

**National Interest Analysis [2017] ATNIA 31**

**with attachments**

**Pacific Agreement on Closer Economic Relations Plus (PACER Plus)**

**and associated side letter**

( Nuku'alofa, 14 June 2017)

**[2017] ATNIF 42**

Attachments:

**Attachment I            Consultation**

**Attachment II            Summary of Key Obligations**

**Attachment III            Fact Sheets: PACER Plus at a Glance, Development Assistance**

## **NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY**

### **SUMMARY PAGE**

#### **Pacific Agreement on Closer Economic Relations Plus (PACER Plus)**

##### **and associated side letter**

(Nuku'alofa, 14 June 2017)

**[2017] ATNIA 31**

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#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is to notify the Depositary (Tonga) in writing of the completion of Australia's domestic requirements necessary to implement the Pacific Agreement on Closer Economic Relations Plus (PACER Plus).
2. Australia, the Cook Islands, Kiribati, Nauru, New Zealand, Niue, Samoa, Solomon Islands, Tonga and Tuvalu signed the Agreement in Nuku'alofa on 14 June 2017. Vanuatu signed the Agreement in Apia on 7 September 2017. Australia anticipates that the Federated States of Micronesia, Palau and the Republic of the Marshall Islands will complete their respective internal approvals enabling them to sign the Agreement before it enters into force.
3. Article 8 (Entry into Force) of Chapter 15 (Final Provisions) provides that PACER Plus will enter into force 60 days after the date on which no fewer than eight Parties have notified the Depositary in writing of the completion of their internal requirements. The Government proposes to take the treaty action as soon as practicable (after the consideration of PACER Plus by the Joint Standing Committee on Treaties (JSCOT) and the passing of amending legislation), with a view to the entry into force of PACER Plus generally and for Australia no later than 2019. The Government also proposes that a side-letter exchanged on 14 June 2017 between Australia and New Zealand limiting application of the Agreement as between each other will enter into force on the date that PACER Plus enters into force for both Australia and New Zealand. Details of this letter are set out below at paragraphs 51 to 55.

#### **Overview and national interest summary**

4. PACER Plus is a comprehensive, WTO-consistent regional economic integration agreement, which covers goods, services and investment and establishes rules and commitments. PACER Plus has a strong development focus and provides for special and differential treatment for Pacific Island Countries (PICs), for cooperation and

consultation on matters within its scope, and for support to PICs to implement its provisions.

5. Pacific Islands Forum Leaders launched negotiations on PACER Plus at their 40<sup>th</sup> meeting on 5-6 August 2009. After eight formal and 15 intersessional rounds of negotiations, Australia, the Cook Islands, the Federated States of Micronesia, Kiribati, Nauru, New Zealand, Niue, Palau, the Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu concluded PACER Plus negotiations on 20 April 2017.
6. PACER Plus provides for the future participation of non-Parties, including on an expedited basis for Pacific Islands Forum Members that participated in the negotiations. Australia continues to engage on PACER Plus with Fiji and Papua New Guinea – both of which participated in the negotiations but did not submit market access offers. New Forum Members, French Polynesia and New Caledonia, can apply to accede to PACER Plus if they wish. For further detail on the accession process, see paragraph 63 below and **Attachment II** (paragraph 42) to this NIA.
7. In parallel to PACER Plus, signatories also concluded and signed two stand-alone arrangements: the Implementing Arrangement for Development and Economic Cooperation, which contains a Development and Economic Cooperation Work Programme of activities for the implementation of PACER Plus; and a Labour Mobility Arrangement to strengthen Pacific mobility cooperation between the participants. These arrangements are of less-than-treaty status.
8. PACER Plus will support Australia's national interest in a stable, secure and prosperous Pacific by promoting economic growth and development in PICs through strengthening their capacity to trade, to benefit from trade, to facilitate trade and to attract and retain investment. PACER Plus will help strengthen PICs' capacity to pursue and benefit from economic integration with non-Parties. Implementation of obligations, application of international rules, standards and best practices and close cooperation will help reduce costs, improve economic welfare and create opportunity in PICs.
9. PACER Plus will provide greater security, predictability and certainty for Australian exporters and investors, improve their access to Parties' markets and maintain that access in the event that PICs negotiate Free Trade Agreements with non-Parties.

## **Reasons for Australia to take the proposed treaty action**

### *Benefits for Australian producers, exporters and investors*

10. Under PACER Plus, PIC tariff reductions will deliver gains for Australian exporters. When PACER Plus is fully implemented, PICs will have eliminated tariffs on 91.5 per cent of their tariff lines, covering 88.5 per cent of Australia's exports in 2016 (a total value of \$0.36 billion). **Table 1** (page 8) summarises Australia's goods access to PIC Parties once the Agreement is fully implemented.
11. The Cook Islands, Niue, Samoa and Tonga will provide early tariff reductions or tariff-free access for Australian exports of beef, sheep meat, poultry meat, dairy products, fruit juices, wine, medicaments, insecticides, agricultural chemicals,

toiletries, packing materials, gold coin, iron and steel products, engine parts, machine parts, computer parts, measuring equipment, electrical and electronic goods, car parts, telecommunications equipment, professional instruments, breathing apparatus and fishing equipment.

12. Over time, all PICs will provide more liberal market access to Australian product groups including meat, dairy, grains, oilseeds, fats and oils, sugar, processed food and beverages, animal feed, plastics, chemicals, metals and metal products, specialised machinery and equipment, car parts, electrical and electronic goods and mineral fuels.
13. PIC commitments will also deliver gains for Australian service suppliers and investors.
14. Australia's largest services exports to the Pacific are tourism and travel services, transport services, and financial services (including insurance). Each of the PIC Parties has made commitments in these sectors, many committing to market access for the first time. WTO members (Samoa, Solomon Islands, Tonga and Vanuatu) have made commitments in addition to their commitment under the General Agreement on Trade in Services (GATS). These include: Maritime passenger transportation services (Solomon Islands); Maritime freight transportation services (Solomon Islands); and Air transport services (Solomon Islands, Tonga, Vanuatu).
15. Australian service suppliers for the first time will benefit from commitments provided by PIC Party non-WTO members (Cook Islands, the Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, the Republic of the Marshall Islands and Tuvalu), with sub-sectoral coverages broadly similar to those of the PIC WTO members, providing new opportunities for Australian service businesses.
16. The Agreement establishes a legally binding investment protection framework in the Pacific for the first time. This framework provides explicit protections to Australian investments, increasing the stability and predictability of the Pacific investment environment.
17. A National Treatment obligation will provide Australian investors with the same treatment as local investors in listed sectors. While several PICs have retained an investment admission review process, these are bound and may not become more restrictive. All the PICs have made national treatment commitments relating to agriculture, hunting and forestry; aquaculture; and manufacturing. Most have made commitments in relation to mining and quarrying.
18. PACER Plus does not include investor state dispute settlement provisions. Investments will be protected by international standards, including protection from uncompensated expropriation, and equality with local investors in the event of damage caused by armed conflict, civil strife, or states of emergency. The free transfer of funds will be guaranteed except in limited circumstances, ensuring Australian investors will be able to access their funds as necessary.
19. Australian producers of goods, suppliers of services and investors will also benefit from the growth and development of PIC economies that PACER Plus will support over the longer term.

20. Most-favoured-nation (MFN) treatment in PACER Plus will help safeguard market access for Australian producers of goods, suppliers of services and investors in the event that PIC Parties apply new more favourable treatment for the producers, suppliers and investors of non-Parties, such as under Free Trade Agreements, after PACER Plus enters into force. (Parties' MFN obligations will also extend the same safeguards against discrimination to Parties other than Australia.) But PICs will not be required to extend such MFN treatment in some cases, such as when they apply new more favourable tariff treatment under Free Trade Agreements with non-Parties composed exclusively of developing countries that are not major trading economies. Parties will also have scheduled MFN exemptions for services and investment.

*Promoting a stable and secure Pacific*

21. A stable and secure Pacific is in Australia's national interest. Australia currently provides approximately \$1.1 billion in Official Development Assistance to the Pacific (2017-18 estimate) to promote growth and development and enhance stability and security.
22. PACER Plus aims to maximise opportunities for PICs to use trade and investment as engines of growth, to create jobs and ensure higher incomes and living standards. To this end, PACER Plus will, through an integrated regional framework, liberalise and facilitate trade in goods, trade in services and investment between Parties, as well as harness and resource mutual efforts in support of these aims.
23. To maximise opportunities for PIC exporters, Australia and New Zealand will legally guarantee to PIC Parties the comprehensive duty-free treatment Australia and New Zealand accord to goods of Forum Island Country origin under current preferential tariff systems, the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) (1980, as amended in 1989) and other instruments.
24. Parties will also use flexible and modern criteria to determine whether goods they import from another Party qualify for preferential tariff treatment. The new criteria improve on SPARTECA's outmoded criteria for determining whether goods imported into Australia and New Zealand from Forum Island Countries qualify for duty-free treatment under their respective current preferential tariff systems.
25. PACER Plus will promote economic growth and development in PIC Parties by lowering the cost of consumer, intermediate and investment goods through lower tariffs, and by providing more secure access for all Parties in a growing regional market. Recognising the small size and vulnerabilities of PIC Parties, PACER Plus allows PICs to liberalise over lengthy timeframes and provides flexibility on dates of initial reductions and liberalisation coverage (see **Table 1**). Also in keeping with Australia's (and New Zealand's) commitment to provide special and differential treatment to developing Parties, PICs will have right of recourse to transitional safeguards, industry development measures and compensated modification or withdrawal of commitments (**Attachment II** (paragraphs 2 and 3) to this NIA).
26. Parties will strengthen regional economic integration in the areas of trade in services, investment and movement of natural persons. Parties' scheduled commitments and applicable rules in these areas will limit restrictions and discrimination and ensure transparency and predictability of their measures. PACER Plus reinforces legal

protections for foreign investors. These measures will encourage foreign investment in PIC Parties, in turn helping to support economic growth and development.

