Submission on behalf of the Australian Fair Trade and Investment Network (AFTINET) to the Senate Standing Committee on Foreign Affairs, Defence and Trade Inquiry into the Economic and Security challenges facing Papua New Guinea and the Island States of the Southwest Pacific

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1. Overview

The Australian Fair Trade and Investment Network (AFTINET) is a national network of 90 organisations and many more individuals supporting fair regulation of trade, consistent with human rights, labour rights and environmental protection. AFTINET welcomes this opportunity to make a submission to the Standing Committee on Foreign Affairs, Defence and Trade's inquiry into the economic and security challenges facing Papua New Guinea and the island states of the Southwest Pacific.

This submission addresses the terms of reference focussed on the economic challenges facing the islands states of the Southwest Pacific. This submission addresses general principles and issues of common concern to our members. Member organisations will also make more detailed submissions in areas of particular concern.

In order to best benefit the island states of the Southwest Pacific, Australia's economic assistance should be based on principles that support democratic control over the economy, environmental protection and fundamental human rights.

AFTINET believes that the following principles should guide Australia's approach to trade in the Southwest Pacific:

- Trade negotiations should be undertaken through open, democratic and transparent processes that allow effective public consultation to take place about whether negotiations should proceed and the content of negotiations.
- Before an agreement is signed, comprehensive studies of the likely economic, social and environmental impacts of the agreement should be undertaken and made public for debate and consultation.

- Trade agreements should not undermine human rights, labour rights and environmental protection, based on United Nations and International Labour Organisation instruments.
- Trade agreements should not undermine the ability of governments to regulate in the public interest.

1.1 Historical Background

The relationship between the Pacific Island Countries and countries like Australia and New Zealand has always had a political and economic importance. The history of colonialism and the economic relationships this fostered is still having an impact today.

Initial agreements like the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) aimed at providing preferential access for imports from 13 Pacific Islands into Australia and New Zealand[1]. This granting of preferential access by both Australia and New Zealand was recognition of the disproportionate economic relationships between these countries and, as such, a measure to address the ongoing disadvantage borne by the Pacific Island countries compared to their heavily industrialised neighbours.

The EU previously had similar preferential arrangements with former colonies under The Cotonou Agreement but, following a challenge to this preferential access through the World Trade Organisation, has been forced to withdraw that access. Further to this, the EU, along with developed countries like Australia, is now demanding reciprocity of market access from Pacific Island Countries.

It is this demand for reciprocal market access in the negotiations for the economic agreements between Island states of the Southwest Pacific and

[1] Kelsey, J. (2004) *Big Brothers Behaving Badly: The Implications for the Pacific Islands of the Pacific Agreement on Closer Economic Relations (PACER)*, available from http://www.pang.org.fj/doc/040401bigbrothersjanekelsey.pdf, accessed 11/01/08.

industrialised countries that will undermine the economic security of these smaller Island economies.

A newly released report outlined the rejection by the Pacific Islands of the PACER-Plus agenda proposed by the Australian Government at the Pacific Island Forum Trade Ministers meeting in July 2008[2].

2. The Impacts of PACER-Plus

The most apparent impact for economic security of the Southwest Pacific Island countries is in the proposed Pacific Agreement on Closer Economic Relations (PACER), and as such, this submission will focus on this proposed agreement.

PACER was endorsed by the Pacific Island Forum Governments at their 2001 meeting. PACER provides for a broader agreement than the Pacific Islands Countries Trade Agreement (PICTA), an agreement on trade in goods amongst Pacific Island Countries, that includes both Australia and New Zealand, PACER promises to initiate negotiations for a free trade agreement by 2011, unless triggered earlier[3].

The initialling of Economic Partnership Agreements (EPAs) between the European Union and both Fiji and Papua New Guinea (PNG) has been seen as the trigger of the PACER-Plus negotiations.

Australia is currently in the preliminary stage of the negotiation of what is known as “PACER-Plus”, an extension of the initial PACER commitments on trade in goods that applied to the Island States, New Zealand and Australia. PACER-Plus is aiming to include both trade in services and investment, in the economic agreement.

