

**PACIFIC AGREEMENT ON CLOSER ECONOMIC RELATIONS (PACER)
DONE AT NAURU ON 18 AUGUST 2001**

Documents tabled on 12 March 2002:

- **National Interest Analysis**
- **Text of the proposed treaty action**

Pacific Agreement on Closer Economic Relations (PACER), done at Nauru on 18 August 2001

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia ratify the Pacific Agreement on Closer Economic Relations (PACER). (Article 13, Article 15 and Articles 18-23).
2. The PACER does not affect Parties' rights and obligations under existing international agreements (Article 5).

Date of proposed binding treaty action

3. It is proposed that Australia ratify the PACER prior to the next Pacific Islands Forum which is expected to be held in August 2002. Most Forum members will have ratified by then and as we have actively participated in the negotiations and our concerns have been addressed, our early ratification would be seen as a positive signal.
4. The PACER was signed at the Forum by the Government of Australia on 18 August 2001.
5. The PACER is expected to enter into force generally (and for Australia) at the time of the next Pacific Islands Forum (August 2002).

Date of tabling of the proposed treaty action

6. 12 March 2002

Summary of the purpose of the proposed treaty action and why it is in the national interest

7. The PACER provides Australia with the opportunity to pursue greater gains from trade if and when a free trade agreement is negotiated between Forum Island Countries (the Cook Islands, Federated States of Micronesia, Fiji Islands, Kiribati, Republic of Marshall Islands, Nauru, Niue, Republic of Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu) and another developed country or a country with a Gross Domestic Product (GDP) higher than the lowest of a developed Forum member.
8. The objective of the PACER is to establish a framework for the gradual trade and economic integration of the Forum members in a way that is fully supportive of sustainable development of the FICs and contributes to their gradual and progressive integration into the international economy. It also provides for the establishment of other elements of a single regional market (for example services and investment), but does not contain any provisions relating to the timing of these negotiations which will arise only as and when the Parties are ready to do so (Article 2).

Reasons for Australia to take the proposed treaty action

9. The Pacific Agreement on Closer Economic Relations (PACER) was negotiated in the Pacific Islands Forum which includes 16 countries, 14 of which are developing or least-developed countries (the “Forum island countries”) and two developed countries (Australia and New Zealand). The PACER provides a negotiating mechanism endeavouring to ensure that Australian trade interests are not disadvantaged if and when Forum Island countries (FICs) negotiate a free trade agreement (FTA) with another developed country or a country with a GDP higher than the lowest of a developed Forum member. Such negotiations may commence with the European Union in September 2002. In the absence of such negotiations by the FICs, the PACER will oblige them to commence FTA negotiations with Australia (and New Zealand) eight years after the entry into force of the Pacific Island Countries Trade Agreement (PICTA). However, our current expectations are that the PICTA will enter into force at approximately the same time as the PACER.
10. There is no such comparable provision in any other trade agreement between Australia and FICs. It represents a significant advantage for Australia.
11. Without ratification of the PACER, Australia would be denied an enhanced opportunity to negotiate better market access to Pacific markets for Australian businesses and industry, while any other country, including developed countries like members states of the European Union, could enjoy duty free access to FICs for their goods.

Obligations

12. It is the general obligation for the Parties to use their best endeavours to follow international best practice in formulating the rules governing the trade relations between them (Article 3(5)).
13. The Agreement stipulates a times schedule for the negotiation of free trade agreements, covering goods, between Forum members. FICs will be required at some future date to enter into negotiations for free trade arrangements with Australia and New Zealand. If one or more of the FICs begin negotiation for free trade arrangements with another developed country partner such as the EU, this will trigger a requirement for consultations with Australia and New Zealand, leading to negotiation for a free trade agreement. Similar requirements apply if the members of the PICTA negotiate free trade arrangements as a group with another country or countries, or if they negotiate free trade arrangements with other countries having higher per capita incomes than New Zealand (as the developed country Forum member with the lowest per capita GDP). On the other hand if FICs negotiate with other developing countries the requirement in relation to Australia and New Zealand is limited to consultation. This requirement does not apply in the case of FIC Agreements with least developed countries or non-Forum countries. If such negotiations are successful they will create a formal free trade agreement notifiable under Article 24 of the General Agreement on Tariffs and Trade (Articles 5-7).
14. If, however, FICs do not negotiate with developed or a country with a GDP higher than the lowest of a developed Forum member, ie New Zealand, FICs will be obliged to commence negotiations with Australia (and New Zealand) no later than 8 years after entry into force of the PICTA (Article 5).
15. Australia (and New Zealand) shall also offer FICs the opportunity to negotiate improved market access if Australia or New Zealand enter into free trade negotiations with other countries (Articles 6). However, as the PACER initially relates to goods only and Australia

already provides the best available market access for FICs' exports to Australia under the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA), Australia is already in compliance with this obligation.