27. PACER Plus will facilitate trade and guide efforts to build PICs' capacity to trade, wherever possible in accordance with international rules, standards and best practices and through the cooperative and consultative mechanisms contained in PACER Plus, in areas such as customs procedures, quarantine, food safety, technical standards, import licensing and services domestic regulation. Accordingly, PACER Plus incorporates certain rights and obligations from WTO agreements, which will be enjoyed and observed by all Parties subject to forms of special and differential treatment for developing countries provided for under the WTO.
28. In recognition of the limited capacities of the non-WTO member PICs (the Cook Islands, the Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, the Republic of the Marshall Islands and Tuvalu), PACER Plus will extend to non-WTO member PICs additional special and differential treatment for certain obligations likely to be especially difficult for them under the WTO agreements on Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Customs Valuation and Trade-Related Investment Measures.
29. Australia has committed to assist Pacific Island Countries to prepare to ratify and to implement PACER Plus. Australia has committed \$4 million (and New Zealand NZD4 million) to a Readiness Package; Australia has committed \$19 million (and New Zealand NZD7 million) to a Development and Economic Cooperation Work Programme.
30. To help facilitate implementation of provisions, PACER Plus establishes frameworks for consultation and cooperation between Parties including:
  - a. standing committees in three broad policy areas;
  - b. information exchange and demand-driven technical discussion of measures within the scope of particular chapters; and
  - c. mandated cooperative and review activities.

### **Associated Arrangements**

31. Australia, the Cook Islands, Kiribati, Nauru, New Zealand, Niue, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu also signed two instruments of less-than-treaty status but related to PACER Plus: (i) a Labour Mobility Arrangement to strengthen cooperation in relation to labour mobility between the participants; and (ii) an Implementing Arrangement for Development and Economic Cooperation, which contains a Development and Economic Cooperation Work Programme of activities for the implementation of PACER Plus.
32. The Labour Mobility Arrangement aims to enhance cooperation between participants on regional labour mobility, including in respect of mobility for unskilled and semi-skilled labour. The Arrangement establishes a Pacific Labour Mobility Annual Meeting to address key issues in cooperation, including enhancing existing labour mobility schemes (such as Australia's Seasonal Worker Programme) and facilitating other forms of temporary labour mobility, as well as exploring the recognition of qualifications and the registration of occupations. The Arrangement is independent of

Parties' treaty-status PACER Plus scheduled commitments on movement of natural persons.

33. The Implementing Arrangement for Development and Economic Cooperation commits Australia and New Zealand to provide support to developing country PACER Plus Parties under the Development and Economic Cooperation Work Programme to assist them implement PACER Plus. The Australian government has committed \$19 million for this purpose. The Implementing Arrangement also sets a broader aid-for-trade target for Australian development assistance to the region to assist PICs benefit from market opening under the Agreement. The Development and Economic Cooperation Work Programme will be established, and may be modified, renewed or terminated, in accordance with Chapter 10 (Development and Economic Cooperation) of PACER Plus. For more detail on PACER Plus development and economic cooperation see the attached Fact Sheets (**Attachment III**).

### **Short Overview of Obligations, including Market Access Outcomes**

34. The text of PACER Plus comprises 15 Chapters, with associated Annexes (including Schedules of Commitments for all PACER Plus Parties). For Australia, PACER Plus is accompanied by a side letter as detailed at paragraphs 51 to 55 below. The text of PACER Plus was made available to the public on 31 May 2017.
35. **Attachment II** to this NIA contains a Chapter-by-Chapter summary of key obligations contained in the Agreement. A brief overview of obligations and market access outcomes is set out below.

#### *Chapter 1 Initial Provisions and General Definitions*

36. Chapter 1 (Initial Provisions and General Definitions) establishes the PACER Plus Free Trade Area and sets out general definitions that inform interpretation of PACER Plus.

#### *Chapter 2 Trade in Goods*

37. Chapter 2 (Trade in Goods) establishes the framework of rules and commitments governing measures affecting trade in goods between the Parties.

#### *Annex 2-A Schedules of Commitments on Tariffs*

- a. Chapter 2 (Trade in Goods) obliges Parties not to apply to originating goods ordinary customs duties and other duties or charges not specified, or in excess of levels, in their Schedules of Commitments on Tariffs at Annex 2-A.
- b. Australia and New Zealand have committed in their respective Schedules not to apply customs duties (excluding excise-equivalent duties) to originating goods from the date of entry into force.
- c. **Table 1** contains a snapshot of the tariff elimination outcomes for ordinary customs duties arising from each Pacific Island Country's Schedule.

*Annex 2-B Administration of Exemptions from the Obligation under Article 3.2 in respect of Regional Trade Agreements under Article 3.2(c)*

- d. Chapter 2 (Trade in Goods) obliges Parties to accord most-favoured-nation (MFN) tariff treatment to originating goods, subject to exemptions. **Attachment II** to this NIA contains details of the obligation and exemptions. One exemption allows PICs to provide more favourable tariff treatment to other parties to certain regional trade agreements composed exclusively of developing countries. PACER Plus Parties will use Annex 2-B to determine whether PICs' claims to that exemption meet the exemption criteria in Chapter 2.

*Annex 2-C Notification of Modified or New Import Licensing Procedures Pursuant to Articles 14.1(c) and 14.2(b)*

- e. Article 14 (Information Exchange in Relation to, and Publication of, Specified Measures) of Chapter 2 (Trade in Goods) obliges Parties to notify their new or modified import licensing procedures to other Parties. **Attachment II** to this NIA contains details of this obligation. Annex 2-C contains the template for notification of the modified or new import licensing procedures.

**Table 1**  
**Pacific Island Parties' Scheduled Commitments on Ordinary Customs Duties:**  
**Tariff Elimination Coverages and First and Last Tariff Reductions**

Pacific Island Country	Tariff elimination coverages (per cent) of:		Year of: +	
	Australia's exports to the Party	Total number of the Party's tariff lines	First tariff reductions §	Last tariff reductions
Cook Islands«	92.0%	93.6%	2019	2021
Kiribati#«	90.4%	94.2%	2019	2019
Republic of the Marshall Islands*	88.2%	66.6%	2029	2053
Federated States of Micronesia*	99.0%	96.1%	2029	2053
Nauru	92.9%	98.6%	2029	2053
Niue	97.3%	97.4%	2019	2043
Palau*	99.7%	96.4%	2029	2053
Samoa	85.8%	85.3%	2019	2043
Solomon Islands#	85.1%	92.8%	2029 or later	2053 or later
Tonga	98.6%	97.8%	2019	2043
Tuvalu#	94.5%	97.4%	2029 or later	2053 or later
Vanuatu#	85.0%	81.5%	2029 or later	2053 or later
<b>All 12 Parties</b>	<b>88.5%</b>	<b>91.5%</b>		

\* Note: The Republic of the Marshall Islands, the Federated States of Micronesia and Palau participated in the decision of Trade Ministers to conclude negotiations made in Brisbane on 20 April 2017, but have yet to sign the Agreement.

+ Note: Entries in these columns assume the Agreement will enter into force during the 2019 calendar year.

§ Note: Where a Party has agreed to eliminate a tariff and the initial tariff reduction occurs after 2019 (the assumed year of entry into force), the tariff is bound at the base rate (based on its applied rate of duty) until reductions commence. Where a Party has agreed to bind a tariff at the base rate but not to eliminate the tariff, the tariff is bound at the base rate from the date of entry into force.

# Note: The Least Developed Countries (LDCs) at the time of conclusion of negotiations were Kiribati, Solomon Islands, Tuvalu and Vanuatu. An LDC Party concluding negotiations at that time will not take their first tariff reductions until the year after the date on which the United Nations graduates it from LDC status or the 11th year (2029) from the year of entry into force, whichever is later. Those Parties' last rescheduled reductions will occur in the 35<sup>th</sup> year (2053) or later.

« Note: Due to its low duties and existing extensive duty-free treatment, Cook Islands will eliminate tariffs in 2021 or year 3 (assuming 2019 is the year of entry into force, year 1). Kiribati is an LDC, but had eliminated all its ordinary customs duties in 2014. Accordingly, Kiribati's tariff elimination will be effective on entry into force (in 2019 or year 1, assuming 2019 is the year of entry into force).

### *Chapter 3 Rules of Origin and Verification Procedures*

38. Chapter 3 (Rules of Origin and Verification Procedures) obliges Parties to follow agreed rules for determining which goods qualify for preferential tariff treatment under the Agreement when an origin claim is made and for the process for claiming this status.

#### *Annex 3-A Declaration of Origin Requirements*

- a. Annex 3-A sets out the requirements for a declaration of origin.

#### *Annex 3-B Schedule of Product Specific Rules*

- b. Annex 3-B contains the Schedule of Product Specific Rules that furnish product-specific criteria that goods containing non-Party content must satisfy to be treated as originating in order to qualify for preferential tariff treatment under the Agreement.

### *Chapter 4 Customs Procedures*

39. Chapter 4 (Customs Procedures) obliges Parties to observe internationally-recognised (WTO and WCO) customs trade facilitation principles, and to apply a fair, uniform and neutral system for the valuation of goods for customs purposes. Non-WTO member Parties' valuation obligations take account of their capacity limitations.

### *Chapter 5 Sanitary and Phytosanitary Measures*

40. Chapter 5 (Sanitary and Phytosanitary Measures) obliges Parties not to impose unnecessary trade restrictions or unjustifiable discrimination when they exercise their rights to use sanitary and phytosanitary (SPS) measures necessary to protect against risks to human, animal or plant life or health. Non-WTO member Parties' SPS obligations take account of these Parties' capacity limitations.

### *Chapter 6 Technical Regulations, Standards and Conformity Assessment Procedures*

41. Chapter 6 (Technical Regulations, Standards and Conformity Assessment Procedures) obliges Parties not to impose unnecessary trade restrictions or unjustifiable discrimination when they exercise their rights to use technical regulations, standards and conformity assessment procedures necessary to achieve legitimate objectives, including to protect human health or safety, animal or plant life or health or the environment, prevent deceptive practices, ensure the quality of exports and protect essential security interests. Non-WTO member Parties' regulatory obligations take account of these Parties' capacity limitations.