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[2] Pacific Network on Globalisation, (2008), *Making Waves: Opportunities for Reclaiming Development in the Pacific*, www.pang.org.fj.

[3] Kelsey, J. (2004) *Big Brothers Behaving Badly: The Implications for the Pacific Islands of the Pacific Agreement on Closer Economic Relations (PACER)*, available from http://www.pang.org.fj/doc/040401bigbrothersjanekelsey.pdf, accessed 11/01/08.

2.1 Removal of Tariffs in the Pacific

For many Island countries, tariffs form a major source of government revenue. Under both PICTA and PACER tariffs on goods are scheduled to reduce to zero, leaving major revenue gaps for Island governments. A report commissioned by the Forum Secretariat has concluded that countries could stand to lose up to US$10 million per year in government revenues due to tariff liberalisation[4]. The report singles out Fiji, PNG, Samoa, and Vanuatu as countries that all stand to lose up to US$10 million in tariff revenues from Australian and New Zealand imports[5].

Some countries will lose over 10% of their revenue through the removal of their import tariffs on Australian and New Zealand goods. Tonga and Vanuatu both stand to lose over 17% of their government revenue under a tariff reducing agreement. The impacts of this agreement would extend beyond the Southwest Pacific to the Compact Countries such as Palau, Federated States of Micronesia and Marshall Islands who must also extend any PACER-Plus preferences to the United States. They could face substantial revenue losses as the US makes up between 45-65% of total imports for these countries[6].

The current proposal is to replace such tariff revenues with user-pays taxation. Value Added Taxes (VATs) are being proposed as one of the solutions to any induced tariff revenue loss[7]. VATs are a problematic source of government revenue as they force the taxation burden onto the poor through increases in taxes applied to all consumer items. Tariffs, however, target the more affluent as they are predominantly applied on luxury items produced externally. VATs also pressure poorer, subsistence farmers, who

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[4] Pareti, S. (2007) *PACER: A Plus of Negative?*, Island Business, September, 2007, available at http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=17625/overideSkinName=issueArticle-full.tpl, accessed 12/10/2007.

[5] Ibid.

[6] Ibid.

[7] Kelsey, J. (2004) *A People's Guide to PACER*, available from http://www.bilaterals.org/IMG/pdf/A_Peoples_Guide_to_PACER.pdf, accessed 17/12/2007, p27.

survive off the land or sea and remittances to have money and engage in the cash economy[8]. The evidence suggests that governments will not recover the lost tariff revenue through VATs. The IMF study looking at the impact of trade liberalisation on poorer government revenues has found that the imposition of consumption taxes/VATs raises only 30% of the revenue previously gained through tariffs[9]. The removal of tariffs and the subsequent imposition of VATs would leave governments having to make up the remaining 70% through other means, or simply spend less on services.

The loss of government revenue through tariffs has major implications for the lives of Islanders. The loss of revenue and subsequent loss of capacity for governments to fund the services, utilities, and infrastructure they need aligns perfectly with the intent of free trade agreements to minimise the role of governments in the market. Undercutting the level of potential government expenditure compliments the push for greater privatisation and selling off of government utilities. This increases the threat that essential services and utilities will no longer offer non-profitable options that are needed by poorer sectors of Island communities.

Economic security for Island states comes through being able to adequately raise government revenue to fund essential services.

Recommendation: To ensure economic security amongst Southwest Pacific Island countries, government revenues should not be compromised through the pressure to commit to remove tariffs under free trade agreements.

2.2 Trade in Services in the Pacific

Services were initially excluded from the PACER agreement between Pacific Island countries, New Zealand and Australia. However under PACER-Plus, services play a key role in the aims for closer economic integration. Any inclusion of services raises concerns about the rights of governments to

[8] Ibid
[9] Coates, B (no date) *Look before you leap: trade agreements in the Pacific*, Presentation hand out, Oxfam New Zealand

ensure equitable access and have the policy space to determine how essential services are provided.

