

## **2010 Civil Society Statement to Pacific Island Forum Leaders regarding PACER-Plus negotiations.**

This statement has been prepared for Pacific leaders attending the 2010 Forum Leaders' Meeting in Port Vila, Vanuatu from August 3<sup>rd</sup> - 6<sup>th</sup> 2010.

### **Statement calling for a Moratorium on PACER-Plus from Pacific civil society organisations, churches and trade unions.**

#### **Overview:**

In June 2009, Pacific NGOs, churches and trade unions expressed concerns about the push for free trade agreements in the Pacific and the grave risk that these agreements pose for our people<sup>1</sup>. We reaffirm those concerns.

The Forum Islands Countries (FICs) are under no obligation to conclude a reciprocal free trade agreement with Australia and New Zealand. Any change in trade relations with Australia and New Zealand is likely to have a major impact on the smaller Pacific partners. We are concerned that a poorly designed free trade deal is taking shape that has the potential to undermine the sovereign authority and responsibilities of independent Pacific nations, the political, economic and social wellbeing of Pacific peoples, and our democratic right to determine our future.

We call for a moratorium on PACER-Plus on the grounds that:

- 1. Forum Island Countries have explicitly called for the time and resources to hold national consultations prior to negotiations. National consultations are the appropriate democratic process to determine what could be included in negotiations and how they should proceed including the type of research needed. These wishes aren't being respected and as such are jeopardising the democratic nature of any PACER-Plus outcomes.***

Forum Trade Ministers and Officials are already meeting in 'preliminary negotiations' and there is concern that such meetings, and any recommendations that come from them, are already determining the landscape that PACER-Plus will be officially negotiated upon. To engage in negotiations in parallel, and prior, to the completion of national consultations undermines the very consultations themselves and runs the risk of Forum Island Countries making commitments before they have assessed their impact on Island communities.

This, in our view, represents a clear and present danger to sovereign democratic processes that need to take place in each Pacific Island country to properly evaluate a free trade agreement with Australia and New Zealand, so as to protect the economic and social wellbeing and human rights of its people.

- 2. An adequate structure for trade negotiations must be established and functioning well before the Forum Island Countries engage in any further trade negotiations with Australia and New Zealand. This is not the case with negotiations moving ahead regardless of the capacity of the FICs.***

The establishment of the Office of Chief Trade Advisor (OCTA) was a priority concern for Forum Island Countries before they entered into negotiations on PACER-Plus. The

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<sup>1</sup> 16 June 2009, "2009 Statement to Pacific Islands Forum Trade Ministers regarding deliberation on potential PACER-Plus negotiations", Apia, Samoa, available at [www.pang.org.fj](http://www.pang.org.fj)

purpose of such an office was to assist FIC's to identify and advance their interests, coordinate negotiating strategies and build the capacity of national trade officials in the region.

The controversy surrounding the delay in the commencement of the Chief Trade Advisor (CTA) until the 29<sup>th</sup> of March 2010 clearly highlights the ongoing challenges faced by the CTA in terms of getting the necessary funding and staff to adequately support the FICs during negotiations. The CTA has indicated that recruitment of technical staff will take around seven months whilst seeking further funding continues to be a key priority. FICs continue to demand that the OCTA needs to be fully established and that it be given adequate resources to carry out its functions effectively.

We reaffirm the Island Governments' position that a fully funded and functional OCTA must be in place to assist FICs to prepare for negotiations that could begin in 2013 (subject to the outcome of national consultations) and call on Australia and New Zealand to respect this decision.

**3. Under PACER-Plus, Pacific aid is being used as a tool to negotiate the liberalisation of Pacific markets. Leaders must insist upon aid being used for community-led development and not just to offset the impacts of trade concessions under PACER-Plus.**

Australia has already made it clear that it aims for coherence and alignment between its strategy of trade liberalisation and aid funding<sup>2</sup>. Whilst Australia and New Zealand trade officials may state that aid funding isn't conditional on liberalisation commitments, Australia's previous comments and the fact that they are placed on the negotiating table side by side means in effect it is already occurring. This leaves the Pacific in the position of making permanent commitments on liberalisation in exchange for temporary commitments on aid funding.

The inclusion of aid within the PACER-Plus framework will decrease its ability to be driven by community needs and instead have to fit into the free trade framework. This will undermine the effectiveness of any aid commitments within PACER-Plus.