### *Chapter 7 Trade in Services*

42. Chapter 7 (Trade in Services) establishes the framework of rules and commitments for trade in services, reflecting the rights, obligations and modes of supply under the WTO General Agreement on Trade in Services (GATS).

### *Annex 7-A Schedules of Specific Services Commitments*

- a. Annex 7-A contains the Schedules of Specific Services Commitments of the Parties.
  - i. Australia has made commitments in 11 out of 12 services sectors under the GATS supply modes 1 to 3 (cross-border supply, consumption abroad and commercial presence).
  - ii. Pacific Island Countries' commitments range from 9 to 11 sectors covering sectors such as financial services, telecommunications, education services, environmental services and transport.

### *Chapter 8 Movement of Natural Persons*

43. Chapter 8 (Movement of Natural Persons) obliges Parties to grant entry to skilled workers such as intra-corporate transferees (executives, senior managers, specialists), contractual service suppliers and business visitors in accordance with its framework of rules and commitments, while preserving each Party's right to manage its borders and preserve its territorial integrity. The Chapter applies to measures regulating the movement of natural persons on a temporary basis into a Party, and builds on rights and obligations established in both the Trade in Services and Investment Chapters.

### *Annex 8-A Schedules of Commitments on Movement of Natural Persons*

- a. Annex 8-A contains the Schedules of Commitments on Movement of Natural Persons of the Parties.
  - i. PACER Plus commitments of Pacific Island Country WTO Members (Samoa, Solomon Islands, Tonga and Vanuatu) go beyond the commitments they have made under the GATS.
  - ii. PACER Plus commitments of Pacific Island Country non-WTO Members (including Cook Islands, Kiribati, Nauru, Niue and Tuvalu) are equivalent to, or go further than, the commitments they have made under the Pacific Island Countries Trade Agreement (PICTA).
  - iii. Under PACER Plus, Australia retains the right to apply Labour Market Testing (LMT) for contractual service providers. Consistent with other FTAs, we will waive LMT for specific categories of natural persons (intra-corporate transferees and independent executives).

### *Chapter 9 Investment*

44. Chapter 9 (Investment) provides market access and post-establishment protections for investors by establishing a framework of rules including the minimum standard of treatment and protection from uncompensated expropriation. Each Party commits to provide national treatment in a positive (specified) list of sectors and most-favoured-nation treatment on a negative list basis (i.e. will apply to all unless listed). WTO Members must act consistently with their obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS); non-WTO Members must list measures that are inconsistent with TRIMS and are to strive for consistency with that

Agreement within their capacity. PACER Plus does not include investor state dispute settlement provisions.

*Annex 9-A Schedules of Commitments on Investment*

- a. Annex 9-A contains Parties' Schedules of Commitments on National Treatment, equating to market access for investors.
- b. Parties' market access commitments on investment cover five areas: agriculture, hunting and forestry; fishing; mining and quarrying; manufacturing; and electricity, gas, and water supply.
- c. Australia's commitments are in line with Australia's foreign investment framework and do not go beyond Australia's existing free trade agreements.

*Annex 9-B Schedules of Commitments on Senior Management and Boards of Directors Exemptions*

- d. Chapter 9 (Investment) obliges Parties to refrain from discriminatory requirements for senior managers and boards of directors in relation to covered investments. Annex 9-B contains Parties' lists of exemptions from their obligations under Article 10 (Senior Management and Boards of Directors).

*Annex 9-C Expropriation and Compensation*

- e. Chapter 9 (Investment) obliges Parties to conform to rules and disciplines on expropriation and compensation in relation to covered investments. Annex 9-C informs the identification of situations in which the provisions of Article 13 (Expropriation and Compensation) apply.

*Annex 9-D List of Measures not Compliant with TRIMS Agreement*

- f. Chapter 9 (Investment) prohibits measures not compliant with the WTO Agreement on Trade-Related Investment Measures (TRIMS Agreement). Annex 9-D sets out the template for the lists of non-WTO Member Parties' measures not compliant with the TRIMS Agreement that Article 11 (Prohibition of Performance Requirements) allows them to maintain, subject to those measures being listed in Annex 9-D within two years of the date of entry into force of PACER Plus.

*Annex I Schedule of Most-Favoured-Nation Exemptions on Services and Investment*

- g. Article 3 (Most-Favoured-Nation Treatment) of Chapter 7 (Trade in Services) and Article 7 (Most-Favoured-Nation Treatment) of Chapter 9 (Investment) obliges Parties to accord most-favoured-nation (MFN) treatment to other Parties' services, service suppliers, investors and investors' covered investments. Annex I contains Parties' commitments on the scope of exemption from those MFN treatment obligations.

### *Chapter 10 Development and Economic Cooperation*

45. Chapter 10 (Development and Economic Cooperation) establishes a framework for the provision of development assistance to developing country Parties to support the implementation of the Agreement.

### *Chapter 11 General Provisions and Exceptions*

46. Chapter 11 (General Provisions and Exceptions) sets out general exceptions to the rules and commitments under the Agreement, includes a security exception, provides for temporary safeguard measures to protect the balance of payments, and (apart from where corresponding rights and obligations apply under the WTO) provides a general exemption for taxation measures.

### *Chapter 12 Institutional Provisions*

47. Chapter 12 (Institutional Provisions) establishes a Joint Committee to oversee matters relating to the implementation and operation of the Agreement and establishes three standing subsidiary bodies.

#### *Annex 12-A Subsidiary Bodies*

- a. Annex 12-A sets out the functions of the Agreement's standing subsidiary bodies: the Committee on Trade in Goods, Rules of Origin and Customs; the Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade; and the Committee on Trade in Services, Movement of Natural Persons and Investment.

### *Chapter 13 Transparency*

48. Chapter 13 (Transparency) sets the minimum standards of transparency (publication and notification) across the Agreement.

### *Chapter 14 Consultations and Dispute Settlement*

49. Chapter 14 (Consultations and Dispute Settlement) includes a binding Party-to-Party dispute settlement mechanism, reflecting previous FTAs' frameworks and the WTO dispute settlement system.

#### *Annex 14-A Model Rules of Procedure*

- a. Annex 14-A sets out model rules of procedure for consultations and dispute settlement pursuant to Chapter 14 (Consultations and Dispute Settlement).

### *Chapter 15 Final Provisions*

50. Chapter 15 (Final Provisions) establishes the processes by which the Agreement will enter into force, how it may be amended, how a Party may withdraw from the Agreement, and requirements for accession to the Agreement.

## *Treaty-level Side Letter with New Zealand*

51. Australia and New Zealand exchanged treaty-level letters on 14 June 2017 outlining how PACER Plus is to apply between them, given the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and its related agreements and understandings, the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) and the Trans-Pacific Partnership Agreement (TPP)). Nothing in PACER Plus shall be construed to derogate from any rights or obligations of New Zealand or Australia under ANZCERTA, AANZFTA or the TPP Agreement.
52. Australia and New Zealand have agreed that Article 4.2 of Chapter 2 (Trade in Goods), Chapter 10 (Development and Economic Cooperation) and Chapter 14 (Consultations and Dispute Settlement) shall not create any rights or obligations between them.
53. The provisions of PACER Plus that will create rights and obligations between Australia and New Zealand are:
  - a. Chapter 1 (Initial Provisions and General Definitions);
  - b. Chapter 2 (Trade in Goods) (except Article 4.2, which shall not create any rights or obligations), together with Annex 2-A (Schedules of Commitments on Tariffs) and Annex 2-C (Notification of Modified or New Import Licensing Procedures Pursuant to Articles 14.1(c) and 14.2(b));
  - c. Chapter 3 (Rules of Origin and Verification Procedures) together with Annex 3-A (Declaration of Origin Requirements) and Annex 3-B (Schedule of Product Specific Rules); and
  - d. Chapter 11 (General Provisions and Exceptions), which shall only apply between them to the extent that PACER Plus creates rights and obligations between New Zealand and Australia, as modified by the exchange of letters.
54. Australia and New Zealand have also agreed to consider the merits of applying provisions of PACER Plus not mentioned above as between them.
55. If an issue arises in regard to any rights and obligations applying between Australia and New Zealand under PACER Plus as modified by the exchange of letters, either Australia or New Zealand, at the written request of the other, shall promptly enter into consultations with a view to seeking an equitable and mutually satisfactory solution.

## **Implementation**

56. Following JSCOT's consideration of the Agreement, Australia will need to amend the *Customs Act 1901* and the *Customs Tariff Act 1995* as well as associated regulations to incorporate the preferential tariff rates that will apply to goods imported from PACER Plus Parties. The Government will also need to update the Legislative Instrument under Subsection 140GB(2) of the *Migration Act 1958* to reflect that Labour Market Testing is not to be required for specific categories of natural persons under PACER Plus.

57. The remainder of Australia's obligations under PACER Plus do not require legislative or regulatory amendments. PACER Plus will not change the existing roles of the Commonwealth, State or Territory governments. Under PACER Plus, businesses will be able to self-declare to claim preferential treatment under PACER Plus. That is, PACER Plus is among Australia's FTAs for which a declaration of origin by the exporter is required to be accepted for consideration by the importing Party for an origin determination, in order to gain access to the Agreement's tariff preference for that product.

## **Costs**

58. The Treasury has estimated that the loss of tariff revenue to the Australian Government resulting from PACER Plus over the Budget forward estimates (from 2017-18 to 2020-21) will be negligible. This estimate is based on an analysis of existing trade levels. The estimates will be affected by revisions to forecasts and projections for the level of imports.

59. PACER Plus includes an economic cooperation component to provide technical assistance and capacity building to Pacific Island Countries to assist in the implementation of the Agreement for which Australia and New Zealand will provide a joint funding package (of A\$19 million and NZ\$7 million from each country respectively) over a five year period once the Agreement enters into force.

60. The Department of Foreign Affairs and Trade's Official Development Assistance budget will absorb funding for implementation assistance to the Pacific Island Countries.

