

PICTA and PACER

Frequently Asked  
Questions

# **PACIFIC AGREEMENT ON CLOSER ECONOMIC RELATIONS (PACER)**

## **What is the PACER?**

The PACER is a framework agreement setting out the basis for the future development of trade relations among all 16 Forum members. The Agreement will enter into force once it is signed and ratified by 7 Forum members.

## **Who are the parties to the PACER?**

All Forum members will be parties to the PACER, once they have signed and ratified the Agreement. ie. the fourteen FICs plus Australia and New Zealand.

## **What are the key features of the PACER?**

The PACER provides for free trade to be established gradually among Forum members, in line with the “stepping stone” approach preferred by the FICs – i.e. as the name suggests the Agreement sets a framework for free trade in the region to be established at the appropriate “pace”, reflecting the differing development status of the Parties.

Initially a free trade area may be established among the FICs. Later, free trade arrangements may be negotiated between the FICs and Australia and New Zealand. The PACER contains a number of provisions relating to the timing of negotiation for free trade between Australia and New Zealand. These provisions are designed to assure Australia and New Zealand that they will not be disadvantaged relative to other trading partners in their trade relations with the FICs.

The PACER also provides for negotiation on the establishment of other elements of a single regional market. It does not however contain any provisions relating to the timing of these negotiations. These matters will be negotiated only as and when the parties are ready to do so.

The PACER also provides for establishment of a programme of trade facilitation measures, designed primarily to benefit the FICs. It contains requirements for the provision by Australia and New Zealand of financial and technical assistance, for the development and implementation of the trade facilitation programmes.

The PACER provides for annual reviews of the operation of the Agreement, and all aspects of trade and economic cooperation among the parties. General reviews of the PACER are to be held at three-yearly intervals.

## **Is the PACER a Free Trade Agreement?**

No. Although it does deal with trade issues, the PACER is not itself a free trade agreement. ie it does not legally require the reduction of tariffs between the Parties. There will be a separate free trade agreement (PICTA) covering free trade among the FICs. Free trade arrangements between the FICs and Australia and New Zealand will be negotiated at some time in the

future. The legal content and structure of any free trade arrangements between Australia and New Zealand will be decided at that time.

### **Does the PACER Commit the FICs to Participate in Free Trade Agreements?**

The PACER does not oblige any individual FIC to participate in the PICTA.

It does require negotiation with Australia and New Zealand “with a view to the establishment of free trade arrangements” in the event that FICs commence negotiations for free trade arrangements with other developed countries. Slightly lower level obligations are imposed on the FICs if they enter a free trade arrangement with most non-developed countries.

The PACER also requires negotiations with Australia and New Zealand to commence 8 years after the PICTA comes into force, if it is not triggered before that through the actions of the FICs described above. In both cases however FICs would become parties to free trade arrangements only if the negotiations are successful.

### **How will the PACER affect free trade arrangements among Forum members?**

The Agreement sets out that any Free trade arrangements negotiated among Forum members must be consistent with the objectives and guiding principles laid down in the PACER. These include an undertaking to use ‘best endeavours’ to follow international best practice in formulating trade rules.

The legal relationship between the PACER and the PICTA is spelt out in the PACER. It provides that the FICs may liberalise trade among themselves and integrate their economies before they enter into reciprocal free trade arrangements with Australia and New Zealand. This is what has been described throughout the negotiations as the “stepping stone” approach.

The PACER states that it does not confer any rights or obligations on Australia and New Zealand under the PICTA.

The PACER requires the PICTA to be established in accordance with the objectives and guiding principles of the PACER. This provision is broadly analogous to the way that the WTO provides some guidance on the contents of regional trade arrangements between WTO members – the PACER provides some guidance as to the contents of some regional trading arrangements among a subset of the Parties to the PACER. The objectives and guiding principles of the PICTA provide only general guidance and reflect some of the special issues facing the FICs.

