Chapter

Undermining Pacific development

A Briefing paper prepared by the South Centre and Pacific Network on Globalisation (PANG)

www.pang.org.fj / www.southcentre.int
facebook: TabuPacerPlus
Twitter: @tabupacerplus
Updated 24 November 2015

The **Pacific Network on Globalisation (PANG)** is a Pacific regional network promoting economic self-determination and justice in the Pacific Islands.

The Pacific Network on Globalisation (PANG) emerged from a regional conference on globalisation, trade, investment and debt held in Fiji in May 2001. Organisations, academics, community and church groups present at the conference pointed out the lack of understanding of free trade and globalisation, and especially of the various impacts on the communities of the small economies of the Pacific. There were concerns about the lack of public information, and a desire to promote informed discussion based on analytical research and debate on free trade and globalisation. The conference pointed out the need for an independent regional medium through which awareness could be raised and the truth about economic globalisation told.

PANG has been one of the most outspoken Civil Society Organisations (CSOs) in the Pacific on free trade, economic reform policies, regional policy-making processes, and the agendas of multilateral and bilateral donors. On some issues, it has been the only voice. PANG has assumed an important watchdog role and has been looked to by other CSOs for leadership in taking on regional governments and the Pacific Islands Forum Secretariat and other regional institutions such as Office of the Chief Trade Advisor (OCTA) on economic and trade issues.

The **South Centre** is the intergovernmental organization of developing countries that helps developing countries to combine their efforts and expertise to promote their common interests in the international arena. It was established by an Intergovernmental Agreement which came into force on 31 July 1995 and its headquarters are in Geneva, Switzerland.

The South Centre undertakes research and analysis oriented on various international policy areas that are relevant to the protection and promotion of the development interests of developing countries. It helps the countries of the South to develop common points of view and to work together on major international development-related policy issues.

Within the limits of its capacity and mandate, the South Centre also responds to requests for policy advice and for technical and other support from collective entities of the South such as the Group of 77 (G-77) and China, the Non-Aligned Movement (NAM) and other developing country groups.

The South Centre has an Observer Status in several international organizations.

The collaboration by the Pacific Network on Globalisation with the South Centre is recognition for the need for independent research and analysis on a key chapter of interest to Forum Island Countries. The analysis is intended for Forum Island Country negotiators, decision makers at the national level, as well as for Civil Society Groups, academia and those interested in understanding how PACER + will undermine development in the Pacific.

Table of Contents

Conclusions and Recommendations

Recommendations:

- FICs need language that seeks to preserve the current margin of preferences that exists under SPARTECA/PATCRA.
- FICs seek coherence on Australia's argument on SAT and demand that there be no obligation for FICs to make market access commitments.
- Those FICs that want to schedule market access offers do so on in a voluntary manner in line with an SAT level of 60% of which bears no precedence for those FICs who do not make market access offers.
- An unequivocal rejection of the linkage between tariff commitments and the strength of safeguards.
- FICs need at least three safeguards: a general safeguard, a special agricultural safeguard and infant industry safeguard.
- Renaming of "Transitional Safeguard Measures" to "Bilateral Safeguard Measure".
- For FICs to ensure that for any agricultural safeguards to be of use they must insist that they are permanent in nature and can go above the MFN or base rates where needed.
- Paragraph 7.3 should be changed to ensure the scope of application for the Safeguard Measures is broader, taken cue from EPAs.
- FICs ensure that a separate annex is provided to allow for safeguard measures, both agricultural or otherwise, to be applied above the MFN or base rates.
- The removal of the proposal concerning "Investigations" into the application of a safeguard measure.
- The inclusion of provisional measures that contain the expanded scope for their use as mentioned above and that are asymmetrical in nature to allow FICs the ability to use only.
- There should be no mechanism for compensation, as such delete Article 7.8.
- Ensure that the Special Agricultural Safeguard measures are permanent in nature and not temporary.
- Change the time for Parties to give notice of enacting safeguards from ten days up to sixty.
- Change the proposal allowing parties to request review of any product or trigger level by determining that any discussion of the Article may be the subject of review in a Committee on Trade in Goods.
- FICs should reject the application of a ceiling on all tariff lines as currently proposed.
- Article 6 Internal Taxation and Regulation should be removed to allow FICs to undertake local content policies to support the growth of domestic FIC industries.
- The Infant-industry safeguards should be allowed to extend beyond the suspension of tariff reductions or the base rate limits.
- FICs should retain the right to use export subsidies, those who are non-WTO FICs should not be bound on their ability to use these subsidies.
- PACER-Plus should confer no burdens contained within the TFA onto FICs unless they have agreed and scheduled commitments at the WTO.
- FICs should argue for the removal of the MFN clause as it currently confers upon them no benefits and only cost in extending preferences to Australia and New Zealand.
- There should be no inclusion of compensation in the instance of FICs modifying their schedules, especially not in the instance of extending such compensation to the areas of services and investment.
- Modification of Schedules should contain an asymmetry in favour of the FICs to allow them to suspend "substantially equivalent" concessions immediately in response to any modification of schedules from Australia or New Zealand that have not been agreed to by the joint committee.

Introduction

Trade negotiators met in Melbourne in the week of 5 October 2015 to further negotiate the PACER-Plus, a comprehensive trade agreement between Australia, New Zealand and 14 Forum Island Countries. This envisaged free trade agreement is in the final stages with the Trade in Goods chapter being the major issue left on the agenda.

This paper analyses the draft Trade in Goods Chapter and show some of the negative implications of the current text for the Forum Island Countries (FICs). Liberalisation of goods and other commitments in the area of goods have major implications on the development prospects of Pacific countries.

Besides that the (balance of) benefits of other chapters considered more or less 'closed' can be questioned, such as commitments on investment arbitration and the non-legally binding nature of access to (seasonal) labour markets in Australia/New Zealand. The desirability of investment provisions in bilateral trade deals has been questioned by the Australian public as well as the administration, for example in relation to the Australia-China FTA. However, the very same issue seem to be acceptable by Australia/New Zealand for Pacific Island Countries in the PACER-plus negotiations. PANG has a separate paper on this issue. It is stressed that chapters can only be considered ‘closed’ when all stakeholders, particularly Civil Society organisations who have largely been marginalised from negotiations, are involved to fully appraise and agree to the contents and implications of the current texts in those chapters.

The conclusion of the analysis is that the Trade in Goods Chapter will severely hamper the development prospects of Pacific Island Countries. They restrict the PICs from being able to ensure that their economy meets the needs of its people and their economic aspirations. PICs are being asked to take on more obligations than they have done at the World Trade Organisation (WTO), without access to adequate safeguards and protective measures. For those PICs not yet WTO members, the PACER-Plus and its Trade in Goods Chapter is effectively WTO accession ‘through the backdoor’.

Based on this analysis, PANG has serious concerns about the current Trade in Goods chapter and feels that it is undermining the ability of the FICs to determine the policy needs of their domestic industries and producers.

The analysis of the Trade in Goods chapter relates to five areas:

1. Market access commitments of trade in goods will benefit Australia/NZ not the PICs;
2. Inadequate safeguards for PIC industries
3. Reduced ability to support domestic producers;
4. Trade Facilitation Agreement and other WTO Agreement through the backdoor
5. Clauses that would oblige Pacific to give more to Australia and New Zealand in the future

Below PANG and the South Centre have provided an analysis of the draft Trade in Goods Chapter in accordance to the five areas mentioned above.

I. Market access commitments - liberalisation of trade in goods will benefit Australia and NZ not the FICs

Current agreements and trading structure

PACER-Plus is very unlikely to bring any substantial market access gains for the FICs. In fact there is clearly a significant imbalance between the market access gains potentially available to the PICs on the one hand and Australia and New Zealand on the other.