## **Future treaty action**

61. Article 7 (Amendments) of Chapter 15 (Final Provisions) provides that PACER Plus may be amended by written agreement of all Parties. Article 1 (PACER Plus Joint Committee) of Chapter 12 (Institutional Provisions) establishes the "PACER Plus Joint Committee" which, among other things, may consider and recommend to the Parties any amendments to PACER Plus. Any amendments agreed by the Parties would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

62. Any agreement between Australia and New Zealand to amend the side letter setting out the way in which PACER Plus applies between the two countries would also be subject to Australia's domestic treaty-making requirements.

63. Article 9 (Accession) of Chapter 15 (Final Provisions) provides that the Agreement is open to accession by a State, separate customs territory or self-governing entity as the Parties may agree. Agreement among the Parties to an accession would require treaty action and be subject to Australia's domestic treaty-making requirements which, once complete, would need to be notified to the Depositary in writing. Australia's obligations contained within PACER Plus, subject to Australia's schedules, would then extend to the new Parties.

## **Withdrawal or denunciation**

64. Under Article 11 (Withdrawal and Termination) of Chapter 15 (Final Provisions), any Party may withdraw from PACER Plus by giving six months' advance notice in writing to the other Parties. More than half of the Parties notifying their withdrawal would terminate the Agreement. Withdrawal from PACER Plus by Australia would be subject to Australia's domestic treaty-making requirements.

## **Contact details**

Pacific Regional Branch  
Pacific Division  
Department of Foreign Affairs and Trade

## Attachment I

### ATTACHMENT ON CONSULTATION

#### Pacific Agreement on Closer Economic Relations Plus (PACER Plus)

(Nuku'alofa, 14 June 2017)

[2017] ATNIA 31

[2017] ATNIF 42

#### CONSULTATION

1. The proposed action will have an impact on the States and Territories, as the obligations in the Agreement apply to all States and Territories (except where specified otherwise in PACER Plus).
2. State and Territory governments were consulted through the Senior Officials Trade and Investment Group (SOTIG) and Commonwealth-State-Territory Standing Committee on Treaties (SCOT) meetings, and through regular visits by Department of Foreign Affairs and Trade (DFAT) officials to State and Territory capitals. The Minister for Trade, Tourism and Investment also briefed his State and Territory counterparts at the Trade and Investment Ministers' Meeting (TIMM). The final text of PACER Plus was sent to the States and Territories prior to tabling in Parliament.
3. In line with the Government's commitment to ensuring Australia's trade objectives are pursued on the basis of community consultation, public consultations on Australia's participation in PACER Plus negotiations commenced on 1 July 2009. The Department of Foreign Affairs and Trade received 41 written submissions from a variety of stakeholders. Submissions were received from a wide range of interested parties including industry, business, community and labour representatives and government agencies. The Institute for International Trade at the University of Adelaide provided a *Research Study on the Benefits, Challenges and Ways Forward for PACER Plus* (Final Report, June 2008).
4. The 35 interested parties and individuals who provided non-confidential submissions and comments were:

Aid Watch

ANZ

Australian Council for International Development

Australian Fair Trade and Investment Network

Australian Industry Group

Australian Pork Limited

BJS Group

Bruck Group

Chamber of Commerce and Industry Queensland

Community and Public Sector Union

Eden Power

Frosty Boy Australia  
Mr Jawed Gebrael  
Dr Nicole George  
Global Justice Network of the Grail in Australia  
Greenlight Technology Group Pty Ltd  
Ms Shona Hawkes  
Honda  
Institute for International Trade  
International Women's Development Agency  
Mr Philip Kidner  
Law Institute of Victoria  
Lowy Institute for International Policy  
Ms Lara Mason  
Music Council of Australia  
National Farmers' Federation  
National Institute of Accountants  
Northern Territory Government  
Oxfam Australia  
Philip Morris Ltd  
QANTAS  
Rural Solutions SA  
SafeWork South Australia  
Uniting World  
Ms Rosie Wong

5. Prior to commencing negotiations, DFAT officials consulted with organisations representing industry, trade unions, professional bodies and other interested groups to ensure their views informed the development of the Government's negotiating strategy. DFAT officials provided briefings to stakeholders on progress in the negotiations in the context of briefings across the Government's trade agenda and provided opportunities for stakeholders to receive briefings and provide their views on request. The Minister for Trade, Tourism and Investment engaged business leaders on PACER Plus at Trade, Tourism and Investment Policy Advisory Council (TTIPAC) meetings.
6. The Pacific Islands Forum also hosted seven Non-State Actors (NSA) Dialogues during the negotiations, involving all negotiating parties. Australia actively engaged in all of them. The Dialogues were meetings between representatives of NSAs, including private sector and civil society organisations, and PACER Plus officials in which officials provided an update on the PACER Plus negotiations and participants discussed the issues covered in the negotiations interactively. The most recent NSA Dialogue was held on 31 May 2017 in Port Vila, Vanuatu simultaneously with the release of the legal text of the Agreement (made available on the DFAT website).

## Attachment II

### Pacific Agreement on Closer Economic Relations Plus (PACER Plus): Summary of Key Obligations

#### Preamble and Chapter 1: Initial Provisions and General Definitions

1. The Preamble recites the historical basis, regional context and broad aims for PACER Plus. Importantly, PACER Plus recognises “the unique and close historical, political, developmental, economic geographic and cultural links that bind the Parties as well as their shared values and interests”. Chapter 1 contains a list of specific terms with accompanying definitions that apply to the whole Agreement.

#### Chapter 2: Trade in Goods

2. Provisions of this Chapter:
  - prohibit customs duties and other similar imposts that are inconsistent with a Party’s scheduled tariff commitments;
  - require Parties to accord to other Parties’ goods tariff treatment no less favourable than that accorded to any country or territory (most-favoured-nation (MFN) tariff treatment), except in respect of:
    - preferences of any Party in force under a regional trade agreement on the date of entry into force of PACER Plus;
    - preferences of any Party accorded to Least-Developed Countries (LDCs) under the World Trade Organization (WTO) Decisions on duty-free and quota-free treatment of LDCs’ goods;
    - preferences accorded under a regional trade agreement exclusively involving Pacific Island Countries and Territories (PICTs);
    - preferences of a developing country Party accorded under a regional trade agreement exclusively involving developing countries, where any non-Party party to such agreement accounts for not more than 1 per cent of world merchandise exports and all non-Parties party to it together account for not more than 4 per cent of world merchandise exports;
    - preferences of the Federated States of Micronesia, Palau and the Republic of the Marshall Islands accorded to the United States of America pursuant to the operation of the MFN clause of their Compacts of Free Association;
      - : Without this exemption, the PACER Plus MFN provision would nullify the operation of the PACER Plus exemption for these Parties from MFN tariff treatment for some regional trade agreements, by reason of the MFN tariff treatment they are required to accord to the United States of America under their Compacts with respect to those agreements.
    - preferences of the Federated States of Micronesia, Palau and the Republic of the Marshall Islands accorded to the United States of America under a regional trade agreement established under their Compacts of Free Association or successor agreements.

3. Provisions of Chapter Two also:

- . provide for the negotiation and incorporation into Schedules of Commitments on Tariffs of accelerated or improved tariff commitments;
- . provide for the unilateral acceleration of a Party's schedule tariff commitments and their extension to all other Parties;
- . allow developing country Parties facing unforeseen difficulties in implementing their scheduled tariff commitments to negotiate with interested Parties the permanent compensated modification or withdrawal of a concession, and require the outcomes to be incorporated into the Agreement;
- . require duty-free treatment of a good re-entering a Party's territory after being temporarily exported to another Party for repair or alteration, but allow a duty to be imposed, if the Party wishes, on the cost of repair or alteration of the good in accordance with its relevant legislation;
- . prohibit Parties from applying a customs duty to any good admitted temporarily from another Party for repair or alteration;
- . prohibit Parties from imposing (except on tobacco products) a customs duty on commercial samples of negligible value and printed advertising materials imported from another Party;
- . prohibit discrimination against imported goods or goods imported from particular Parties in respect of internal taxation and regulation;
- . require Parties that use anti-dumping, countervailing and safeguard measures to do so only in conformity with WTO rules;
- . require fees and charges for services rendered that are imposed on imports and exports to be limited in amount to the approximate cost of the service;
- . require any licensing of imports used to administer an allowable non-tariff measure to be implemented in a transparent and predictable manner, fairly and equitably;
- . require that no non-tariff measure on imports or exports be applied unless it is consistent with the WTO Agreement and PACER Plus and that no measure be applied to traffic in transit that is inconsistent with the WTO Agreement; and
- . prohibit:
  - border measures required to be eliminated under the WTO Agriculture Agreement
  - "grey-area" measures required to be eliminated under the WTO Safeguards Agreement and
  - requirements for consular transactions on imported goods.