Future arrangements between the FICs and Australia and New Zealand must provide the FICs with no less favourable treatment than they enjoy under existing arrangements eg. SPARTECA..

The PACER requires all Parties to keep each other informed about trading arrangements among themselves. Thus the FICs will need to keep ANZ informed about implementation of the PICTA, while Australia and New Zealand are required to keep the FICs informed about developments within CER.

### **Will the FICs be required to enter into an FTA with Australia and NZ in the future and when is this likely?**

The FICs will be required at some future date to enter into negotiations for free trade arrangements with Australia and New Zealand. If these negotiations are successful the result will be an FTA.

If the FICs do not negotiate any free trade arrangements with other countries in the meantime (see details of trigger below), then negotiations with Australia and New Zealand will commence 8 years after the PICTA comes into force - negotiations can of course commence earlier if all the parties so agree.

If one or more of the FICs begin negotiation for free trade arrangements with another developed country partner such as the EU, this will trigger a requirement for consultations with Australia and New Zealand, leading to negotiation for a free trade Agreement between those FICs and Australia and New Zealand. Similar requirements apply if the members of the PICTA negotiate free trade arrangements as a group with another country or countries, or if they negotiate free trade arrangements with other countries having higher per capita incomes than New Zealand (as the developed country Forum member with the lowest per capita GDP). On the other hand if FICs negotiate with other developing countries the requirement in relation to Australia and New Zealand is limited to consultation. This requirement does not apply in the case of FIC Agreements with least developed countries or non-Forum Pacific Island countries, which are exempted.

### **Is the PACER notifiable to the WTO?**

No. The PACER is explicitly designed so that it is not a free trade agreement within the meaning of GATT Article XXIV, and is therefore not notifiable.

Any free trade agreement involving Australia and New Zealand, as developed countries, will have to be consistent with, and be notified to, the WTO under GATT Article XXIV.

Since the PICTA will involve only developing countries it may be consistent with, and notified to the WTO under, the Enabling Clause of 1979, which provides less rigorous criteria than Article XXIV.

### **What are the benefits of the PACER to the FICs?**

The principal benefits to the FICs are contained in the provisions for trade facilitation and financial and technical assistance. The extent of these benefits depends crucially on the extent to which the financial and technical assistance provided is additional to existing levels of assistance.

The PACER also provides the FICs with the right to consultation with Australia and New Zealand if either Australia or New Zealand were to enter into negotiations for a free trade agreement with a non-Forum country. These consultations would be with a view to improving market access for FIC exports into Australia and New Zealand markets. As FICs currently

enjoy duty free entry (under SPARTECA), such improvements in access could be through measures such as improved Rules of Origin criteria, assistance with marketing initiatives, assistance with Quarantine obligations. This would be a matter for the consultations.

The PACER also ensures that individual FICs maintain their existing level of market access in Australia and New Zealand, even if other FICs negotiate new arrangements with Australia and New Zealand.

### **What are the benefits of the PACER to Australia and New Zealand?**

The principal benefit that the PACER gives to Australia and New Zealand is the assurance it provides that they will not be disadvantaged in FIC markets as a result of any arrangements the FICs may conclude with other countries. Australia and New Zealand do not currently have this protection. The PACER also provides that in due course the FICs will negotiate for free trade arrangements with Australia and New Zealand, even if they do not conclude any such arrangements with other countries in the meantime.

### **What about the Small Island States and Least Developed Countries - Is there recognition of their special circumstances?**

The Agreement specifically notes the special circumstances of the LDCs and SIS.

The guiding principles laid down for future FTAs established amongst the Parties specifically states that LDCs and SIS can be integrated with different timetables and structures pursuant to their level of development.

The PACER states that the trade facilitation programs developed as part of the Agreement should give special attention to the needs of SIS and LDCs, both in the design of the programs, and funding levels.