At present, FICs are already exporting under the **South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA)** and in addition Papua New Guinea can export under the **PNG-Australia Trade and Commercial Relations Agreement (PATCRA)**. Fiji also has a special bilateral trade arrangement with Australia for textiles, clothing and footwear (**SPARTECA (S-TCF)** Scheme).

Under these agreements FICs already have duty-free quota-free access to Australia/New Zealand.[1] In formal that access is not under threat. The PACER provides (Article 5.3) that *"with respect to any Forum Island Country, Australia and New Zealand shall maintain all existing arrangements relating to market access at the time this Agreement enters into force, until such time as that particular Forum Island Country has concluded new and/or improved trade arrangements providing equal or better access to their markets".*

At the same time the value of the existing market access is being steadily diminished by the erosion of the FICs "preferential position" in the Australia and New Zealand markets as those two countries conclude FTAs with an ever-widening circle of partners, including especially the ten ASEAN countries and also China in the case of New Zealand and the United States in the case of Australia. PACER-Plus will not change this situation**, and no language has been included to preserve the current margin of preferences.**

For Australia/New Zealand the Pacific Island Countries are an important market. In fact, together they represent the 13th largest trading partner for Australia/New Zealand. The four main importers among PICs are Papua New Guinea, Fiji, Solomon Islands and Samoa. Papua New Guinea and Fiji take up more than 80% of Pacific Island Countries' import from Australia/New Zealand.

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 FICs exports (measured in value), most of it in the form of pearls and precious stones. If precious stones are excludes, **Australia and New Zealand only account for 15% of Pacific exports**. For many products, Australia and New Zealand is even of less significance – less than 10% of exports of fish and fish products, milling products, oil seeds, animal/vegetable fats, oil seeds, cocoa and cocoa preparations, beverages, articles of rubber, wood and articles of wood, paper and paperboard, nickel and articles end up in Australia/New Zealand (see also Annex). It is unclear how PACER-Plus would make a difference given that the tariffs are at 0 for these products in Australia/New Zealand.[2] However, in return FICs are asked to liberalize 'substantially all trade' with Australia/New Zealand.

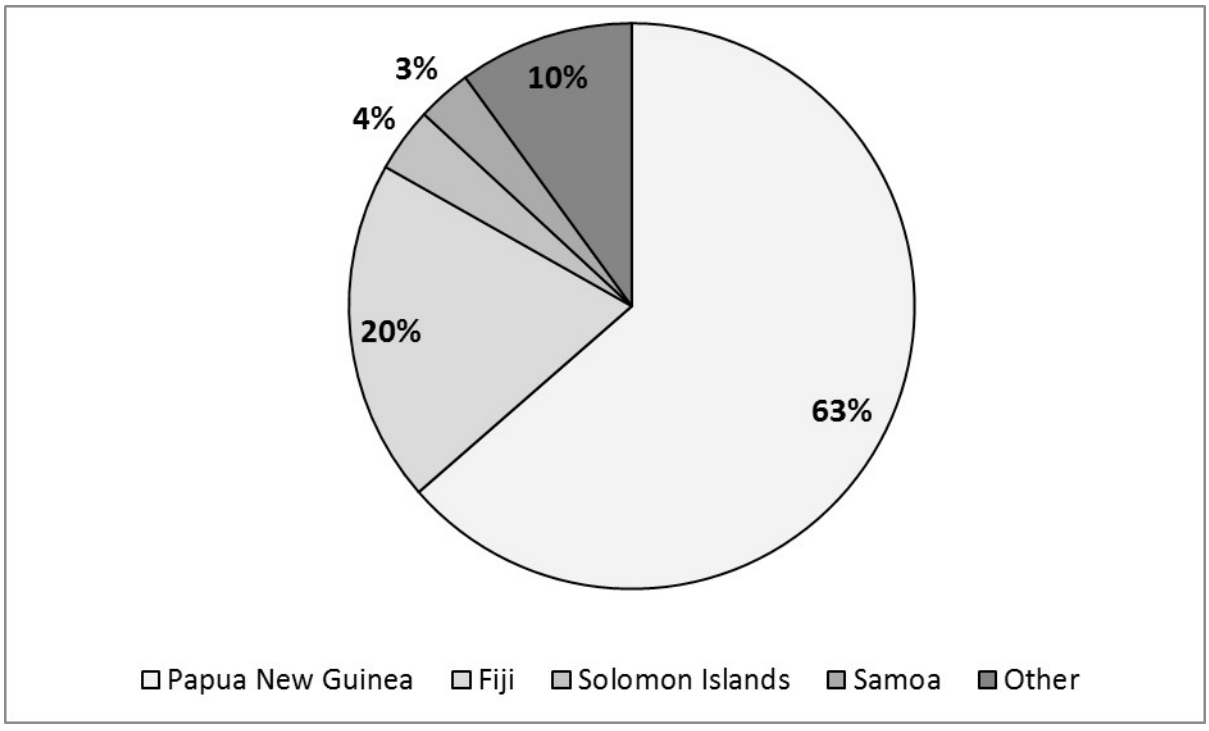
[1] An exception appears to be Fiji's exports of sugar to Australia (which is banned according to 2009 WTO Trade Policy Review).

[2] A response to this could be that PACER-Plus will try and address the failing of SPARTECA to support FIC exports to A/NZ. This is very unlikely as several issues of interest to Pacific (SPS, rules of origin) are marginally addressed.

Pacific Island Countries are the 13th largest trading partner of Australia/New Zealand

No	Country	AUSNZ export in 2014 (USD billion)	No	Country	AUSNZ export in 2014 (USD billion)
1	China	89.7	11	Thailand	5.3
2	Japan	45.6	12	United Kingdom	4.6
3	Korea, Republic of	19.4	**13**	**Pacific Island Countries**	**3.4**
4	United States of America	13.9	14	United Arab Emirates	3.4
5	India	8.5	15	Viet Nam	3.2
6	Singapore	8.4	16	Hong Kong, China	3.2
7	New Zealand	7.2	17	Saudi Arabia	2.7
8	Taipei, Chinese	7.1	18	Netherlands	2.5
9	Malaysia	6.3	19	Philippines	2.1
10	Indonesia	5.3	20	Germany	1.8

The four main importers among PICs are Papua New Guinea, Fiji, Solomon Islands and Samoa. Papua New Guinea and Fiji take up more than 80% of Pacific Island Countries' import from Australia/New Zealand.



'Substantially all trade' does not need tariff liberalisation by Forum Island countries

Australia has stated that tariff liberalisation would have several objectives, including:

i. increasing freedom of trade and facilitation of trade that will lead to closer economic cooperation;
ii. ensuring the removal of duties on substantially all the trade between Parties;
iii. addressing the concerns of FICs revenue loss through staged tariff reductions over a long period of time and addressing other sensitivities;

These are problematic assumptions. Firstly, 'freedom of trade' and the 'facilitation of trade' can't be assumed to lead to economic cooperation. An influx of goods from Australia and New Zealand also cannot be assumed to be 'economic cooperation', one would argue that healthy, competitive and mature domestic industries in the FICs would be the best outcome for economic cooperation – an outcome that has been shown to come about through careful, deliberate tariff policy.

The 'substantially all trade' criterion is derived from the WTO. All free trade agreements that involve developed countries must follow the rules of Article XXIV of the General Agreement on Tariffs and Trade (GATT), one of the basic agreements within the WTO.[3] A free trade agreement that liberalises trade between the parties should cover 'substantially all trade' (SAT) within a 'reasonable time period' for it to be WTO-compatible. The idea is that free trade agreements discriminate against other countries which is against Most-Favoured Nation treatment, a principle of the WTO. However if an agreement covers 'substantially all trade' it is considered OK.