4. Provisions of Chapter 2 allow Pacific Island Countries (without prejudice to their rights to negotiate with interested Parties the permanent compensated modification or withdrawal of a concession and to do so at any time, including a final scheduled tariff reduction) to have recourse to flexibilities to temporarily deviate from Scheduled Tariff Commitments during the period in which the custom duty concerned is scheduled to be reduced:

- Temporary Safeguard Measures*, which may be applied when the competent authorities of a Party conduct an investigation and find that, as result of staged elimination of a duty, goods are being imported into the Party in such increased quantities and under such conditions so as to cause or threaten serious injury to the domestic industry producing a like or directly competitive good:

  - only following an investigation by the Party’s competent authorities conducted in accordance with Articles 3 and 4.2(c) of the WTO Agreement on Safeguards and in compliance with the requirements of Articles 4.2(a) and 4.2(b) of the WTO Agreement on Safeguards;
  - for such a period as may be necessary to prevent or remedy serious injury and to facilitate adjustment, but:
    - : for no longer than two years with the possibility of the extension of three further years;
    - : for no longer than a period of five years cumulatively on the same good;
    - : not after the final reduction of the duty in the Party’s Schedule of Commitments on Tariffs; and
    - : not concurrently with a global safeguard measure applied to the same good under GATT Article XIX and the WTO Agreement on Safeguards;
  - subject to progressive liberalisation of the transitional safeguard measure at regular intervals during the period of application and, upon termination of the measure, to reversion to the scheduled tariff commitment that would have applied had the measure never been applied;
  - subject to the provision of trade liberalising compensation mutually agreed with Parties affected by the transitional safeguard measure through consultations, where the compensation terminates with the termination of the measure; and
  - subject to observance of specified notification requirements; but
  - permitting recourse to a provisional measure of no more than 200 days duration in critical circumstances where delay would cause damage that would be difficult to repair, following an appropriate preliminary determination made, and subject to the measure being applied, in accordance with specified requirements.
- Industry Development Measures*, which may be applied for development purposes in specific situations (and without any restrictive trade remedy requirements):

  - recognising the Forum Island Countries’ unique situations characterised by low populations, limited arable lands and other natural resources, small isolated economies and high vulnerability to natural disasters and taking into account the high incidence of persistent gaps between their respective levels of per capita gross national income and those of the world’s developed countries and larger or more advanced developing countries;
  - enabling a Forum Island Country to request recourse to the Industry Development Measure (Measure) to support either:

- : the establishment of a new industry or a new branch of production in an existing industry;
  - : the substantial transformation of an existing industry;
  - : the substantial expansion of an existing industry supplying a small proportion of the domestic demand; or
  - : an industry destroyed or substantially damaged as a result of hostilities or natural disaster;
- applying initially for seven years with the possibility of extension for a further three years, and reverting to levels not exceeding scheduled rates that would have applied but for the Measure, but not applying such Measure to the same good simultaneously with a Transitional Safeguard Measure;
  - applying if tariff lines subject to all the requesting Party's existing Measures in force and the new Measure, when it is proposed, together account for not more than eight per cent of the total exports of an affected Party to the requesting Party and account for not more than three per cent of tariff lines;
  - applying subject to agreed or otherwise determined compensation of affected Parties, to be provided three years after the initial application of the Measure and to cease upon termination of the Measure;
  - allowing Kiribati (in recognition of it having autonomously eliminated all of its ordinary customs duties in 2014) recourse to the Measure applied at the level of its general non-preferential rate of duty in accordance with all other applicable provisions, but no later than 25 years from entry into force.

5. Provisions of Chapter Two also:

- . require each Party to:
  - publish all laws, regulations, judicial decisions and administrative rulings that affect trade, all international trade agreements, and any new impost, restriction or prohibition on imports;
  - administer all such measures in a uniform, impartial and reasonable manner;
  - exchange information with other parties on all rates of duty, all fees and charges, and new or modified import licensing procedures; and
  - exchange and publish up-to-date information on these matters;
- . set out procedures to update tariff classifications used in tariff schedules to any new version of the Harmonized Commodity Description and Coding System (Harmonized System);
- . require Parties to establish contact points to transmit and receive requests and notifications from other Parties, as well as to facilitate requests for information and for technical discussions on measures affecting trade; and
- . mandate consultation on implementing the Chapter and review of the Chapter three years after entry into force.

### **Chapter 3: Rules of Origin and Verification Procedures, including Schedule of Product Specific Rules**

6. In order to improve outcomes for Pacific Island Countries on qualifying goods for access to PACER Plus preferential tariff commitments, Chapter 3 uses less restrictive and more flexible criteria to establish origin than those under existing trading arrangements (for example, the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA)). By increasing Parties' ability to trade and better facilitating trade, those criteria strengthen economic integration between Parties.
7. In general terms, under PACER Plus, a good of a Party is eligible for preferential treatment ("originating") if it:
  - is wholly obtained or produced in one or more Parties. For example, this rule would cover iron ore imported from the Party where it has been mined or an imported manufactured good from a Party that is made from components produced entirely in that Party or a number of Parties; or
  - meets Product Specific Rules (PSRs) as outlined in an annex to the Chapter. PSRs determine the circumstances in which a good imported from a Party and containing components or inputs from a non-party is eligible for preferential tariff treatment.
8. In line with international best practice, the PSR Schedule in PACER Plus sets out up to three alternative rules to determine if an imported good originates from a Party. Any one of these must be met to qualify for a preference:
  - Change of Tariff Classification (CTC): a good has undergone a significant production process that changes its tariff classification. The degree of change required to confer origin is specified for each product in the PSR Schedule;
  - Regional Value Content: a certain minimum level of value-adding has taken place within the PACER Plus membership, with the last process of production taking place in a PACER Plus Party – this is an option for some but not all products; and
  - Process: a good has undergone a specific process that fundamentally changes its nature. For example, a substance that undergoes a chemical reaction that transforms it but does not change its tariff classification or change it sufficiently to apply the CTC rule – this is available for some products.
9. The underlying principle behind PSRs is that imported goods must have undergone substantial transformation in a PACER Plus Party or Parties to be eligible for preferential treatment. PSRs in the Agreement are similar to the rules in the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), with a few exceptions to which Parties have mutually agreed on different rules (e.g., tobacco more restrictive than AANZFTA and fresh and frozen fish more accessible than AANZFTA).
10. Chapter 3 sets out a world's best practice trade-facilitating process for verification of claims of origin, when required, that balances the need for compliance with the rights of producers and traders. It also sets out documentation and record keeping requirements. Exporters, producers or their authorised representatives can complete

the declaration of origin needed to claim a preference on a good imported from another Party: no requirement for certification of origin by an independent body applies. Importers will not be required to provide a declaration of origin if the value of the imported good is below US\$200.

#### **Chapter 4: Customs Procedures**

11. Objectives of this Chapter include:

- . ensuring predictability, consistency and transparency in the application of their customs laws and regulations;
- . promoting the efficient, economical administration of customs procedures and the expeditious clearance of goods;
- . simplifying and harmonising customs procedures;
- . facilitating trade between the Parties and the security of such trade;
- . enhance the implementation of WTO customs valuation rules and other provisions on customs matters; and
- . promoting cooperation between customs administrations of the Parties.

12. Provisions of this Chapter:

- . encourage customs administrations to assist each other, including on:
  - the implementation and operation of the Chapter;
  - customs best practice and risk management;
  - the provision of prior notice of changes to laws, regulations and relevant procedures and guidelines;
  - simplification and harmonisation of customs procedures;
  - advancement of technical skills and use of technology;
  - application of the Harmonized Commodity Description and Coding System (Harmonized System);
  - the movement of goods between the Parties; and
  - customs enforcement;
- . encourage or require Parties to:
  - ensure predictability, consistency and transparency of their customs procedures and practices, and facilitate trade including through the expeditious clearance of goods;
  - have their own systems that support electronic customs transactions, taking into account international standards and best practices;
  - adopt procedures to expedite clearance of shipments while maintaining appropriate control;
  - maintain procedures allowing goods to be released within 48 hours of arrival or as soon as practicable, including at the point of arrival where possible;
  - apply WTO customs valuation rules;

- : WTO Member Parties reaffirm their WTO custom valuation obligations.
- : Non-WTO Member Parties apply WTO custom valuation obligations to the extent of their capacity.
- provide written advance rulings on tariff classification and origin of goods;
- facilitate the clearance of low-risk goods and focus on high-risk goods;
- provide a single point for the documentary or electronic processing of goods where inspection is not necessary;
- work to enhance the use of risk management techniques in the administration of customs procedures;
- designate enquiry points to address enquiries from interested persons on customs matters and publish information online concerning procedures for making such enquiries;
- promptly publish online or in print form all statutory and regulatory provisions and administrative procedures applied or enforced by the Party’s customs administration (except law enforcement procedures and internal operational guidelines);
- provide any person to whom an administrative decision has been issued access to independent administrative review or review by a higher authority of the decision and access to judicial review when the determination is taken at the highest level of administrative review;
- . encourage customs administrations to consult with each other regarding significant customs issues affecting goods trading between the Parties;
- . require Parties to consult with each other regularly on the implementation of their commitments under the Chapter; and
- . mandate a review of the Chapter within three years after entry into report and a final report of the review within four years.

## **Chapter 5: Sanitary and Phytosanitary Measures**

13. The Chapter incorporates key features of the international framework of rules and standards in relation to measures that protect against sanitary and phytosanitary (SPS) risks, with the objectives of:
- . facilitating trade between the Parties while protecting human, animal or plant life or health within each Party;
  - . providing greater transparency in, and enhance understanding of Parties’ SPS measures;
  - . strengthening cooperation between Parties on SPS measures;
  - . enhancing practical implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) by WTO Members; and
  - . promoting application of the requirements of the SPS Agreement by non-WTO member Parties.

#### 14. Provisions of this Chapter:

- . affirm the rights of Parties to take SPS measures necessary to protect human, animal or plant life or health within each Party in conformity with the Chapter;
- . require Parties to apply the SPS Agreement;
  - : WTO Member Parties affirm their rights and obligations with respect to each other under the SPS Agreement.
  - : Developing Non-WTO Member Parties (Cook Islands, the Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, the Republic of the Marshall Islands and Tuvalu) will ensure their SPS measures are based on the SPS Agreement only to the extent of their capacity. But, on request of another Party with an interest in an SPS measure, they are required to engage in bilateral technical discussions on the measure.
- . require Parties to:
  - ensure SPS measures:
    - : are applied only to the extent necessary to protect human, animal or plant life or health;
    - : are based on science, and not to maintain them without sufficient scientific evidence;
    - : do not arbitrarily or unjustifiably discriminate between Parties where identical or similar conditions prevail;
    - : are, wherever possible, based on international standards, guidelines or recommendations where they exist;
    - : have a scientific justification where the SPS measures result in a higher level of SPS protection than would be achieved by basing them on international standards, guidelines or recommendations; and
    - : are based on pertinent information where they are provisionally adopted and relevant scientific evidence is insufficient;
  - in the case of an importing Party, provide exporting Parties with a reasonable opportunity to demonstrate the equivalence of their SPS measures with its own, including to enter into negotiations to achieve bilateral or regional recognition arrangements on the equivalence of specified SPS measures;
  - cooperate with each other on adaptation of SPS measures to regional conditions in accordance with SPS Agreement and relevant international standards, guidelines and recommendations, to facilitate trade;
  - publish SPS measures promptly and, except in urgent circumstances, allow a reasonable interval between publication and entry into force of a regulation to allow time for adaptation of exporting Parties' producers to adapt to the new requirements;
  - notify to other Parties through contact points if:
    - : an SPS measure is a new or amended measure that may affect the trade of an exporting Party;
    - : an SPS measure affecting the trade of an exporting Party is provisionally applied;