The inclusion of services in any agreement will most likely see the adoption of the World Trade Organisation definition of public services. AFTINET is highly critical of the definition of public services used in Free Trade Agreements and the WTO's General Agreement on Trade in Services (GATS), which defines a public service as "a service supplied in the exercise of governmental authority … which means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers." This definition results in ambiguity about which services are covered by the exemption. In Australia, as in many other countries, many public and private services are provided side by side. This includes education, health, water, prisons, and many more.

The provision of services interlinks with the accountability and responsibility of governments. Maintaining services under government provides more policy space to ensure that the levels of services needed by the population are being met. Governments are far more willing to provide cost-inefficient services through cross-subsidisation, to enable access for the poor, than private enterprise is. Universal access is threatened through the privatisation of services and their inclusion in any PACER-Plus agreement.

A report prepared by the Pacific Islands Forum Secretariat highlighted Island countries could expect a negative list for services[10]. A negative list means that all laws and policies are affected by the agreement unless they are specifically listed as reservations. This differs from WTO multilateral agreements like the General Agreement on Trade in Services (GATS), which is a 'positive list' agreement, meaning that it only applies to those services which each government actually lists in the agreement. The negative list is therefore a

[10] Pareti, S. (2007) *PACER: A Plus of Negative?*, Island Business, September, 2007, available at http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=17625/overideSkinName=issueArticle-full.tpl, accessed 12/10/2007.

significantly greater restriction on the right of governments to regulate services than the WTO GATS agreement. Given that only three states from the Pacific Islands are members of the WTO, the inclusion of a negative list for services places restrictions on PACER-Plus countries that go beyond what many would have to accept in accession to the WTO.

A ‘positive list’ approach to Australia’s trade negotiations in services and investment allows Australia and Southwest Pacific Island states to determine exactly which sectors are going to be included in any agreement. This provides for future industries and sectors to be excluded from an agreement unless specifically included under government direction. This approach also places Australia’s trade strategy more in line with multilateral efforts within the WTO.

Even when essential services are not publicly provided, governments need to regulate them to ensure equitable access, and to meet other social and environmental goals. To the extent that services and investment are included in any trade agreement, it should be under a positive list rather than a negative list.

> ***Recommendation:*** Public services should be clearly and unambiguously exempted from trade agreements and there should be no restrictions on the right of governments to regulate services in the public interest

> ***Recommendation:*** If Australia is to include services in a trade agreement that it be done only as a “positive list”.

2.3 Trade in Manufacturing Goods

Liberalised trade in goods in the Pacific will lead to a concentration of investment, most likely in Australia. Many small Island countries that manufacture goods rely on imported materials which they then assemble domestically. This results in those goods violating the Rules of Origin (ROOs)

as determined by the PICTA/PACER agreements and thus they don't receive the preferential treatment when exported.

PACER-Plus will see manufacturing and other industries move to those areas where they can value add within the country. In the garment and textiles industry this previously has seen a movement towards Fiji as it was the only country with the economies of scale to produce and still qualify for preferential treatment. Under a PACER-Plus agreement there would be incentives for manufacturing industries to move to Australia and New Zealand in order to take advantage of the infrastructure and capacities within those countries.

The flight of such investment, coupled with reduced revenue from tariffs, would see Island communities left with a greater demand for services like education and training, but with fewer resources to provide them.

Recommendation: Pacific Islands Countries retain the policy space to nurture and protect infant industries that play important economic roles.

2. 4 Southwest Pacific Foreign Investment

Investment agreements normally accompany trade agreements and aim to provide additional guarantees for private investors. Investment agreements can cover such areas as ensuring unrestricted rights to establishment in a country, local treatment in relation to subsidies and government procurement, protection against re-nationalisation, and the establishment of disputes bodies to decide upon claims of infringement of investor rights.

Investment chapters in a PACER-Plus agreement would likely involve some very sensitive areas in the Pacific. One such issue could be the communal ownership of traditional lands as this is seen by some investors to be a barrier to investing in the region, due to the uncertain nature about land titles. Investment chapters also look at granting foreign investors the same rights as domestic investors, undermining the ability of governments to prioritise and nurture the growth of infant industry. These two examples highlight how the

inclusion of investment chapters in trade agreements challenges domestic regulation decisions by governments.