### **How will the PACER affect the FICs' commitments under other regional and international trade agreements ie WTO, SPARTECA, MSG, Cotonou Agreement, Compact of Free Association?**

The PACER expressly states that it does not affect rights and obligations under existing Agreements. Thus the FICs' rights and obligations under existing Agreements will remain in force.

*WTO – (Papua New Guinea, Fiji, Solomon Islands)*

All Forum members who are WTO members remain bound by their obligations as WTO members, including their obligations towards each other. On the other hand FICs who are not members of the WTO do not become subject to any WTO obligations as a result of joining the PACER. However they do benefit from a requirement that parties to the PACER who are WTO members must provide other parties with no less favourable treatment than they are obliged to provide to other WTO members in respect of sanitary and phytosanitary matters, customs procedures, and standards and conformance. For WTO members all this means is

that the same treatment already provided to 140 countries must be provided to all Forum members.

*SPARTECA – (All FICs)*

SPARTECA will remain in force until its members decide to amend, replace or terminate it. The PACER provides that Australia and New Zealand must continue to provide individual FICs with the existing level of market access until such time as new arrangements are concluded providing equal or better market access.

*MSG Trade Agreement – (Papua New Guinea, Vanuatu, Fiji, Solomon Islands)*

The PACER does not affect existing arrangements under the MSG Trade Agreement, and does not preclude the MSG countries from continuing to liberalise trade among themselves. If the MSG countries join the PICTA their future liberalisation among themselves will have to be consistent with their obligations under the PICTA. If the MSG countries were to negotiate free trade arrangements with non-Forum countries, they would be bound by the provisions regarding consultations and negotiations with Australia and New Zealand, in the same way as any other FIC.

*Cotonou Agreement – (All FICs)*

The Cotonou Agreement provides for the possible commencement of negotiation for reciprocal free trade arrangements between the European Union and the ACP states. If all the FICs began such negotiation with the EU, they would then be obliged under the PACER to undertake consultations 'as soon as practicable' with Australia and New Zealand, with a view to negotiating free trade arrangements with those two countries. If some, but not all of the FICs, commenced negotiation for reciprocal free trade Agreements with the European Union, then only those FICs would be obliged to enter consultations with a view to negotiating free trade arrangements with Australia and New Zealand. Negotiation with the European Union is perhaps the most likely way in which a requirement to negotiate free trade arrangements with Australia and New Zealand may be triggered. Conversely, if the FICs were to negotiate a free trade arrangement with Australia and New Zealand before doing so with the EU, the provisions of the Cotonou Agreement will then require them to open negotiations with the EU.

*Compact of Free Association – (Palau, Federated States of Micronesia, Republic of the Marshall Islands)*

The PACER in itself does not provide for any trade concessions to Australia and New Zealand, and so obligations to reciprocate to the USA under the Compact Agreement are not triggered. The PACER does provide for negotiation of free trade arrangements with Australia and New Zealand at some future date. If the result of these negotiation is an FTA, and if the existing provisions of the Compact remain in force at that time, this would trigger a requirement for the Freely Associated States to provide the same preferences to the United States.

Under the PACER, existing preferences to the United States under the Compact of Free Association do not result in a requirement to offer the same preferences to Australia and New Zealand.

# **PACIFIC ISLAND COUNTRIES TRADE AGREEMENT** **(PICTA)**

## **What is the PICTA?**

The PICTA is a free trade Agreement among the FICs, which will gradually, over the next 10 years, lead to the establishment of a free trade area.

## **What is an FTA?**

An FTA is an agreement whereby the members agree to eliminate barriers to trade among themselves, while maintaining their individual barriers against imports from the outside world. This removal of barriers to trade primarily involves the reduction of tariffs to zero on substantially all of the products traded.

An FTA is different to a customs union, where the members agree to free trade amongst them but also have a common external tariff ie. they apply a common tariff against imports from the outside world.

## **Who are the members of the PICTA?**

Any FIC may join the PICTA. It is proposed that 6 of the FICs will have to ratify the PICTA before it can enter into force.