- : a change in animal or plant health status may affect existing trade;
- in the case of an exporting Party, provide relevant information to an importing Party if it identifies after exportation a significant SPS risk in an export consignment destined for the importing Party;
- in the case of an importing Party, notify an exporting Party of non-compliance with its SPS measure if it determines a significant, sustained or recurring pattern of non-compliance, and on request, provide information on non-compliant consignments;
- in the case of an importing Party preparing a new or an amended SPS regulation not substantially the same as a relevant international standard, guideline or recommendation, publish it and notify other Parties so as to provide a reasonable opportunity for comment before the final version is adopted;
- explore opportunities to further cooperate, including to undertake information exchange, on SPS matters of mutual interest or of significant interest to a developing country Party;
- in the case of an importing developed country Party, take into account developing country Parties' lists of prioritised products of significant export interest in its import standards development work programmes with a view to facilitating their exports;
- explore cooperative actions to address a significant, sustained or recurring pattern of non-compliance of an exporter from an exporting developing country Party with an importing Party's requirements;
- explore strengthening cooperation on the provision of technical assistance and capacity building, especially in relation to trade facilitation;
- on request, undertake technical discussions on any SPS measure affecting trade between Parties and on any other SPS matter of mutual interest;
- accord special and differential treatment to developing country Parties, including providing longer timeframes for phased compliance with a new SPS measure on products of interest to them or for compliance of their producers, if the importing Party's appropriate level of protection against SPS risks allows;
- consult as required to consider the implementation of Parties' commitments under the Chapter; and
- commence a review of the Chapter within three years after entry into report and a final report of the review within four years.

## **Chapter 6: Technical Regulations, Standards and Conformity Assessment Procedures**

15. The Chapter incorporates key features of the international framework for the preparation, adoption and application of technical regulations, standards and conformity assessment procedures measures, with the objectives of:
  - . facilitating trade by ensuring technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade;
  - . ensuring transparency and promoting understanding of Parties' technical regulations, standards and conformity assessment procedures;

- . strengthening information and cooperation, including the preparation, adoption and application of technical regulations, standards and conformity assessment procedures;
- . enhancing implementation of the WTO Agreement on Technical Barriers to Trade (TBT Agreement) by WTO Members and promoting observance of the requirements of the TBT Agreement by non-WTO member Parties.

16. Provisions of this Chapter:

- . affirm the rights of Parties to prepare, adopt or apply technical regulations necessary to achieve legitimate regulatory objectives and standards and related conformity assessment procedures consistently with the Chapter;
- . require Parties to apply the TBT Agreement;
  - WTO Member Parties affirm the TBT Agreement;
  - Developing Non-WTO Member Parties (Cook Islands, the Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, the Republic of the Marshall Islands and Tuvalu) will ensure the technical regulations, standards and conformity assessment procedures they prepare, adopt or apply are based on the TBT Agreement only to the extent of their capacity. But, on request of another Party with an interest in a regulation, standard or procedure, they are required to engage in bilateral technical discussions on the matter;
- . require Parties to:
  - ensure, in respect of technical regulations and standards, that products imported from other Parties are accorded national treatment and most-favoured-nation treatment;
  - ensure in respect of conformity assessment procedures applied to imported products, national treatment and most-favoured-nation treatment are accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation;
  - respond to reasonable written requests for information on their technical regulations, standards and conformity assessment procedures and for clarification of their responses, and also explain their reasons in writing if:
    - : a relevant international standard, guide or recommendation is not used a basis for a technical regulation or related conformity assessment procedure;
    - : a technical regulation of another Party is not accepted as equivalent;
    - : results of a conformity assessment procedure conducted in another Party are not accepted;
    - : a body in another Party assessing conformity with the same technical regulation or standard is not recognised;
    - : if, in the view of another Party, a technical regulation is more trade restrictive than necessary, or a conformity assessment procedure is more strict or applied more strictly than necessary to provide adequate confidence products conform with the applicable technical regulation or standard;

- : if, in the view of another Party, a technical regulation or conformity assessment procedure does not conform to applicable non-discrimination requirements;
- ensure standardising bodies in their territory appropriately observe provisions of the Code of Good Practice for the Preparation, Adoption and Application of Standards in the TBT Agreement;
- in the case of an importing Party that is preparing a technical regulation or related conformity assessment procedure with technical content not in accordance with that of a relevant international standard, guide or recommendation, publish it and notify other Parties so as to provide a reasonable opportunity for comment before the final version is adopted;
- publish promptly technical regulations and conformity assessment procedures that have been adopted, and allow a reasonable interval between the time of adoption of a technical regulation or related conformity assessment procedure and its entry into force for producers in exporting Parties, particularly developing country Parties, to adapt to it;
- cooperate on technical regulations, standards and conformity assessment procedures, including by undertaking joint efforts to facilitate trade between Parties and increase market access opportunities for developing country Parties, and by giving positive consideration to sector-specific proposals for further cooperation;
- on request, enter into technical discussions on any measure another Party considers to warrant further discussion to clarify it and resolve concerns;
- accord to exports from developing country Parties special and differential treatment required under the TBT Agreement;
- consult as required to consider the implementation of Parties' commitments under the Chapter;
- commence a review of the Chapter within three years after entry into report and a final report of the review within four years.

## **Chapter 7: Trade in Services**

17. This Chapter reflects the WTO General Agreement on Trade in Services (GATS) rights and obligations covering all four of the GATS modes of supply for the delivery of services (Mode 1: cross-border trade; Mode 2: consumption abroad; Mode 3: commercial presence; and Mode 4: presence of natural persons). Key obligations related to commitments include:
- . national treatment, where a PACER Plus Party must treat local and foreign service suppliers equally where there are like circumstances for services sectors listed in its schedule;
  - . market access, where a Party may not impose restrictions on foreign suppliers in service sectors listed in its schedule; and
  - . most-favoured-nation (MFN) treatment, where a Party must extend immediately and unconditionally to other Parties treatment no less favourable than that it provides to third countries, unless it schedules an exemption.

18. Chapter 7 also contains:

- a specific Article on increasing Pacific Island Countries' participation in services trade through negotiated specific commitments on market access, national treatment and other matters including those regarding qualifications, standards or licensing, to be entered into a Party's schedule at Annex 7-A – a key issue for the Pacific Island Countries given that services are the biggest single element of Pacific Island Country economies and the principal generator of jobs;
- provisions on domestic regulation, including for Parties:
  - to ensure that all measures of general application affecting trade in services are administered in a reasonable, impartial and objective manner in sectors where specific commitments are undertaken;
  - to maintain or institute procedures for review of administrative decisions affecting trade in services;
  - to prevent nullification and impairment of specific commitments in sectors where specific commitments are undertaken, by ensuring qualification requirements and procedures, technical standards and licensing requirements and procedures are based on objective and transparent criteria, are not more burdensome than necessary to ensure quality of the service and, in the case of licensing, are not in themselves a restriction on supply of the service;
  - to ensure competent authorities' procedures for authorisations required for the supply of a service in a sector where specific commitments are undertaken fulfil specified criteria for transparency and procedural fairness
  - to provide adequate procedures to verify the competence of professionals of another Party where specific commitments are undertaken; and
  - to permit service suppliers of other Parties to use the business names they ordinarily trade under and ensure the use of business names is not unduly restricted;
- provisions encouraging harmonisation or other recognition among Parties of their standards or criteria for authorising, licensing or certifying service suppliers and, where such agreements or arrangements are reached, requiring Parties to avoid discrimination in their application, to afford other interested Parties adequate opportunities to accede to them, and to base recognition on multilaterally agreed criteria if appropriate;
- transparency provisions which require Parties to publish licencing requirements, technical standards and international agreements impacting on services trade between the Parties; and
- provisions for review of commitments and on establishing contact points.

## **Chapter 8: Movement of Natural Persons**

19. As in other advanced trade agreements that respond to the increasing links between international trade in goods, services, investment and skills, this Chapter facilitates cross-border movement of skilled workers. It applies to measures regulating the

temporary presence of natural persons in a Party, and builds on rights and obligations established in both the Trade in Services Chapter and the Investment Chapter.

20. Chapter 8 recognises the right of a Party to regulate the entry of natural persons of another Party into its territory, providing this does not nullify or impair benefits accruing to other Parties under the Chapter. The Chapter does not create any obligations on citizenship, nationality, residence or employment on a permanent basis.
21. Provisions on temporary entry of business persons require Parties to process applications for visas and other permits expeditiously and to notify, upon request, that they have received completed applications for visas and other permits.
22. Chapter 8 specifies that no Party shall have recourse to dispute settlement procedures (as set out in Chapter 14) unless the matter involves a pattern of practice and the business persons affected have exhausted all available administrative remedies.