There is no agreement on what constitutes 'SAT' or 'reasonable time frame' – it is up to parties to negotiate. So it is largely the stronger developed country that can dictate the terms. Australia is known to have set very high standards in agreements with more developed countries than the FICs – 80 or even 90+%. The target of the European Commission has been liberalisation of 80% of imports in the Economic Partnership Agreement negotiations with African, Caribbean and Pacific (ACP) countries. It appears to have reached this goal in most instances. However, the Economic Partnership Agreement between EU and 16 West-African countries West Africa agreed to liberalize 75% in a timeframe of 20 years. However, 75% liberalisation is still having a major impact on nascent industries and the agreement has not been signed yet by all parties.

Papua New Guinea is the largest market for Australia and New Zealand. Interestingly, a trade agreement is already applicable in the trade between PNG and Australia and New Zealand. This agreement does NOT require PNG to liberalise. Nonetheless, **Australia defended the non-reciprocal PNG-Australia agreement as being compliant with Article XXIV:**

> *6. In 1974-75 and 1975-76 more than 95 per cent of Australian imports from Papua New Guinea were duty free and it was estimated that in 1977 more than 99 per tent of Papua New Guinea exports to Australia would be admitted free of duty. In 1974-75, almost 82 per cent of total two-way trade between Australia and Papua New Guinea was duty free.- Consequently, the parties to the Agreement considered that PATCRA conformed fully to the provisions of Article XXIV of the General Agreement in that it was a full free-trade area in GATT terms from the time it came into operation.*
>
> *7. The representative of Australia stated that although Papua New Guinea would not be extending any reverse preferences to Australia under the Agreement, trade statistics showed that substantially all the trade was covered within the meaning of Article XXIV:8(b). It was*

[3]More flexibible rules apply for free trade agreements between developing countries under the so-called 'Enabling Clause'

pointed out in this connexion that Article XXIV did not contain any specific provision with respect to reverse preferences. The absence of reverse preferences in favour of Australia did not, in the view of his authorities, affect the free-trade area status of the Agreement.
(GATT document L/4571, 14 October 1977)

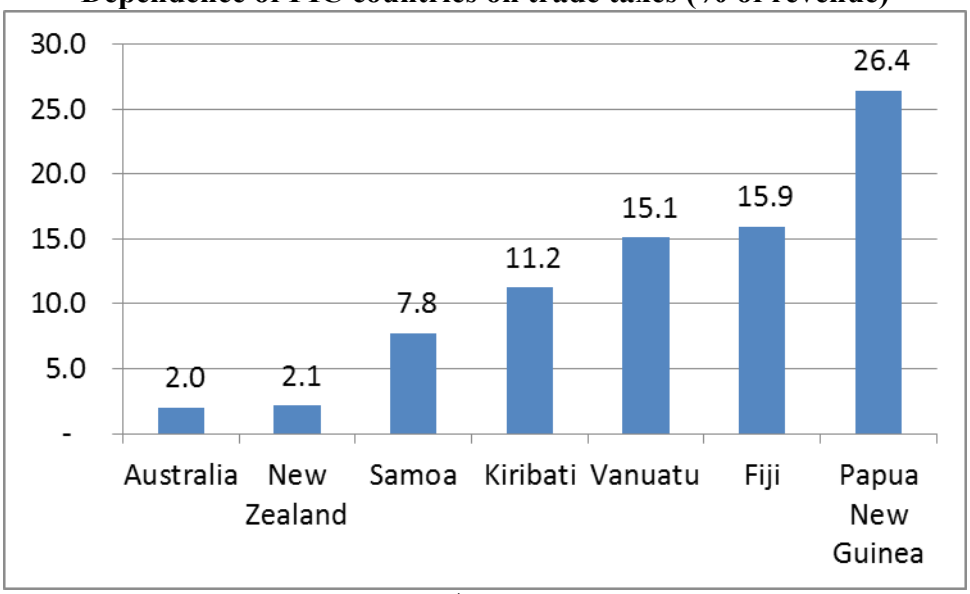
Consequently, Island countries need not liberalize their imports in order to satisfy the requirement to liberalize 'substantially all trade'.

The FTA between Australia and PNG is notified as an Article XXIV RTA - i.e. meeting the requirement of substantially all trade

FICs derive a lot of government revenue from trade taxes

Forum Island Countries are quite dependent on trade taxes – import/export tariffs and revenue from import licenses and fees/charges levied separately from import tariffs. PACER-Plus will significantly reduce or eliminate income from import tariffs, revenue from import licenses as well as fees and charges. In contrast, the governments of Australia and New Zealand have multiple other sources of government revenue. As a matter of fact, based on World Bank data, Australia and New Zealand only derive 2% of revenue from trade taxes whereas Vanuatu, Fiji derive 15% of their income from trade taxes and PNG more than 25%:

Dependence of FIC countries on trade taxes (% of revenue)



Source: World Bank, most recent year available[4]

Tariff revenue losses

If Forum Island Countries where to eliminate import tariffs, this would result in substantial revenue losses. Some studies demonstrate that lowering import tariffs on Australian and New Zealand goods, where most Pacific imports originate, could lead to big tariff revenue losses – in the order of US$110 million across the FICs. The biggest losers would be Cook Islands (6-12%), Kiribati (14-15%), Samoa (12- 14%), Tonga (17-19%), and Vanuatu (17-18%) The tax bases of the tiny Pacific administrations are already vulnerable – and some are tax-havens. They will struggle to establish and collect new revenues.[5]

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:

[4] http://data.worldbank.org/indicator/GC.TAX.INTT.RV.ZS

[5] http://www.pacificpolicy.org/wp-content/uploads/2012/05/D08-PiPP.pdf

Tariff revenue loss for Pacific Island Countries will be more than USD 200 million based on current imports from Australia/New Zealand (2012-2014).

Country/ Territory	Binding coverage	Bound average	MFN average applied tariff on imports	Imports from AUSNZ during 2012-2014 (USD 000)	100% lib on imports from AUSNZ – Loss in USD 000	Loss when 80% liberalized, in USD 000
Fiji	51.1	40.4	11.4	787,447	89,769	71,815
Papua New Guinea	100	32.2	4.7	2,553,106	119,996	95,997
Samoa	100	21.3	11.4	125,071	14,258	11,406
Solomon Islands	100	78.3	10	147,827	14,783	11,826
Tonga	100.0	17.6	11.7	70,445	8,242	6,594
Vanuatu	100.0	39.7	9.1	94,056	8,559	6,847
Subtotal						204,486
Other PICS			9.7[6]	237,700	23,096	18,477
Total PICs						**222,963**

Source: WTO (binding coverage, bound average, MFN applied average)

Finding alternative sources of government revenue is difficult

The FICs have good grounds to be worried about what the implications will be for government revenue as many currently utilise tariffs as an easily obtainable and convenient form of revenue collection. It is also worth noting that tariffs are also a manner of which to, in general, target those who have more money and are able to afford luxury imported items, shifting to other forms of taxation such as value added taxes shift the burden to the entire population, a population that isn't wholly engaged in the cash economy. Whilst tax reforms are happening in the region is it important to bear in mind the ability of other forms of taxes to replace the revenue of those gained from tariffs. 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.[7] The difference between the tax reforms that are being undertaken now in some FICs and the commitments on tariffs is that those made under PACER-Plus are irreversible in the event that FICs cannot obtain the necessary government revenue.