**4. The impacts of the global recession and financial crisis are still being felt and as such there should be no more commitments on trade liberalisation until the full causes and impacts of the crisis are understood.**

Given the impacts of the global financial crisis, Pacific Civil Society Organisations (CSOs) are of the view that this is an inappropriate time to be signing agreements that tie the hands of governments and remove the flexibilities that are essential to respond to domestic priorities. The negative impacts of the global recession on Forum Island Countries would be deepened by the projected government revenue losses from PACER-Plus<sup>3</sup> and the other 'adjustment costs'. We urge Pacific Governments to delay any commencement of negotiations at least until 2013, when the implications of the global recession and appropriate forms of regulation are better understood.

**5. There has been no investigation of any alternative to a WTO-compatible free**

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<sup>2</sup> Trade Minister Simon Crean, *Building Prosperity Through Trade: Helping Developing Countries Reap The Benefits*, Speech given 15 October 2008

<sup>3</sup> A report commissioned by the Pacific Islands Forum Secretariat, and completed by Washington-based consultants *Nathan Associates*, found that under PACER-Plus, Pacific countries stand to lose tens of millions of each year.

***trade agreement. All avenues for trade relations should be explored before continuing down the trade liberalisation path.***

In acknowledgment of the special and different circumstance of the FICs, and the fact that a majority of the FICs are not WTO members, Australia and New Zealand should offer the region alternatives to a WTO-driven free trade agreement. Alternatives could include improvements to the status quo (SPARTECA) with a focus on overcoming the difficulties of the Forum Island countries and their peoples in utilising their access to Australian and New Zealand markets to overcome poverty. In particular Australia and New Zealand should offer improvements in Rules of Origin requirements, remove trade barriers (including Australia's restrictions on the import of commercial amounts of kava) and provide assistance with meeting necessary sanitary and phytosanitary rules in Australia and New Zealand. These are all initiatives that would expand Pacific export opportunities and can be undertaken without requiring a new FTA between Australia and New Zealand and the FICs.

***6. Trade in Services is being included as a priority area despite the impacts this will have on the FICs. A Services chapter should be rejected as part of PACER-Plus as it will remove policy space that FICs need to support and encourage local development.***

The services sector includes key areas that affect people's well-being as well as the economic and social development of island nations: health, education, water, electricity, and more.

Yet island governments are in danger of trading away control of key sectors, without guarantees that would protect development outcomes (such as gender equality, universal and affordable access to health care, or guaranteed provision of basic services like water and electricity).

Under a WTO-compatible FTA it is likely that FICs will be requested to make commitments in services that go beyond existing WTO commitments. Australia and New Zealand are likely to demand a 'negative' list of commitments<sup>4</sup>, meaning that everything is included in the negotiations except those service areas specifically excluded. Such an agreement would force FICs to go beyond existing WTO requirements for services, including those countries that aren't members of the WTO.

Services negotiations pose a threat to Island countries and their ability to develop local providers. Many Pacific countries maintain performance requirements for foreign investment that include requiring foreign investors partner with local investors, employ a quota of local managers or staff, or use a quota of local produce. An agreement on trade in services under PACER-Plus could force FICs to do away with these performance requirements as they would be considered restrictions on national treatment under Mode 3 *Commercial Presence* of any such agreement. Many FICs also reserve certain economic activities for nationals. Again, the inclusion of Services in PACER-Plus could force FICs to do away with some of these reservations as they would be in contravention of market access under Mode 3 of any agreement on services.

***7. Any inclusion of an Investment chapter will grant foreign corporations extensive rights without corresponding responsibilities to support Pacific***

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<sup>4</sup> A report commissioned by the Pacific Islands Forum Secretariat, and completed by Washington-based consultants Nathan Associates, found that Pacific countries could expect a negative list approach to services negotiations from Australia and New Zealand.

### ***Island development.***

Investment chapters proscribe a regulatory environment that focuses more on facilitating investment than development. Such chapters require foreign investors to be treated like local investors, removing the ability of governments to support infant industries in the interest of building local capacity. In addition Australia and New Zealand are likely to argue for the inclusion of an 'Investor-State' Clause. These clauses grant companies the right to challenge and sue governments over regulations and standards that are perceived to impede their business.

A WTO-compatible trade agreement would cut off the options that FICs could use to ensure that foreign investment is in response to the needs of communities and that the benefits from such investment are directed towards communities.