## **Chapter 9: Investment**

23. The key obligations related to commitments under this Chapter include:
  - . non-discrimination: through national treatment and most-favoured-nation (MFN) treatment provisions that are in line with those in the Services Chapter
    - a Party must treat local and foreign investors equally where like circumstances exist for economic activities listed in its schedule
    - a Party must extend automatically to other Parties the most favourable treatment it provides to third countries, unless it has an exemption in its MFN schedule;
  - . minimum standard of treatment: the foreign investor/investment to be treated in accordance with customary international law, including fair and equitable treatment and full protection and security;
  - . compensation for losses: obligation not to treat investors from other Parties less favourably than its own investors or investors from other Parties or non-Parties in the event of armed conflict, civil strife or state of emergency;
  - . expropriation and compensation: obligation not to expropriate or nationalise a covered investment (investment in existence as of the date of entry into force of the Agreement, or established, acquired or expanded thereafter, which has been admitted by the host Party subject to its relevant laws, regulations and policies) unless it is undertaken in a non-discriminatory manner, for a public purpose and upon payment of prompt, adequate, and effective compensation;
  - . transfers: commitment to allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory;
  - . performance requirements:
    - reaffirms the obligation for WTO members not to impose as a condition of establishment or operation of an investment of the other Party any measure inconsistent with the WTO Agreement on Trade-Related Investment Measures (TRIMS);
    - requires non-WTO members to comply with those obligations to the extent of their capacity or as otherwise stipulated in the Chapter, and for

greater certainty, requires a list of a Party's measures that do not comply with the TRIMS Agreement in Annex 9-D within two years of the date of entry into force and, after the expiry of this date, new measures inconsistent with the TRIMS Agreement are not to be introduced; and

- . senior management and boards of directors: prohibition on requiring appointment of particular nationalities to senior management positions in businesses that are covered investments.
24. Chapter 9 applies investment provisions on fair and equitable treatment, senior management and boards of directors, compensation for losses, expropriation and compensation, transfers and subrogation to any measure affecting the supply of a service through commercial presence (i.e., Mode 3) if such measures relate to covered investment.
25. Chapter 9 contains provisions relating to the free transfer of funds and an obligation on Parties to permit transfers of funds in and out of their territories. Limited situations exist where restrictions may be necessary (i.e., in the case of bankruptcy, insolvency, etc.)
26. Chapter 9 also contains standard provisions such as those relating to competent authorities and contact points, technical discussions and reviewing commitments.
27. Chapter 9 does not include an investor-state dispute settlement (ISDS) mechanism.

#### **Chapter 10: Development and Economic Cooperation**

28. This Chapter creates a framework for trade-related development assistance to the Pacific Island Countries, including implementation assistance.
29. Attached to the Chapter is an Implementation Arrangement, which establishes a Work Programme for the delivery of implementation assistance and lists indicative activities. The Implementation Arrangement is of less than treaty status and can be modified to accommodate changes in assistance priorities. The Work Programme will have an initial life of five years, extendable by consensus of PACER Plus Parties.

#### **Chapter 11: General Provisions and Exceptions**

30. This Chapter provides a series of general exceptions to the obligations and commitments in PACER Plus. These exceptions permit Parties to adopt or enforce measures that otherwise would be inconsistent with PACER Plus, for example where they are:
- . necessary to protect public morals;
  - . necessary to protect human, animal or plant life or health; or
  - . relate to the conservation of exhaustible natural resources.
31. Chapter 11 also includes an exception for security-related reasons, including:
- . for measures taken in pursuance of a Party's obligations with respect to maintaining or restoring international peace and security;

- . where disclosure of information would be contrary to a Party's essential security interests; and
  - . for measures a Party considers necessary to protect its essential security interests:
    - relating to fissionable and fusionable materials;
    - for the purpose of supplying or provisioning a military establishment;
    - taken to protect critical public infrastructures from deliberate attempts intended to disable or degrade such infrastructures;
    - taken in time of war or other emergency in international relations.
32. Australia's security interests are also safeguarded in respect of proposals to invest, under our market access commitments on Services, Investment, MFN-exemptions and Senior Management and Boards of Directors. These commitments are unbound for any measure Australia considers necessary for the protection of its essential security interests with respect to proposals by foreign persons to invest in Australia.
33. Other general exceptions include the ability to impose temporary safeguard measures in the event (or threat) of serious balance of payments and external financial difficulties. Taxation measures are generally exempt in PACER Plus, with some limited exceptions such as where corresponding rights and obligations are imposed under the WTO.

## **Chapter 12: Institutional Provisions**

34. This Chapter establishes a Joint Committee consisting of representatives of the Parties. The Committee will have broad powers, including on all matters relating to the implementation and operation of the Agreement and supervision of subsidiary bodies. The Chapter also creates three subsidiary bodies: Customs Procedures, Rules of Origin and Trade in Goods Committee; Sanitary and Phytosanitary and Technical Barriers to Trade Committee; and Services, Movement of Natural Persons and Investment Committee. An Annex provides a discretionary and non-binding list of functions for these three committees.
35. The Joint Committee is obliged to undertake a general review of the Agreement with a view to furthering its objectives in three years from the date of entry into force, and every five years thereafter, unless otherwise agreed by the Parties.

## **Chapter 13: Transparency**

36. This Chapter sets the minimum standards of transparency across the Agreement. It contains obligations in relation to publishing laws, regulations and procedures, as well obligations relating to the notification of proposed or actual measures to members. It also provides that higher or more expansive standards in other Chapters will supplement or supplant those in this Chapter.

## **Chapter 14: Consultations and Dispute Settlement**

37. This Chapter includes a binding Party-to-Party dispute settlement mechanism, reflecting previous FTAs' frameworks and the WTO dispute settlement system. Given the sensitivities and vulnerabilities of the Pacific Island Countries, PACER Plus has more comprehensive special and differential provisions than the WTO Dispute Settlement Understanding. The dispute settlement mechanism also builds on chapter-specific consultations provisions in the Agreement.
38. Similar to other Agreements, the Chapter is structured around a framework that contains Party-to-Party consultations in the first instance, followed by a formal binding dispute settlement process if consultations do not identify a mutually satisfactory outcome.
39. This Chapter applies to the entire Agreement except for the Development and Economic Cooperation Chapter. With the inclusion of appropriate safeguards, the Agreement will make the Chapter on Sanitary and Phytosanitary Measures subject to the Consultations and Dispute Settlement Chapter (for the first time in an Australian FTA). This reflects the fact that the eight Pacific Island Countries are not members of the WTO and therefore do not have recourse to the WTO dispute settlement system. This will allow all Parties to seek consultations and commence dispute settlement proceedings under the Agreement.

## **Chapter 15: Final Provisions**

40. This Chapter governs the way in which PACER Plus operates as a treaty. It establishes the processes by which the Agreement will enter into force, how it may be amended, how a Party may withdraw from the Agreement, and requirements for accession to the Agreement. It also provides clarity on the operation of the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) – an early regional agreement in which Australia and New Zealand provide tariff-free entry to Pacific Island Countries' goods on a non-reciprocal basis.
41. Chapter 15 provides that, in the event of any inconsistency between rights and obligations under PACER Plus and SPARTECA, provisions in PACER Plus will prevail. It also provides that the Agreement will enter into force 60 days after at least eight Parties have ratified it.
42. Chapter 15 also provides for the Agreement being open to accession by a State, separate customs territory or self-governing entity as the Parties may agree:
  - . An applicant for accession is required to accept all the provisions of this Agreement and its Annexes and to enter negotiations with the Parties on Schedules of Commitments on Tariffs (Chapter 2), Trade in Services (Chapter 7), Movement of Natural Persons (Chapter 8) and Investment (Chapter 9) on terms to be agreed between the Parties.
  - . The Agreement will enter into force for an accession applicant 60 days after it has deposited an instrument of accession with the Depositary indicating that it accepts the terms and conditions for the accession.

## Attachment III

### Pacific Agreement on Closer Economic Relations Plus (PACER Plus): Fact Sheet: PACER Plus at a Glance

<http://dfat.gov.au/trade/agreements/pacer/fact-sheets/Pages/pacer-plus-at-a-glance.aspx>



### PACER Plus at a Glance

PACER Plus is a regional development-centred trade agreement. The negotiations were concluded in Brisbane on 20 April 2017 by 14 members of the Pacific Islands Forum: Australia, Cook Islands, Federated States of Micronesia, Kiribati, Nauru, New Zealand, Niue, Palau, Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

The Agreement opened for signature on 14 June 2017 at a signing ceremony in Nuku'alofa in Tonga. So far, Australia, Cook Islands, Kiribati, Nauru, New Zealand, Niue, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu have signed the Agreement.

PACER Plus covers trade in goods (rules of origin and verification procedures, customs procedures, biosecurity measures, and standards and conformance), trade in services, investment, temporary movement of natural persons, development and economic cooperation, institutional arrangements, transparency, and consultation and dispute settlement. Schedules of commitments cover tariffs, services, investment and movement of natural persons.

#### Opportunities for Australian business

PACER Plus will provide commercial opportunities for Australian exporters and investors in a range of sectors. These opportunities will increase over time as the provisions of the agreement lead to more open and transparent policies, and as wider relationships are built regionally and beyond.

#### A development-focussed agreement

PACER Plus commits all Parties to economic cooperation and development. A key objective is to support Pacific island countries to become more active partners in, and benefit from, regional and global trade. This in turn will create opportunities for growth, jobs and increasing living standards.

Pacific island countries face a range of development challenges including small domestic markets and narrow production bases, weak regulatory and private sector capacity, low savings and investment rates, as well as high trade and business costs. They also have young, fast growing populations that need growth and jobs.

To support Pacific island countries to meet these challenges, PACER Plus:

- builds a framework of international rules that will, over time, increase predictability, transparency and stability in the regional business environment, especially in areas in which Pacific island countries trade
- delivers targeted and responsive technical assistance to help Pacific island countries benefit from trade.

Parties' commitments on tariffs, services and investment will foster greater flows of goods, services and investment between Australia, New Zealand and the Pacific island countries. Pacific island countries will liberalise at a pace that takes into account their levels of development and unique challenges as small island developing economies. In implementing PACER Plus, Pacific island countries will work to simplify regulations, which will benefit consumers and businesses across the region. Pacific island countries will be assisted to do this. Collectively, these initiatives

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will create greater certainty resulting in increased business confidence and new opportunities for growth, jobs and rising living standards.

### Goods

PACER Plus commits all Parties to economic cooperation and development. A key objective is to support Pacific island countries to become more active partners in, and benefit from, regional and global trade. This in turn will create opportunities for growth, jobs and increasing living standards.

On entry-into-force of the Agreement, Australia and New Zealand will bind (guarantee) all tariffs on all Pacific island countries goods imports at zero. Pacific island countries have committed to liberalise tariffs and more information is available in the [Trade in Goods](#) fact sheet.

Pacific island countries will benefit from modernised rules of origin (ROO) and flexible product specific rules (PSR), allowing Pacific island country producers to obtain inputs from a range of external as well as domestic sources and still qualify for duty-free entry to Australia and New Zealand. This flexibility will boost opportunities for more domestic value adding.