A Forum commissioned report examining the EPAs between Pacific Island States and the EU recommended that:

> "it would not make sense for PACPs to purchase fine-sounding arrangements for promotion of an inherently improbable flow of foreign direct investment (FDI) from Europe by giving up powers to protect and manage aspects of their domestic economies that they would otherwise expect to use to good effect. Exceptional care is needed in approaching trade offs between trade and investment issues where there are substantial asymmetries and imbalances between ACP and EU positions.[11]"

The Island countries of the Southwest Pacific should adopt the same attitude towards Australian and New Zealand FDI.

Recommendation: Australia should not promote a PACER-Plus agreement that would restrict the rights of governments to make independent decisions on domestic policy and regulation.

2.5 No Investor-State Disputes Settlement Process

All trade agreements contain State-to-State dispute processes to resolve disagreements arising from the agreements. Investor-State disputes processes are additional disputes processes which allow investors to challenge government actions and sue governments for damages if they believe their investments have been harmed. The Thailand/Australia FTA, the Singapore/Australia FTA and the recently signed Australia/Chile FTA include such a clause. Investor-State dispute processes in other agreements like the North America Free Trade Agreement (NAFTA) have seen a range of government regulation aimed at protecting public health and the environment overturned in the interests of trade[12]. This allows unaccountable investors to challenge the democratic powers of governments to enact legislation that is in the public interest.

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[11] Coates, B (no date) *Look before you leap: trade agreements in the Pacific*, Presentation hand out, Oxfam New Zealand

[12] See Public Citizen's Report on all the cases included under the Investor-State Disputes Process in NAFTA at http://www.citizen.org/documents/Ch11cases_chart.pdf

Whilst such a mechanism exists in Australia's trade agreements with Singapore, Thailand and Chile it was not included in the FTA with the United States, in part because of strong public opposition in Australia.

A Forum Secretariat commissioned report has stated that Islands can expect the exclusion of investor-state dispute processes, but they could expect special provisions in the event of "armed conflict or civil strife" to be included[13]. Given the recent inclusion of an Investor-State disputes process in the Australia/Chile FTA, there is an indication that such a process could still be included in any PACER-Plus agreement.

> ***Recommendation:*** Australia should continue with the example set by the AUSFTA and not include investor-state dispute processes in any trade agreements

3. Labour Mobility within the Southwest Pacific

Worldwide remittances to developing countries now double the amount given to countries through Overseas Development Assistance, signifying just how important worker mobility is.

Labour mobility within the Pacific is complex and involves social, cultural and economic aspects. The movement of skilled workers from island countries offshore, chasing better pay and career options, is contributing to a 'brain drain' from island communities. Low and semi-skilled workers are often left behind with limited opportunities and seek work arising in other countries.

The announcement by the Rudd government at the recent Pacific Island Forum meeting of a trial three year seasonal worker programme has been welcomed by Island governments. The implementation of any such programme should take on the lessons learned from the current visa 457 scheme.

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[13] Ibid.

The Temporary Business (Long Stay) - Standard Business Sponsorship (Subclass 457) or Visa 457 is a visa to sponsor skilled workers into Australia for between 3 months to 4 years. Whilst the visa scheme was aimed at bringing out skilled workers, it has seen some abuse by employers seeing it as a source of cheaper labour.

There have been 3 reported workplace deaths of visa 457 workers[14]. A review into the application of the scheme has found breaches, including:

- Workers in positions that have no benefit for local workforces.
- Accommodation and meal expenses wrongly deducted directly from workers' wages.
- Workers employed in locations other than those stated on visas.
- Safety standards ignored.
- Overtime unpaid.[15]

Many workers who are encountering these conditions are also feeling too afraid to speak up or change jobs. Those temporary migrants who are most vulnerable and have low levels of education, don't speak english very well, and are unaware of their rights are most likely to be exploited[16]. Many are referring to the conditions as being "akin to slavery"[17].