#### ***8. Labour mobility schemes are being discussed as part of the PACER-Plus negotiations, despite not being the appropriate forum for such arrangements.***

It is not appropriate to situate temporary labour mobility schemes in FTAs. They have no place in such agreements, which are primarily concerned with trade and subject to WTO trade rulings. The long term interests of the development of sustainable economies in FICs will not be served by their working-age population being temporarily employed overseas in low-wage seasonal work.

Increased opportunities for regional labour mobility must be driven by planned labour market testing, recognising the rights of local workers and guaranteeing wages and conditions for local and overseas workers. Australia and New Zealand are unlikely to entrench labour market access in a WTO-compatible agreement, and access to their labour markets should be established outside the PACER-Plus framework, rather than used as a bargaining chip in the trade negotiations.

#### ***9. Capacity building for Forum Island Country trade officials is being driven by Australia and New Zealand.***

The Australian government committed in May 2008 to fund training for Pacific trade officials to enable them to better engage in free trade negotiations. However, a clear conflict of interest arises when training programmes like these are directed by Australia and New Zealand. It is extremely unusual for trade officials to improve their negotiating capacity by discussing their national issues and concerns *with those they would then negotiate with!*

Trade officials from Pacific countries need independent and objective sources of information, training and capacity building in order to engage in trade negotiations with Australia and New Zealand. The OCTA is best placed to offer, or facilitate, independent training and capacity building for trade officials. In addition, Pacific CSOs would be keen to be viewed as partners in designing and implementing, as well as benefiting from, any such programmes.

#### ***10. There has been no human rights assessment made to evaluate the risks to fundamental rights such as health and food prior from any PACER-Plus agreement.***

A reciprocal free trade agreement between Australia, New Zealand and the FICs will

impact on the ability of Pacific states to realise, protect and fulfil a range of universal human rights, including the right to health, the right to an education, the right to food, the right to work, rights of Indigenous Peoples and the right to land. These impacts would be disproportionately borne by women – especially in their traditional role of primary caregivers but with overall wider impact on the human rights of Pacific women and girls. However, there has so far been minimal gender analysis on the risks arising from any PACER-Plus agreement.

Australia, New Zealand and the FICs have international obligations to ensure they enable and protect the realisation of human rights. The rules of a trade agreement must not override these obligations.

***11. The lack of inclusion for Pacific Civil Society Organisations (CSOs) in all aspects of trade and development policy creation, including consideration of any new FTAs, and during the negotiation of those FTAs.***

At the October 2009 Trade Ministers meeting, Ministers discussed and emphasised the importance of consultation with stakeholders including the private sector and non-government organisations (Non-State Actors). Trade Ministers directed the Forum Secretariat to organise an annual discussion with NSAs in the margins of a Forum trade meeting<sup>5</sup>.

We welcome the recognition of the need for Non-State Actors to be involved. However, to date involvement in PACER-Plus discussions and negotiations at the regional level has involved only the private sector with the involvement of non-government organisations being virtually non-existent.

For our part, Pacific CSOs undertake to work collaboratively with the Pacific Islands Forum Secretariat and Pacific Governments with the aim of ensuring that trade agreements create real benefits for Pacific people.

***This statement has been endorsed by:***

Pacific Conference of Churches

Ecumenical Centre for Research, Education and Advocacy (ECEA)

Pacific Concerns Resource Centre (PCRC)

O Le Siosiomaga Society (OLSSI)

Pacific Network on Globalisation (PANG)

Fiji Womens' Rights Movement (FWRM)

Development Alternatives with Women for a New Era (DAWN)

Christian World Service (CWS)

Women's Action for Change (WAC), Fiji

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<sup>5</sup> Outcomes Document FTMM October 2009, Brisbane

South Pacific and Oceanic Council of Trade Unions (SPOCTU)

Vanuatu Association of Non Government Organisations (VANGO)

Council of Pacific Education (COPE)

Vanuatu Council of Trade Unions (VCTU)

Sam Alefaio (Tuvalu Climate Action Network)

Pascal Tevi (Hultu Paifuva Association)

David Teaabo (Kiribati Association of Non Government Organisations)

Votausi Mackenzie (REUV - Vanuatu)

Moia Tetoa (AMAK - Kiribati)

Hilda Lini