Unaddressed market access issues

The main potential for improved access to the Australian and New Zealand markets the FICs could come from improvements in rules of origin and more constructive approaches to Sanitary and Phytosanitary (SPS) issues. In the areas of SPS as well as rules of origin, the PACER-Plus has not achieved any perceptible result. The SPS Chapter of PACER-Plus essentially copies some provisions from the WTO's SPS Agreement without really addressing the real problems associated with small island states. Rules of origin have not been concluded yet. They should be facilitative to FIC exports, asymmetrical (lower thresholds for value addition by FICs) and administrative methods/processes/documentation requirements should not negate the use of preferential market

[6] Estimate based on simple average

[7] 'Tax Revenue and (or?) Trade Liberalization', Baunsgaard and Keen, June 2005, IMF Working Paper, WP/05/112, http://www.imf.org/external/pubs/ft/wp/2005/wp05112.pdf.

access. Global sourcing or very low value addition thresholds for some commodities (textiles, clothing and footwear, fish and fish products) should be part of the package.[8] However, even if better and more flexible rules of origin could be negotiated, these benefits will be eroded quickly when Australia/New Zealand conclude FTAs with major textile, clothing and/or footwear exporters.

Concluding remarks

The definition of 'substantially all trade' can be made without the FICs making any commitments. As has been mentioned above, Australia has previously argued at the WTO that "*the absence of reverse preferences in favour of Australia did not, in the view of his authorities, affect the free-trade area status of the Agreement."* Given the unlikely nature of Australia to keep coherence in its approach to free trade agreements in the Pacific, FICs should be arguing for, at worst, the equivalent of what was agreed in the West Africa EPA which included a figure of 75%. It is worth noting the FICs comments at the 4th Intersessional:

> "The FICs indicated that they would be offering a SAT level of 60% and contended that the market access offers under the EPA were conditional upon global sourcing for products under the HS 0304/05 and 1604/05 as well as development assistance. In a similar vein, they argued that any market access commitment that they would make in PACER Plus would be contingent upon legally binding commitments on labour mobility and development assistance."

There is a legal argument for FICs to make no commitments on tariff cuts and that should be strongly argued in the negotiations. FICs already have Duty-Free Quota-Free access to the Australian and New Zealand markets, therefore the increase in trade is going to come from commitments made by the FICs, again it appears the FICs are shouldering the burden of commitments in PACER-Plus.

Recommendations:

- FICs need language that seeks to preserve the current margin of preferences that exists under SPARTECA/PATCRA.
- FICs seek coherence on Australia's argument on SAT and demand that there be no obligation for FICs to make market access commitments.
- Those FICs that want to schedule market access offers do so on in a voluntary manner in line with an SAT level of 60% of which bears no precedence for those FICs who do not make market access offers.

[8] Fiji (and other FICs) wants SPARTECA's rules of origin reviewed to improve market access to Australia and New Zealand. Since Fijian TCF exporters import most, if not all, material inputs they seemingly face extreme difficulties meeting SPARTECA's restrictive value-added rules of origin, including under the S-TCF Scheme; Fiji is pursuing efforts to further reduce the minimum local area content from 35% to 25%. Exclusion of wool and wool-blend products by Australia from the S-TCF scheme has also effectively crippled Fiji's TCF industry, which, if included, would have been able to develop a comparative advantage in exports of wool and wool-blend products. (see 2009 WTO Trade Policy Review on Fiji, WTO document WT/TPR/S/213).

II. Inadequate safeguards for FIC industries

Trade remedies are important policy tools for FICs to be able to respond to any damage that happens to domestic producers on account of low or no tariffs on imports from Australia and/or New Zealand due to PACER-Plus.

Policy space to nurture and protect their domestic industries is an essential right for FIC governments. This right is unconditional and not linked with market access offers – that would be a feature of a true 'development agreement' that PACER-plus is supposed to be.

Australia has suggested that the 'strength' of safeguards should correspond to the level of tariff commitments to be undertaken by FIC. This suggestion is flawed. A free trade agreement goes far beyond what any WTO FIC member agreed to at WTO. Non-WTO FIC Members have complete freedom. FICs should have much stronger safeguards than that what is available at the WTO. It also follows that in principle the maximum remedy in the form of additional tariff should be able to go up to the WTO bound tariff (if applicable) not the 'base rate'(current applied tariff) or 'suspension of tariff reduction'.

Further to this is ensuring that the FICs are matching the global calls for protection of their industries by actions from Australia and New Zealand. In the current text on PACER-Plus this means ensuring that any proposals on *Global Safeguard Measures* support those of the G-90 (which includes the African Group, ACP and LDC Group) at the WTO. The proposal is stronger than what is currently worded in PACER-Plus and states:

> Parties shall not apply safeguard measures against a product originating in a developing country Party as long as its share of imports of the product concerned in the importing Party does not exceed 3 per cent or 10 per cent in the case of a least developed country Party.

Transitional Safeguard Measures too narrow and weak

It is applauded that FICs made a Chapter proposal for *'Transitional Safeguard Measures'* . Nonetheless, serious concerns remain with the FIC proposal.

1) Firstly it needs to be made clear why it is referred to as a 'transitional' measure. This implies that measures are not permanent and that there is a limit to when the measures can be taken, yet there is no stipulation of an expiry in the text. The text must clearly reflect the permanent nature of measures.

Article 7.3, in relation to the *Transitional Safeguard Mechanism*, states:

> If, as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good of a Party is being imported into a developing country party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the developing country party may, to the minimum extent necessary to prevent or remedy serious damage and facilitate adjustment, apply a transitional safeguard measure, consisting of:
>
> (a) the suspension of the further reduction of any rate of customs duty provided for under this Agreement on the good; or
>
> (b) an increase of the rate of customs duty on the good to a level not to exceed the lesser of:
>
> (i) the most-favoured-nation (MFN) applied rate of customs duty in effect at the time

the action is taken, or

(ii) the MFN applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

2) The measures as currently proposed limits the grounds for use to conditions that "cause serious damage, or actual threat thereof" to a domestic industry producing like products. Limiting the scope of the measures use undermines the ability of the FICs to utilise the measure and can lead to it not being of most benefit to FICs.

There is no reason why PACER-Plus shouldn't accommodate a broader scope in relation to safeguard measures. Many EPAs have added the following conditions to allowing their use:

- disturbances in a sector or industry of the economy, whether of an economic or social nature, or difficulties which could bring about serious deterioration in the economic situation of the importing Parties or Pacific States, or
- disturbances in the markets of agricultural like or directly competitive products or mechanisms regulating those markets.

The interim EPAs, signed and ratified by Papua New Guinea and Fiji, contained a similar scope (albeit containing a reference to agriculture) and as such PICs should demand such flexibilities with two countries that are major exporters to the region.

3) Further it is worth paying attention to the condition that states "'as a result of the reduction or elimination of a customs duty pursuant to this Agreement". This condition, which is derived from Article XIX GATT is in practice not used in the WTO context. In the context of a bilateral safeguard, Australia/New Zealand can argue in the future that any damage by their exports has no causal link with reduction or elimination of customs duties which took place several years ago. This language should be redrafted; it is noted that similar language does not appear in many other FTAs.

4) As can be seen from above, Article 7.3 outlines the actions that may be taken under measures yet is weaker than necessary. The remedy under 7.3 should be the customs duty to a level that does not exceed the customs duty applied to other WTO Members. Remedies should also include quotas not only tariff quotas. For instance 'limit imports by means of quantitative restrictions to a rate not less than the rate of such imports during any period of twelve months which ended within twelve months of the date on which the restrictions come into force' (from Article 22 'Difficulties in Particular Sectors', Agreement Establishing the Caribbean Free Trade Association (CARIFTA)

5) The FIC proposal contained in Article 7.5 *Investigations* is also an extraordinary concession from the FICs to allowing their ability to use any safeguards. The proposal states that a Party may only apply or extend a transitional safeguard measure following an investigation by a Parties competent authority to examine the impacts of imports of the domestic industry. The proposal also includes mandated public hearings from all interested parties. Following the investigation the competent authorities will publish their findings and conclusions.