PACER Plus will support Pacific island countries to modernise their customs processes and procedures, in turn reducing the cost of importing and exporting and increasing opportunities for intra-Pacific island country and inter-regional trade.

PACER Plus commits Parties to prepare and apply regulations, standards or procedures based on the World Trade Organization (WTO) Agreement on Technical Barriers to Trade, but only to the extent of their capacity for non-WTO Members. Meeting these standards will increase opportunities for Pacific island countries in the global trading system, which is increasingly reliant on international standards and quality assurance.

Under PACER Plus, Australia and New Zealand will assist Pacific island countries to improve their sanitary and phytosanitary (SPS) capabilities, so that they can convert access opportunities in Australian and New Zealand markets into actual trade gains.

### Services and Investment

PACER Plus is the first trade agreement for the Pacific island countries to include commitments on services and investment. Services are the single biggest component of Pacific island country economies and the principal source of jobs. Services are central to micro, small and medium enterprise participation in regional trade. PACER Plus will create more transparent and predictable operating conditions for domestic and foreign suppliers.

PACER Plus investment outcomes are win-win for Australia and all Parties. Commitments under PACER Plus will increase investor confidence in the Pacific island countries. For the Pacific island countries, increased inflows of direct foreign investment will help to meet their needs for capital and technology in developing their rich agricultural, mineral and marine resources, as well as developing niche offerings in services, especially tourism and manufacturing.

### Movement of Natural Persons (MNP)

PACER Plus will facilitate the cross-border movement of skilled workers through targeted commitments on temporary entry and stay of specific service suppliers.

### Labour Mobility Arrangement

In keeping with global FTA practice, PACER Plus does not include treaty-level commitments on unskilled and semi-skilled workers. Australia, New Zealand and the Pacific island countries have agreed on a separate non-binding

Labour Mobility Arrangement establishing a regional framework to enhance and promote labour mobility cooperation.

### Development Assistance

Dedicated assistance from Australia and New Zealand will be critical to ensuring Pacific island countries' improved access to international markets. To this end, PACER Plus includes a Chapter on Development and Economic Cooperation and an accompanying implementation arrangement. These provide a framework through which Parties will work together to identify needs for assistance, prioritise activities and evaluate progress. The PACER Plus Joint Committee, consisting of representatives of the Parties, will act as the governing board for this work.

Australia will provide up to \$4 million of Official Development Assistance (ODA) to assist Pacific island countries to prepare to ratify and implement the Agreement, and \$19 million once the Agreement comes into force. Negotiating Parties have already identified immediate needs, particularly in modernising Pacific island countries' customs processes and procedures. New Zealand will co-fund these activities with a further contribution of NZ\$11 million.

Australia has also committed to an Aid for Trade funding target of 20 per cent of Pacific ODA to help address supply-side constraints and build Pacific island countries' capacity to trade. In 2016-17, total ODA to the Pacific is estimated to be up to \$1.1 billion. This broader trade- and investment-related assistance will help address needs identified by Pacific island countries at regional and bilateral levels, including through existing Aid Partnerships. New Zealand has committed to a funding target of 20 per cent of its total ODA to Aid for Trade in the Pacific.

### Transparency

PACER Plus has a strong emphasis on transparency and accountability. This is in response to concerns from business that unnecessarily complex and opaque regulatory processes in the Pacific impose significant costs that weigh heavily on small and medium-sized enterprises. PACER Plus contains obligations to ensure that laws, regulations, procedures, and administrative rulings in relation to the Agreement are publicised quickly. It also contains obligations to notify other Parties when introduced measures affect them

### Institutional Arrangements and Forward Agenda

PACER Plus has review processes to provide an opportunity for Parties to assess progress against expected outcomes and refresh the Agreement. Parties will review PACER Plus three years after entry-into-force and then every five years. This will occur across-the-board, as well as in specific elements like services, investment, MNP and development cooperation. The Agreement is open to other countries to join. Negotiating parties commend the Agreement to the other members of the Pacific Islands Forum.

PACER Plus will enter-into-force 60 days after eight negotiating Parties have ratified it.

## Pacific Agreement on Closer Economic Relations Plus (PACER Plus): Fact Sheet: Development Assistance



### Maximising the benefits of PACER Plus through Development Assistance

PACER Plus will help Pacific island countries to become more active partners in, and benefit from, the regional and global trading system, in turn creating new opportunities for economic growth, jobs and rising living standards. Dedicated assistance is critical to achieving these outcomes.

To this end, PACER Plus includes a Chapter on Development and Economic Cooperation and an accompanying Implementation Arrangement. These provide the framework through which Parties will work together to identify needs for assistance, prioritise activities and evaluate progress throughout implementation.

Before these instruments come into effect, Australia and New Zealand will support a Readiness Package to support parties in their preparation to ratify the Agreement.

This sequenced programme of development assistance is designed to meet the diverse needs and priorities of the Parties, enabling efficient implementation of the Agreement and also building broader institutional and productive capacity for sustained impact. The full scope of this assistance is outlined below.

#### **PACER Plus Readiness Package: immediate technical support for ratification, customs, notification and revenue planning**

Recognising that the process of ratification of multilateral trade agreements can take time, Australia and New Zealand announced in August 2016 a package of immediate technical support for preparation, ratification and early adjustment. This support, to be rolled out as soon as the Agreement is signed, responds to a needs assessment undertaken by the Office of the Chief Trade Adviser (OCTA) and will enable signatories to reap early benefits from the Agreement.

Australia and New Zealand will provide a joint funding package (of \$4 million and NZ\$4 million from each respective country) for 'readiness' activities. These targeted activity streams were identified in the needs assessment and agreed through the course of negotiations. The activities of the Readiness Package will include:

- **Legislative drafting:** Support to assist signatories review and update relevant national laws and regulations.
- **Customs modernisation, harmonisation, implementation of up to date tariff codes and transposition of schedules:** In PACER Plus, like other current FTAs, goods will be identified by the internationally-recognised system known as the Harmonized Commodity Description and Coding System (HS), which is updated every five years. The Readiness Package will support the Oceania Customs Organisation (OCO) to assist each PACER Plus signatory to implement the latest version of the code, HS 2017, and to position them to undertake the five yearly update. The OCO will also help signatories transpose the Agreement's tariff schedules into the latest code.
- **Training on notification requirements under the Agreement:** An important feature of PACER Plus is that it sets out obligations which promote transparency, availability of information, contact points and

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certainty for the private sector which are essential for trade and investment. The Readiness Package thus includes targeted training for government and private sector entities to meet these obligations, including the new product specific rules and Rules of Origin.

- **Public outreach and stakeholder engagement:** Support will be provided for the production and dissemination of targeted communication materials for business, civil society and the general public which explain the Agreement.
- **Revenue planning and mitigation:** As participants reduce tariffs on imports, some countries may need to modernise their fiscal systems and mobilise alternative sources of government revenue. The Readiness Package will provide support to enable FICs to plan for any such adjustments.

All support under the Readiness Package is designed to be flexible and responsive to PACER Plus signatories and will be adjusted based on needs, with some activities potentially continuing into the implementation phase once the Agreement enters into force.

### **PACER Plus Implementation Package: coordinated support across each core aspect of the agreement**

Upon ratification, the Joint Committee of PACER Plus Parties will act as a governing board for approving a work programme of development assistance linked directly to the Agreement.

Parties will establish an implementation unit to prepare information and advice for the Joint Committee and administer activities. Australia and New Zealand will provide a joint funding package (of \$19 million and NZ\$7 million from each respective country) over five years once the Agreement enters into force. The support will accommodate evolving needs and is extendable by consensus of the Parties. As agreed in negotiations, it will focus on activities to implement Parties' obligations in regard to:

- Rules of Origin and other Aspects of Implementation of Tariff Commitments
- Customs
- Sanitary and Phytosanitary Measures
- Technical Regulations, Standards and Conformity Assessment
- Trade in Services, and
- Investment.

### **Broader aid for trade to build productive capacity**

Alongside the Agreement's central trade capacity building package for PACER Plus implementation, Australia has committed to an aid for trade funding target of 20 per cent of its ODA budget for the Pacific. In 2016-17, total ODA to the Pacific is estimated to be up to \$1.1 billion. This aid for trade funding will support Pacific island countries to better integrate into and benefit from the global trading system, implement domestic reform, and make a real impact on the lives of their citizens.

Australia will deliver this broader aid for trade through its Pacific regional and bilateral development programmes with PACER Plus Parties. Australia will consult individual governments regarding their priorities through existing regular aid partnership talks. Australia's Pacific aid for trade support will complement the Parties' own trade-related initiatives to increase economic growth, generate jobs and increase living standards. Some key regional initiatives already underway are:

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- **Agricultural export development:** The Pacific Horticulture and Agricultural Market Access Program (PHAMA) helps Pacific exporters meet quarantine standards and other market access requirements of trading partners, including Australia and New Zealand. The new phase of the PHAMA program is due to commence in mid-2018, and will include a specific focus on supporting PACER Plus signatories.
  - **Trade facilitation, export promotion and investment:** Australia has increased funding to the Oceania Customs Organisation (OCO) to help strengthen Pacific customs administrations, and will continue long-standing support for Pacific Trade and Invest (PT&I) which provides high-quality export facilitation, investment and tourism promotion services across the region.
  - **Private sector development and job creation:** An extended partnership with the International Finance Corporation (IFC) will see activities directed to ensuring the Pacific is able to fully benefit from a more open trade regime in the region. Through the Asian Development Bank (ADB), targeted financial and business advisory services are being provided to eligible small to medium enterprises to foster private sector led economic growth and job creation, along with assistance to improve the environment for business through the Private Sector Development Initiative. In addition, a new programme, [Pacific RISE](#) is working with investors to promote investments in Pacific enterprises.
  - **Labour mobility and remittances:** Australia is committed to expanding its support in this priority area of interest to FIC partners given its important development impact. As announced in the [White Paper on Developing Northern Australia](#), Australia has abolished the cap on places, included the broader agricultural industry and accommodation sector and introduced a pilot scheme for the tourism industry in Northern Australia through the Seasonal Worker Programme.