The Agreement will remain open for signature by FICs for a specified period. FICs who decide to join after that period will have to follow the process for accession of new members. Extra time will be given to the Freely Associated States, to allow them to negotiate some form of waiver of the MFN provisions in their Compacts with the United States.

## **Why should the FICs enter into an FTA and what are the benefits?**

Freer trade amongst the FICs, as a result of the PICTA, will hopefully encourage specialisation and greater efficiency in FIC economies. FICs will increase their exports to other FICs of products in which they can be competitive, and will increase their imports of goods, which are being produced competitively by other FICs, reducing prices. The resulting increase in trade will reflect enhanced efficiency and improved consumer welfare in the FIC economies, leading hopefully to the overall creation of jobs.

It is also hoped that the creation of a regional market will encourage increased investment in FICs. Many FICs currently struggle to attract investment because of their small domestic market. However, the opportunity to reach the regional market of 6m people, at zero tariff rates, may encourage investment that was hesitant before.

Unfortunately, the level of trade among FICs is low, due to the constraints of geographical location and poor transport links. Even with the FTA it will be difficult to overcome these constraints, and by itself the FTA may deliver only small benefits to the FICs initially.

The PICTA should therefore also be viewed by the FICs as a “stepping stone” towards their more complete integration into the international economy, an initial preparatory step towards more extensive liberalisation in the future that will hope to achieve greater long run benefits. The PICTA will provide the FICs with experience in the negotiation and operation of an FTA, and it will help to create a common basis for the FICs’ negotiations with other trading partners.

The PICTA will be a “training ground” for the FIC economies, ready for further integration in the future. Businesses will become used to the idea of outside competition, and some governments will have to begin implementing reforms needed in preparation for more extensive trade liberalisation, for example reform of revenue collection systems.

### **What are the disadvantages of an FTA to FICs?**

The small size of the expected benefits could be argued to be a disadvantage of the PICTA initially. There will be some administrative costs associated with the operation of the PICTA, even though the PICTA has been designed with a view to minimising those costs as far as possible.

Some increased imports under the PICTA may displace more efficient imports from non-member countries. This is the trade diversion effect associated with an FTA.

### **Will there be adverse social impacts?**

Adverse social impacts can arise from “adjustment costs” associated with the removal of tariff barriers. In some cases inefficient FIC businesses may find it difficult to compete with businesses in other FIC partners. Those involved in these businesses may have to look for other avenues of employment, and may suffer unemployment and/or a loss of income at least temporarily. There may be a disruption to their way of life and this may place some burden on their communities to provide them with temporary support. Because the economic effects, including adjustment costs, of the PICTA are expected to be small, at least at first, these social impacts are also expected to be small. Generally in FTAs such impacts are smaller than the impact of other aspects of economic and technological change. They will also be balanced by increased opportunities opening up for other businesses in each FIC, which should lead to creation of employment, and a net overall benefit.

### **How will the FTA be achieved and when?**

The PICTA provides for the progressive phasing out of tariffs on trade among the FICs. Tariffs of developing FICs will be reduced to zero by 2010, and by 2012 for small island states and least developed countries, except in the case of “excepted imports” (the “negative list”), for which tariffs are to be reduced to zero by 2016.

Trade barriers other than tariffs, such as quotas, must be eliminated immediately on trade between the FICs

### **Which tariffs must be reduced under the PICTA?**

Tariffs must be reduced only on imports from other FIC members of the PICTA. Tariffs on imports from other countries, including Australia and New Zealand, and any FICs that do not join the PICTA, will not be affected.

### **Does the PICTA require the removal of any internal taxes or charges?**

No, but it does require “national treatment” ie. such taxes and charges relating to trade of goods (as well as laws, regulations etc) must be applied equally to domestically produced goods and goods from PICTA partners.

### **What does the PICTA cover?**

The PICTA covers all trade in goods between its members, it does not cover trade in services, or capital or labour movement.