Such a proposal is not found in any other trade agreement and opens to door for exporters, government officials and others from Australia and New Zealand to intervene in the process of a FIC administering their safeguard measures and pressure them to try and achieve an outcome that may not be in the FICs best interest. There is no need for such a process to include exporters or parties not from the FIC country applying the safeguard.

It is common for many trade agreement to contain requirements to inform a Party of any initiation of safeguard mechanisms, the investigation process however will result in additional burdens for

FIC administrators as well as undermine the ability of FIC personnel to be the ones who determine "whether or not the application of a safeguard measure would be in the public interest".

Further the proposals under Article 7 *Notification and Consultation* add an additional burden of proof on the FICs to justify any safeguard measure. Such a burden not only will make it hard for FIC bureaucracies but it remains unclear as to the justification of such a proposal.

6) It is heartening to see the FICs have now proposed within the *Transitional Safeguard Measures* a provision for provisional measures. Unfortunately the proposal is still bound by the narrow scope of the safeguard measures and reliant upon the findings of the proposals for an investigation under 7.5. Such restrictions will ultimately undermine the effectiveness and willingness to deploy such a measure as the narrowness may not be sufficient to protect the domestic industry and the requirements for an investigation will be an administrative burden. Provisional measures are aimed to be easy to use and effective, the FICs proposal falls short on both accounts. One possible proposal could be:

Where exceptional circumstances require immediate action, a Forum Island Country (or Countries), may take the measures provided for in paragraph [] on a provisional basis. Such action may be taken for a maximum period of two hundred and forty (240) days .

As the proposed text above highlights, the options for us of a provisional measure should be at best only for the FICs or at least asymmetrical in their application (the EU West Africa EPA allow EU Parties 180 days, West African Parties 240). The FICs proposal offers the same measures to all Parties regardless of their development status.

7) It will be discussed in more detail below but Article 7.8 that deals with compensation should be deleted from the proposed text as it does not provide any developmental interest for the FICs and isn't necessary to be included in such a proposal.

Lack of protection for agricultural producers

Many FICs feature strong agricultural sectors with many Pacific Islanders engaging in some form of agrarian activity. As such ensuring that domestic producers are not overrun by the enormous agricultural export capacity of Australia and New Zealand is crucial. Recent events in Papua New Guinea have shown the importance of being able to protect local farmers[9].

New Zealand's proposal on *Special Agricultural Safeguard Measures* seems to attempt to provide some of that protection for the FICs but is more restricting than other agreements signed between developed nations.

1) Firstly it is important to reject the proposal from New Zealand in NZ Article 8.5, that such measures to protect agricultural producers be temporary in nature. The EU-South Korea FTA does not include such measures in a temporary form. As Developing and Least-Developed Countries, FICs must have the permanent right to protect their farmers as essential to any proposal on safeguards.

2) With all agricultural safeguards there is a delay between the knowledge of and taking action against an import surge and the actual import surge. This is due to the compilation of trade statistics, the monitoring of import surges and the bureaucratic process that accompany the many phases of such. This being the case, the only way to retroactively apply duties is to release goods and delay the definitive assessment of customs duty (under a security), and if a safeguard

[9] "Ten imported fruit and veg banned in PNG", Radio New Zealand International, posted 17 August 2015, available at http://www.radionz.co.nz/international/pacific-news/281606/ten-imported-fruit-and-veg-banned-in-png

becomes applicable the additional safeguard could be applied to ALL imports except those that have not been cleared yet (as they are en-route).

These time delays mean that ensuring there is an adequate response to import surges is crucial, this may mean being able to take provisional measures and to ban imports.

3) The current proposal by New Zealand in NZ Article 8.3 states that:

> The sum of the additional customs duty applied under Paragraph 2 and any other customs duties applied to the product in question shall not exceed the lesser of the most-favoured-nation ("MFN") applied rate of customs duty in effect on the date on which the special safeguard measure is applied or the base rate.

The EU-South Korea FTA, Article 3.2.6, goes further allowing for a separate tariff rate that Party's set out in an Annex that permits such duties going beyond the MFN or base rates. **In some cases this has allowed some safeguards duties on sensitive items to be up to 754.3%.**

FICs should ensure maximum flexibility and usefulness in the safeguards and as such demand these measures be included.

4) The EU-South Korea FTA offers a number of other opportunities for PICs to ensure PACER-Plus has the maximum developmental flexibilities for themselves. Firstly, NZ Article 8.7 provides ten days for Parties to give notice of the enactment of any safeguards, the EU-South Korea FTA offers its Parties sixty days for such transparency.

5) Further the mechanism for review, NZ Article 8.8, allows for any Party to request a review of the products included and their trigger levels. The EU-South Korea FTA offers greater protection for such safeguards by stating "The implementation and operation of this Article **may be the subject of discussion and review** in the Committee on Trade in Goods referred to in Article 2.16 (Committee on Trade in Goods)."

Proposed language for agricultural safeguards:
A Forum Island Country may apply a bilateral safeguard on agricultural products in situations where
- *the volume of imports of a product entering a FIC Party region during any year exceeds [105%] over the average of the three preceding years for which data is available; or*
- *the average import price of a concerned product originating from Australia or New Zealand in a FIC falls during two consecutive months below [90] % of the average price for that product in that FIC or below 90% of the import price of that product into that FIC during [the most recent marketing year for which data is available][the previous marketing year][10].*

[10]This text is inspired by the EU bilateral safeguard on sugar in the West Africa EPA as well as the existing Special Agricultural Safeguard (SSG) at the WTO contained in Article 5 of the Agreement on Agriculture and the on-going negotiations on the Special Safeguard Mechanism (SSM) in WTO's agriculture negotiations

Concluding remarks

Safeguards and protections are meant to be used when things are going wrong, it is in those times when you need to ensure you have the best response possible. The proposals contained currently in PACER-Plus will leave FICs short when they need it most.

Below are some recommendations to strengthen the proposals as they currently stand. It's worth once again noting Australia's argument that safeguards are justified only by extensive commitments on market access. This not only shows a worrying lack of understanding about the developmental complexities and realities of the FICs but also undermines any notion from Australia that PACER-Plus is a 'development agreement' for the FICs.

Recommendations:

- An unequivocal rejection of the linkage between tariff commitments and the strength of safeguards.
- FICs needs at least three safeguards: a general safeguard, a special agricultural safeguard and infant industry safeguard.
- Renaming of “Transitional Safeguard Measures” to “Bilateral Safeguard Measure”.
- For FICs to ensure that any agricultural safeguards are of use they must insist that they are permanent in nature and can go above the MFN or base rates where needed.
- Paragraph 7.3 should be changed to ensure the scope of application for the Safeguard Measures is broader, taken cue from EPAs
- FICs ensure that a separate annex is provided to allow for safeguard measures, both agricultural or otherwise, to be applied above the MFN or base rates.
- The removal of the proposal concerning “Investigations” into the application of a safeguard measure.
- The inclusion of provisional measures that contain the expanded scope for their use as mentioned above and that are asymmetrical in nature to allow FICs the ability to use only.
- There should be no mechanism for compensation, as such delete Article 7.8.
- Ensure that the Special Agricultural Safeguard measures are permanent in nature and not temporary.
- Change the time for Parties to give notice of enacting safeguards from ten days up to sixty.
- Change the proposal allowing parties to request review of any product or trigger level by determining that any discussion of the Article may be the subject of review in a Committee on Trade in Goods.