16. Australia is obliged to maintain all existing arrangements with any Forum Island Country relating to market access in effect at the time the Agreement enters into force, until such time as the particular Forum Island country has concluded new and/or improved trade arrangements providing equal or better access to their markets (Article 5(3)). This provision will maintain our current obligations under SPARTECA.
17. The PACER also provides for the establishment of detailed programs for the development, establishment and implementation of trade facilitation measures, designed primarily to benefit FICs (Article 9 and Annex).
18. The Agreement stipulates that Australia (and New Zealand) provide financial and technical assistance for a program of work to be agreed between the Parties in the future, in areas such as trade facilitation and promotion, capacity building, and structural adjustment (Articles 9 and 11). The trade facilitation annex outlines a framework for the negotiation and conclusion of such future trade facilitation programs (eg on quarantine, customs and standards issues).
19. Parties to the PACER that are WTO members will be obliged to provide no less favourable treatment in relation to sanitary and phytosanitary matters, customs procedures, and standards and conformance to all other Parties irrespective of whether those other Parties are members of the WTO (Article 10).
20. The Parties shall provide mutual assistance in international trade and economic fora in relation to the terms of the PACER, and Australia (and New Zealand) shall continue to assist FICs in their efforts to become active members of international trade and economic organisations by developing the necessary capacity to negotiate, participate effectively in, monitor and implement these agreements (Article 12).
21. The PACER requires all Parties to keep each other informed about trading arrangements among themselves. Thus, the FICs will need to keep Australia (and New Zealand) informed about implementation of the PICTA, while Australia and New Zealand are required to keep the FICs informed about developments within CER (Article 14).
22. The PACER provides for annual reviews of the operation of the Agreement, and all aspects of trade and economic cooperation among the Parties. General reviews of the PACER are to be held at three-yearly intervals (Article 16). The Parties shall meet at least once per year to review the implementation and operation of the PACER, and shall undertake to conduct a general review of its operation no later than three years after it enters into force, and thereafter in three-year intervals, or as otherwise agreed (Article 16).
23. To date 13 Forum members (including Australia) have signed the PACER, and four countries have ratified the Agreement (Cook Islands, Fiji, New Zealand, and Samoa).

Implementation

24. Obligations flowing from the PACER will not require new legislation, as they either refer to the negotiation of free trade agreements with the FICs in the future, or are – or will be – covered by existing or future legislation and policies or budgetary processes (for example the provision of development aid or technical assistance measures).

Costs

25. There may be costs associated with the implementation of the Trade Facilitation Annex but we would not expect this to exceed \$250,000 (based on a similar figure New Zealand has already provided). However, it has been made clear during the negotiations that funding for these programmes is subject to prior agreement between the Parties, and therefore, subject to Australian domestic budget processes, and other relevant approval mechanisms.

Consultation

26. The following consultations have taken place:
- The Commonwealth-State Standing Committee on Treaties (SCOT) has been informed throughout the treaty negotiations.
 - Peak business sector associations (Australia-Fiji Business Council, Australia-Pacific Islands Business Council and the Australia-New Zealand Business Council) were consulted prior to crucial negotiations on 5 April 2001 at a meeting in Melbourne. DFAT outlined the negotiations and laid out Australia's proposed negotiating strategy for the final rounds of negotiations in May and June 2001. The business sector associations agreed with the proposed approach and did not provide any further comments or feedback following the consultations.

Regulation Impact Statement

27. The Office of Regulatory Review has advised that no Regulation Impact Statement is required.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

28. The PACER stipulates that a formal and WTO consistent free trade agreement may be negotiated, in accordance with Articles 6 and 7 (see also above under "Obligations").
29. Any such future agreements would be treated as treaties in their own right and would need to undergo normal Australian treaty making processes.
30. The PACER can be amended by unanimous agreement of the Parties. Such amendments would enter into force 30 days after all Parties have accepted the amendments and notified such acceptance to the Secretary General of the Pacific Islands Forum (Article 18).
31. There are no provisions permitting reservations.

Withdrawal or denunciation

32. Any Party can withdraw from the Agreement by giving notice of its intention to do so to the Secretary General of the Pacific Islands Forum. The withdrawal will be effective 180 days from the date on which such notice is given. If all Parties give such notice, the Agreement will terminate 180 days thereafter (Article 21).

Contact details

Pacific Regional Section
Africa, Middle East and Pacific Division

Department of Foreign Affairs and Trade