The PICTA does not cover trade in alcohol and tobacco products, which are exempted for at least 2 years. After 2 years a decision will be made on their permanent status.

The Agreement also provides a list of exceptions, ensuring that the FICs can continue to restrict trade for the usual range of reasons generally allowed in international trade agreements. This includes things like the prohibition of dangerous goods such as explosives, or the restriction of trade necessary to protect human or animal health (ie Quarantine).

### **Can the coverage be extended to other sectors in future? eg services**

Yes. In fact one of the stated objectives of the Agreement in the long term is the creation of a single market amongst the FICs, which would mean extending the coverage to include trade in services, and at some point the movement of capital and labour. This would be done in stages over the long term.

The coverage would be extended either through an amendment of the main text, or through the addition of a specific protocol. Amendments can only be done with the agreement of all the Parties, and a protocol is only binding on those who separately sign it, so in either situation the Parties will retain complete control as to their involvement in future extensions.

### **What is the criterion for according preferential entry on goods traded within the FTA?**

In order to qualify for preferential entry, goods must comply with the rules of origin as set out in the PICTA. These are based on a 40% local content criteria.

### **How can it be ensured that tariff reductions actually take place?**

It is a country's sovereign right to set its own tariffs. However, by signing and ratifying a treaty under international law, the Parties to the Agreement are stating that they agree to abide by its provisions, which in the case of the PICTA, clearly states the tariff reduction obligations.

Failure to abide by the tariff reduction schedule will substantially harm its reputation in the international arena.

As with most trade agreements, there will be no specific enforcement body policing the Agreement. The Parties themselves will monitor each other to ensure that reductions are being made. If a country is not abiding by its obligations then the other Parties can call it to consultations, to resolve the problem. If this is not successful then there are provisions for dispute settlement (see below) eventually leading to a revocation of any preferences given to the offending Party.

### **What about the sensitive industries? Can these be protected in an FTA?**

The provisions on excepted imports (the “negative list”) allow a longer period to phase out the tariffs on goods from the “sensitive industries”. Products to be included on the “negative list” must be specified at the time of signing the Agreement, and the reasons for doing so must be given. The PICTA contain rules as to which products can and cannot be included on the “negative lists”.

There is no provision for permanent exclusion of any product from the PICTA.

### **What happens if situations arise which make it difficult to adhere to their obligations under the PICTA?**

The PICTA contains some emergency action provisions which are designed to allow FICs to suspend specific obligations under the PICTA in some circumstances. The circumstances under which this may occur, the extent to which obligations may be suspended, and the procedures to be followed, are spelt out in the Articles. Such rules are necessary to ensure that these provisions are not used arbitrarily or as a means of re-introducing protection without adequate justification. The procedures laid down will place some burdens on FICs but they are less burdensome for example than the comparable provisions in the WTO Agreement. The need to follow these procedures will discourage members from using these provisions arbitrarily or unjustifiably.

### **What about new industries that need protection during the implementation of the FTA?**

The PICTA contains provisions on “Protection of Developing Industries” which are designed to deal with this issue. They provide for the temporary re-imposition of protection under certain conditions, where this is necessary to allow the successful establishment of a new industry.

### **What happens in the case of disputes between members?**

It is hoped that all disputes will be solved by consultation between the Parties, but if necessary the PICTA has a dispute settlement procedure that moves successively through stages of consultation, mediation and legally binding independent arbitration. At the first two stages a time period is provided after which a party may require the dispute to move to the next stage if

the dispute has not been resolved by then. At the end of the process, the arbitrator will make an award one way or the other. If this is not followed the aggrieved Party may revoke any preferences given to the offender up to level equivalent to the damage caused by the matter under dispute. Obviously it is hoped it will never go this far.

### **What about Small Island States and Least Developed Countries – Is there recognition of their special status?**

The Agreement specifically notes the special circumstances of the LDCs and SIS, and this is borne out in a number of the provisions of the Agreement. LDCs and SIS have a 10 year liberalisation schedule rather than 8 years for other developing FICs. They also have longer periods of protection under the developing industry provisions, and the emergency action provisions.