III. Reduced ability to support domestic industries

Standstill on tariffs – freezing FICs level of development

The ability of governments to support and nurture local industries has been a key development policy tool for all industrialised countries. 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.[11]

Tariff policy is part of a dynamic industrial policy, and tariffs vary depending on the level of development of a country and the needs of various domestic industries. For instance, at early stage of development, tariffs on labour intensive and resource intensive products are generally raised selectively, after which tariffs move down but tariffs increase on low-technology intensive products.

However, the PACER-plus is fixing a maximum applied level of ALL tariffs, even those that are not being liberalised. This will severely hamper any attempt for a tariff policy supportive of industrialisation and building domestic value chains. This is unacceptable for a 'development agreement'.

National treatment – the end of local content policies

Article 6 on Internal Taxation and Regulation states that "In respect of internal taxes, other internal charges and laws , regulations and requirements affecting matters within the scope of Article III of GATT 1994, each Party shall accord to the goods national treatment---" This means that local content policies that directly or indirectly favour domestic products are outlawed by the PACER-Plus.

For instance, Fiji has a local-content scheme which requires foreign investors manufacturing cigarettes to use at least 50% locally grown and processed tobacco (Foreign Investment Regulations 2008, Schedule 1). Australia/New Zealand can force Fiji to let go of this scheme based on Article 6. It is to be noted that Pacific countries do export zero dollar worth of tobacco and tobacco products from Australia/New Zealand.

Targeted local content policies can be beneficial in other sectors. For instance, the import of (frozen) fish could be limited and/or conditioned on the requirement of investment in local processing capacity or other local investments – that will not be allowed under Article 6.

Inadequate infant industry protection

Given the importance of policy space for tariffs it is encouraging to see the FICs proposing safeguard measures that would protect infant industry development.

As mentioned above, the proposals by the FICs under *Chapter 7* fail to be sufficiently wide in scope to be of most benefit to FICs. The limiting of the measures to only the suspension of tariff reductions or the base rate limits the options for FICs in protecting their infant industries plus the addition of the burden of proof will undermine that ability to protect FIC emerging industries.

[11] http://twnside.org.sg/title2/t&d/tnd36.pdf

There are times when FICs will need to apply a higher duty than is currently being applied. For example, since 1963, the United States has a relatively high tariff of 35% on imports of light trucks which has remained until today in order to protect U.S. domestic automakers from foreign competition (e.g., from Japan and Thailand).

Limiting to use export subsidies to support FIC industries

The proposals in *Article 11 Other Non-Tariff Measures* covers the use of, or lack thereof, export subsidies. The current text proposes that "WTO Member Parties shall not introduce or maintain [AU: , and non-WTO Member Parties shall not introduce,] an export subsidy on any good destined for another Party, including on an agricultural good, except for export subsidies applied to non-agricultural goods by Parties that are a Least-Developed Country."

Providing export subsidies allows for additional avenues to support FIC producers, for example to attract companies to an export processing zone.[12]

The current PACER-plus text would take away the policy tool of export subsidies for non-LDCs. In the WTO Agreement on Subsidies and Countervailing Measures, the exemption from the prohibition to provide export subsidies applies LDCs **plus** countries with a GDP per capita of USD 1000 in 1990 prices. India and Nigeria are still within this limit. [13] Papua New Guinea, Solomon Islands and Kiribati are countries among the PICs with a GDP lower than Nigeria (see table below). Besides that, many small economies with export processing zones (especially in Caribbean, Central America, Jordan) have received waivers in the WTO to continue export subsidies. FICs should be allowed the same, including in the PACER-plus.

Country	**GDP per capita (2013)**
Australia	67,458
New Zealand	41,556
Nigeria	3,006
Papua New Guinea	2,088
Solomon Islands	1,954
Kiribati	1,651

For non-WTO members the current proposals also act as a negative list for any agricultural export subsidies – they have 90 days to notify other Parties of any export subsidies that will be maintain after ratification. For non-WTO member FICs this undermines their ability to support their farmers by introducing new subsidies in the future and has them going beyond what is currently asked of WTO FICs[14].

Concluding Remarks

FICs need to retain the maximum amount of flexibility to protect their domestic industries. The proposals contained within the current text, whilst allowing some options for protection, does so with significant rigidity. This rigidity ignores the complex economic circumstances that face the FICs and undermines their ability to follow the path that almost all other countries have used to

[12] This is not to say that the model of Export Processing Zone is by definition a good development model that is sustainable in the long run.. However, for several countries Export Processing Zones have worked as a means to provide employment and learn skills, among others (for example in Caribbean, Central American countries, China).

[13] WTO document G/SCM/110/Add.12, 6 July 2015

[14] The 2005 Hong Kong Ministerial Declaration reaffirmed that such subsidies can continue to be used by developing countries.

industrialise.

For the proposed protections to have a meaningful impact they must be strengthened and made to work for the FICs. Instead of approaching such protections as aberrations on the free trade landscape they should be seen as legitimate policy tools to achieve the development aims that are supposed to be at the heart of PACER-Plus.

Recommendations

- FICs should reject the application of a ceiling on all tariff lines as currently proposed.
- Article 6 Internal Taxation and Regulation should be removed to allow FICs to undertake local content policies to support the growth of domestic FIC industries.
- The Infant-industry safeguards should be allowed to extend beyond the suspension of tariff reductions or the base rate limits.
- FICs should retain the right to use export subsidies, those who are non-WTO FICs should not be bound on their ability to use these subsidies.

IV. Trade Facilitation Agreement and other WTO commitments through the backdoor

Despite there being no mention of the WTO's Trade Facilitation Agreement (TFA) in the Trade in Goods chapter under PACER-Plus, FICs are going to be bound by the commitments it contains without the flexibilities it currently offers.

For instance, *Article 9: Fee and Charges Connected with Importation and Exportation* covers the issues associated with any charges attached to export and imports. The Article states that all fees and charges on or in connection with importation or exportation must be:
(a) are limited in amount to the approximate cost of the services rendered;
(b) do not represent an indirect protection to domestic products or a taxation on imports or exports for fiscal purposed; and
(c) **are otherwise in conformity with the WTO Agreement**, including ***inter alia*** Articles I and VIII of GATT 1994.

It is the clause in Article 9.1 (c) referenced above that introduces the TFA into PACER-Plus. Once the TFA is in effect it will form part of the WTO Agreement thus ensuring that its commitments are now part of the commitments included under PACER-Plus.

With regards to fees and charges related to importation and exportation the Trade Facilitation Agreement adds certain requirements which aim to reduce fees and charges (Article 6 of the TFA):

- Information on fees and charges shall be published Information to be published shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.
- Fees and charges shall not be applied until information on them has been published.
- An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force, except in urgent circumstances.
- Fees and charges are to be periodically reviewed with a view to reducing their number and diversity, where practicable.

Another example through which the TF Agreement is imported into the PACER-Plus is Article 11/12 on Publication and Administration of Trade Regulations. Para 6 states that '.. Article X of GATT **and other provisions of the WTO Agreement** relating to the publication and administration of trade regulations are incorporated into and shall form part of this Agreement, *mutatis mutandis'* This makes Article 1 of the TFA (publication and availability of information) applicable to FICs.

It is important to note the manner in which the TFA has been oversold. The International Chamber of Commerce prior to the Bali WTO Ministerial released a report stating that the TFA would contribute US$1 trillion to the global economy, a figure that was widely touted and repeated by proponents of the TFA. The figure however appears to be a gross inflation of the impacts of the TFA with Joseph Capaldo of the Global Development and Environment Institute at Tufts University examining the modelling that lead to the ICC's figure and finding that the gains are largely over stated as they are "based on a set of unjustifiable assumptions; its initial costs are substantial; its destabilizing potential is ignored in most discussions"[15]. The inclusion of the TFA in PACER-Plus is a serious concern as there are very real and substantial costs associated with its compliance.

In recognition of the costs of compliance, TFA contains scope for Developing and Least-Developed

[15]For a more thorough critique see Capaldo, J. The uncertain gains from Trade Facilitation Published in the South-North Development Monitor (SUNS) #7713 dated 9 December 2013

Countries to schedule their level of commitment. This scheduling comprises of three categories:

- Category A – commitments implemented upon entry into force;
- Category B – commitments implemented after a transitional period.
- Category C – indicates commitments that require implementation capacity and technical assistance to implement provisions to be implemented after a transitional period.

FICs who are currently WTO Members are undergoing their own decision making processes regarding the ratification of the TFA, yet PACER-Plus may go beyond their initial commitments. If FICs did not ratify the TFA, or if ratified did not list TFA provisions on fees and charges in the TFA as Category A/B (i.e. Category C - need for implementation capacity and technical assistance to implement provisions), it would still be bound to these provisions through the PACER-Plus.

According to the WTO Secretariat, fees and charges provide revenue for the government and protection to domestic production' and 'the removal of fees and charges entail a loss of revenue for the government'.[16] The WTO Trade Policy Review found that for Tonga "the fees for customs processing, attendance fees, wharfage charges, and bond rent generated approximately T$1.1 million in government revenue during the financial year 2011/12[17]". Whilst the entirety of this revenue wouldn't be lost, it is indicative of the valuable contribution to government revenue that such fees can provide.

This analysis of the text doesn't have the scope to go through each FICs level of fees and charges and how they contribute to government revenue. Rather it wants to highlight that PACER Plus how in the context of tariff reductions they can play an important role in generating government revenue. Further the additional costs that will come with the additional commitments of the TFA, commitments that it appears are not specifically mentioned (nor the associated assistance through the scheduling process in the WTO).

The Agreement on Import Licensing Procedures is also made part of the PACER-plus. Paragraph 3 of Article 9/10 on Import Licensing mandates that "..in respect of import licensing procedures, the Agreement on Import Licensing Procedures are incorporated into and shall form part of this Agreement, *mutatis mutandis*".

Concluding remarks

The inclusion by stealth of the TFA and other WTO Agreements into the commitments under PACER-Plus is highly problematic. Non-WTO FICs will be bound by into the TFA and other WTO Agreements, without formally being a WTO Member. For WTO FICs, the Scheduling process of TF Agreement is short-circuited. WTO FICs possibility of scheduling such commitments into Categories A, B or C as agreed upon by WTO Members is constrained. It goes beyond existing WTO commitments and leaves FICs without recourse to transition and access to additional assistance in order implements these commitments. PACER-Plus, the so called 'development agreement' for the FICs is unwinding the minimal, yet hard fought for, flexibilities that exist in the TFA.

Recommendations:

- PACER-Plus should confer no burdens contained within the TFA onto FICs unless they have agreed and scheduled commitments at the WTO.

[16] http://www.wto.org/english/thewto_e/acc_e/cbt_course_e/c5s2p6_e.htm

[17] See WTO Trade Policy Review for Tonga in 2014, available at https://www.wto.org/english/tratop_e/tpr_e/s291_e.pdf

V. Clauses that would oblige Forum Island Countries to give more to Australia and New Zealand in the future

Despite the rhetoric of PACER-Plus being a "development agreement", Australia and New Zealand have ensured that their interests are protected under the Trade in Goods chapter. In addition to having the FICs shoulder the burden of commitments in the chapter, Australia and New Zealand will ensure that they have multiple avenues that would force FICs to give more to them in the future.

Most Favoured Nation (MFN) Clause

In *Article 3: Commitments on Tariffs*[18] Australia's proposal under Art 3.2 is a proposal for a Most Favoured Nation clause, aimed to ensure that any benefits that Parties offer to non-Parties that are better than provided for under PACER-Plus are passed on PACER-Plus Parties. Given that FICs already enjoy duty free and quota free access to Australia and New Zealand under SPARTECA, this proposal is about ensuring that Australia and New Zealand maintain the best access to PIC markets.

Australia's proposal on a MFN clause directly aimed to prevent their exporters from missing out on any opportunities FICs offer to other countries. This proposal aims to ensure that any other agreement that FICs enter into passes on any preferential treatment to Australia and New Zealand. As Developing and Least-Developed Countries this would add an enormous disincentive to any FIC undertaking a pro-development South-South agreement. Thus PACER-Plus becomes a tool to inhibit development activities in order to ensure that Australian (and New Zealand) exporters are protected.

Whilst there is no exception for South-South development agreements it does appear that Australia and New Zealand are the ones who will receive Special and Differential treatment under the proposals in Art 3.2. The exceptions stipulated under Art3.2(a) and (b) give space to Australia and New Zealand not to extend LDCs preferences to the PICs. In other words, this is a recognition that **FICs will be treated worse than LDCs.** As a matter of fact, there is no legal provision that actually states that PICs will have duty free and quota free market access to Australia and New Zealand.

It's worth noting that not all Free Trade Agreements have an MFN clause. In fact such clauses are relatively rare in the area of goods. The Australia-US FTA as well as the recently agreed Trans-Pacific Partnership do not contain an MFN clause in the Trade in Goods chapters, yet Australia is pushing for on in PACER-Plus.

Use of safeguards are subject to paying compensation to Australia/New Zealand

Under *Article 7 Trade Remedies* the issue of compensation is raised in conjunction with T*ransitional Safeguard Measures.* Sadly it appears that it is the FICs that have proposed this paragraph allowing for "an exporting Party will be entitled to suspend equivalent concessions to the importing Party until the withdrawal of the safeguard measure". This language allows for compensation in regard to the use of safeguard measures, an allowance that is not contained in the EPAs. Even in the EU-South Korea FTA, which has language on compensation and the right of suspension of equivalent concessions, it states that such rights should not exist in the first two years of application of the bilateral safeguard. By proposing compensation, FICs are ensuring that

[18] Given the as yet unfinished nature of the chapter, Articles will be referred to by their number according to FIC proposals.

Australia and New Zealand will be able to maintain their interests above what would be a more development friendly proposal of allowing the FICs to utilise their bilateral safeguard measures without fear of reprisal.

Modification of Schedules

The adoption of proposals regarding any Modification of Schedules sees Australia and New Zealand attempting to ensure that any modification of schedules by the FICs would see them compensated in an equivalent way. If this cannot be obtained through commitments on tariffs then such a "compensatory adjustment" would be made in either FIC Investment or Services schedules. Such a proposal highlights the desire by Australia and New Zealand for greater access in the services/investment markets of the FICs, potentially allowing them to gain through this mechanism what they couldn't gain in other negotiations.