Specific provisions are also made to ensure the participation of LDCs and SIS in the Rules of Origin committee, established under the Agreement.

### **Will other Pacific Islands be allowed to join?**

Yes. New members can be admitted by unanimous consent of the existing members, and the Agreement specifically contemplates the extension of the PICTA to include other Pacific Islands. Accession of non-Forum Pacific islands will not trigger a requirement for consultation with Australia and New Zealand under the PACER, except under some very specific conditions outlined in the PACER.

Some non-Forum Pacific Islands may face constitutional obstacles to accession to the PICTA, because of their relationship with a metropolitan power (France or the USA). During accession negotiation provision can be made for specific constitutional and trade issues faced by these non-Forum Pacific Islands.

### **What about Australia and New Zealand – Can they join the PICTA?**

In principle, the provisions of the Agreement could permit Australia and/or New Zealand to join, but only if all the members unanimously agree. This is however unlikely to be an attractive option for either Australia and New Zealand or the FICs. Among other things, entry of Australia or New Zealand would trigger a requirement for the PICTA to be notified to the WTO under GATT Article XXIV. The PICTA contains some provisions, which may create difficulties in this case.

The PICTA is designed with FICs specifically in mind. To include Australia and New Zealand it will be more appropriate to have a specific Agreement designed which incorporates the diverse needs of all 16 members, and which complies to the WTO's more rigorous standards for developed countries.

**How will the PICTA affect the FICs' commitments under other regional and international trade agreements ie WTO, SPARTECA, MSG, Cotonou Agreement, Compact of Free Association?**

Like the PACER, the PICTA does not affect rights and obligations under existing agreements. Thus the FICs rights and obligations under existing agreements will remain in force.

*WTO – (Papua New Guinea, Fiji, Solomon Islands)*

The FICs who are WTO members remain bound by their obligations as WTO members, including their obligations towards each other. The emergency action provisions of the PICTA are less stringent than the corresponding WTO provisions, because of the limited capacity of many FICs to implement such provisions. However, if a WTO member in the PICTA becomes subject to emergency action measures by another WTO member in the PICTA, it would be possible for the former FIC to insist that WTO procedures be followed by the latter.

This last point is one of the reasons for confidence that membership of the PICTA does not present problems for the WTO members in the PICTA, despite the fact that the PICTA emergency action provisions do not meet WTO standards. Additional grounds for confidence on this point are that the PICTA may be notified under the Enabling Clause rather than Article XXIV of GATT, and that in any case the WTO members have not been able to agree as to whether Article XXIV provides a dispensation from all GATT Articles or only from GATT Article I (the non-discrimination provision).

*SPARTECA – (All FICs)*

Since the PICTA does not deal with trade relations between the FICs and Australia and New Zealand, it does not have any effect on SPARTECA . SPARTECA does not affect the right of the FICs to establish an FTA among themselves,

*MSG Trade Agreement – (Papua New Guinea, Vanuatu, Fiji, Solomon Islands)*

Existing preferences granted by MSG members to each other are not affected by the PICTA. MSG members would be allowed to continue to reduce barriers among themselves at a faster rate than is provided by the PICTA.

*Cotonou Agreement – (All FICs)*

The PICTA does not affect the Cotonou Agreement. Under the Cotonou Agreement it is only preferences granted to other developed countries that can trigger a requirement for comparable preferences to be granted to the EU.

*Compact of Free Association – (Palau, Federated States of Micronesia, Republic of the Marshall Islands)*

Under the terms of the Compacts, if the Freely Associated States join the PICTA, they would be obliged to offer the same trade preferences to the United States unless the United States grants a waiver from the relevant provisions in the Compacts. While it is hoped that the United States may be willing to grant such a waiver, this remains to be tested in practice.