The Article however also goes beyond what is seen as most development friendly. The EU CARIFORUM EPA contains a similar article on the modification on schedules but the linkage for "compensatory adjustment" isn't made. The article states:

- In the light of the special development needs of Antigua and Barbuda, Belize, the Commonwealth of Dominica, Grenada, the Republic of Guyana, the Republic of Haiti, Saint Christopher and Nevis, Saint Lucia, and Saint Vincent and the Grenadines, the Parties may decide in the CARIFORUM-EC Trade and Development Committee to modify the level of customs duties stipulated in Annex III, which may be applied to a product originating in the EC Party upon its importation into the CARIFORUM States.
- The Parties shall ensure that any such modiPICation does not result in an incompatibility of this Agreement with the requirements of Article XXIV of the GATT 1994. The Parties may also decide simultaneously to adjust the customs duty commitments stipulated in Annex III and relating to other products imported from the EC Party, as appropriate (Article 17 CARIFORUM EPA)

By not containing such a commitment the CARIFORUM countries are not required to offer such compensation specifically due to their developing country nature. FICs should demand the flexibilities that have been given to the CARIFORUM countries and not include such proposals that would provide a disincentive for them to respond to their development needs and modify their schedules if need be.

In addition to the proposals by Australia and New Zealand that have been adopted regarding the modification of schedules is a proposal by the FICs that is also of benefit to Australia and New Zealand. The FIC proposal on the modification of schedules allows for any Party within PACER-Plus to modify their schedules without the agreement from the Joint Committee but in response those Parties impacted by such a modification may suspend "substantially equivalent" concessions to such a Party after 6 months since the modification of the schedule.

Whilst this proposal by the FICs may initially be seen as an ability for them to modify without waiting for agreement from the Joint Committee, the symmetrical nature of the proposal means that both Australia and New Zealand can effectively withdraw their commitments for 6 months before the FICs can respond. Such a proposal must be asymmetrical in favour of the FICs to ensure that they are able to undertake such actions if needed.

Concluding Remarks

Australia and New Zealand have gone to great lengths to stress that PACER-Plus in a development agreement and in the interests of the FICs. At the time that the decision to launch negotiations was being made Australia's then Parliamentary Secretary for International Development Assistance Bob

McMullan stated that “there is nothing in it for us”. Yet we have seen that Australia has made proposals to ensure that there most definitely is something in it for them and that they are in no way disadvantaged. Whilst it is not surprising that a Party would take such a position the problem arises when such a position will directly disadvantage the Parties this agreement was supposed to benefit, undermining the very purpose of such an agreement.

Recommendations:

- FICs should argue for the removal of the MFN clause as it currently confers upon them no benefits and only cost in extending preferences to Australia and New Zealand.
- There should be no inclusion of compensation in the instance of FICs modifying their schedules, especially not in the instance of extending such compensation to the areas of services and investment.
- Modification of Schedules should contain an asymmetry in favour of the FICs to allow them to suspend “substantially equivalent” concessions immediately in response to any modification of schedules from Australia or New Zealand that have not been agreed to by the joint committee.

Conclusions

PANG and South Centre have serious concerns regarding the current text, both for what it includes and what it omits. FICs are shouldering the burden with regards to commitments and the loss of the policy space that has been enjoyed by countries like Australia and New Zealand to protect and nurture their domestic industries and to reflect their development aspirations.

PACER-Plus is yet to be concluded, and whilst PANG and South Centre believe that the direction of PACER-Plus is inherently against the interests of the FICs, there is still room for FICs to argue against a Trade in Goods chapter that fails to meet their needs. It is now up to the FICs to refuse such onerous commitments and assert their right to economic self-determination and a future of their own making

Annex - Australia/New Zealand share in FIC exports (by product category)

Product code	Product label	export to AUSNZ	export to world	AUSNZ export share (%)
71	Pearls, precious stones, metals, coins, etc	2057666	2139376	96%
86	Railway, tramway locomotives, rolling stock, equipment	5261	5541	95%
08	Edible fruit, nuts, peel of citrus fruit, melons	3355	3975	84%
62	Articles of apparel, accessories, not knit or crochet	38693	46314	84%
07	Edible vegetables and certain roots and tubers	19601	24069	81%
61	Articles of apparel, accessories, knit or crochet	13321	16551	80%
73	Articles of iron or steel	18091	26123	69%
63	Other made textile articles, sets, worn clothing etc	4780	7232	66%
30	Pharmaceutical products	4936	9167	54%
23	Residues, wastes of food industry, animal fodder	8989	16962	53%
95	Toys, games, sports requisites	1184	3032	39%
25	Salt, sulphur, earth, stone, plaster, lime and cement	13634	38034	36%
19	Cereal, flour, starch, milk preparations and products	16266	47421	34%
85	Electrical, electronic equipment	37360	119976	31%
82	Tools, implements, cutlery, etc of base metal	633	2046	31%
24	Tobacco and manufactured tobacco substitutes	504	1658	30%
74	Copper and articles thereof	4319	14875	29%
TOTAL	**All products**	**3693237**	**13068419**	**28%**
27	Mineral fuels, oils, distillation products, etc	1284243	4748681	27%
42	Articles of leather, animal gut, harness, travel goods	295	1183	25%
39	Plastics and articles thereof	2299	9288	25%
99	Commodities not elsewhere specified	4631	19439	24%
76	Aluminium and articles thereof	2363	10741	22%
21	Miscellaneous edible preparations	1139	5476	21%
20	Vegetable, fruit, nut, etc food preparations	1190	5960	20%
84	Machinery, nuclear reactors, boilers, etc	12197	61792	20%
09	Coffee, tea, mate and spices	39467	206803	19%
52	Cotton	384	2170	18%
49	Printed books, newspapers, pictures etc	575	3681	16%
33	Essential oils, perfumes, cosmetics, toileteries	1121	7219	16%
87	Vehicles other than railway, tramway	5431	36666	15%
94	Furniture, lighting, signs, prefabricated buildings	727	4980	15%
97	Works of art, collectors pieces and antiques	1199	8452	14%
90	Optical, photo, technical, medical, etc apparatus	2405	17079	14%
04	Dairy products, eggs, honey, edible animal product nes	932	7105	13%
88	Aircraft, spacecraft, and parts thereof	3030	23616	13%

Product code	Product label	export to AUSNZ	export to world	AUSNZ export share (%)
83	Miscellaneous articles of base metal	126	1140	11%
02	Meat and edible meat offal	501	4597	11%
64	Footwear, gaiters and the like, parts thereof	217	2210	10%
75	Nickel and articles thereof	28829	313075	9%
72	Iron and steel	2355	28580	8%
40	Rubber and articles thereof	848	11079	8%
34	Soaps, lubricants, waxes, candles, modelling pastes	358	6273	6%
11	Milling products, malt, starches, inulin, wheat gluten	873	17501	5%
96	Miscellaneous manufactured articles	123	2633	5%
12	Oil seed, oleagic fruits, grain, seed, fruit, etc, nes	2845	62749	5%
41	Raw hides and skins (other than furskins) and leather	456	11459	4%
38	Miscellaneous chemical products	106	3342	3%
48	Paper and paperboard, articles of pulp, paper and board	410	13325	3%
32	Tanning, dyeing extracts, tannins, derivs,pigments etc	176	8794	2%
22	Beverages, spirits and vinegar	2438	130928	2%
10	Cereals	21	1165	2%
44	Wood and articles of wood, wood charcoal	18746	1320368	1%
05	Products of animal origin, nes	67	5203	1%
16	Meat, fish and seafood food preparations nes	2213	172314	1%
03	Fish, crustaceans, molluscs, aquatic invertebrates nes	9271	745617	1%
43	Furskins and artiPICial fur, manufactures thereof	15	1355	1%
15	Animal,vegetable fats and oils, cleavage products, etc	5684	625338	1%
89	Ships, boats and other floating structures	1959	749205	0%
18	Cocoa and cocoa preparations	321	146591	0%
68	Stone, plaster, cement, asbestos, mica, etc articles	1	2487	0%
17	Sugars and sugar confectionery	25	116019	0%
26	Ores, slag and ash	9	851395	0%