The experience of the Visa 457 in Australia should serve as a warning to the Pacific Islands. The seasonal worker trial must support the rights of workers in all countries and not be an avenue for the exploitation of domestic and overseas workers.

The recommendations from the government's review of Visa 457 arrangements by Industrial Relations Commissioner Barbara Deegan, due to report to the Minister for Immigration and Citizenship by October 1, 2008,

[14] Moore, M. and Knox, M. *Foreign Workers 'Enslaved' By Visa 457*, The Age, 28/8/2007
[15] Ibid.
[16] Anon, *Some migrants being 'treated like slaves'*, The Sydney Morning Herald, 2/10/2007
[17] Moore, M. and Knox, M. *Foreign Workers 'Enslaved' By Visa 457*, The Age, 28/8/2007

should be considered in regard to the application of any temporary worker scheme within Australia.

4. Australian Process for Engaging Economically with the Southwest Pacific Island States

4.1 Parliamentary Process

The Australian Government should commit to effective and transparent community consultation about proposed trade agreements in the Southwest Pacific, with sufficient time frames to allow informed public debate about the impact of particular agreements.

To facilitate effective community debate, it is important that DFAT develop a clear structure and principles for consultation processes that can be applied to all proposed trade agreements. The Senate Foreign Affairs, Defence and Trade Committee made detailed recommendations for legislative change in its November 2003 report, *Voting on Trade*, which, if adopted, would significantly improve the consultation, transparency and review processes of trade negotiations[18]. These recommendations were supported by the ALP member of the Committee. The key elements of these recommendations are that:

- Parliament will have the responsibility of granting negotiating authority for particular trade treaties, on the basis of agreed objectives;
- Parliament will only decide this question after comprehensive studies are done about the economic, regional, social, cultural, regulatory and environmental impacts that are expected to arise, and after public hearings and examination and reporting by a Parliamentary Committee; and
- Parliament will be able to vote on the whole trade treaty that is negotiated, not only on the implementing legislation.

[18] Senate Foreign Affairs, Defence and Trade Committee, 'Voting on Trade: The General Agreement on Trade in Services and an Australia-US Free Trade Agreement', 26 November 2003 at paragraph 3.91.

We welcome the Australian Labor Party policy platform on increased transparency in the process of undertaking talks regarding a trade agreement. We are encouraged that the platform now states:

> "…prior to commencing negotiations for bilateral or regional trade agreements, a document will be tabled in both Houses setting out the Labor Government's priorities and objectives, including independent assessments of the costs and benefits of any proposals that may be negotiated. This assessment should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise."[19]

AFTINET eagerly anticipates the adoption of this policy and the inclusion of social, cultural and environmental impacts into the assessment of any proposed trade agreements.

AFTINET welcomes the policy put forward by the ALP to table any trade agreements in Parliament with any implementing legislation. However, AFTINET still believes that to properly increase transparency and democracy, the Parliament should be the body that decides on whether or not to approve a trade agreement, not just its implementing legislation.

> ***Recommendation***: That the Government set out the principles and objectives that will guide Australia's consultation processes for trade agreements and that the Government will have regular consultations with unions, community organisations and regional and demographic groups which may be adversely affected by the agreement.

> ***Recommendation***: That the Government establish parliamentary review processes, which give parliament the responsibility of granting negotiating authority for proposed trade agreements and that Parliament should vote on the agreement as a whole, not only the implementing legislation.

[19] Australian Labor Party National Platform and Constitution 2007, Section 3.26.

4.2 Modelling of Impacts for Free Trade Agreements

The econometric modelling that was used by Australia as a basis for entering into negotiations on previous trade agreements has been severely flawed. Econometric modelling has been based on assumptions of perfect labour mobility and complete and instantaneous market access, assumptions that do not reflect the reality of the agreement commitments. Such generous modelling often act to exaggerate the economic benefits.

In addition to the problematic econometric aspects of the modelling that is undertaken, such studies also exclude the social and environmental impacts of an FTA. The decisions and implications of FTAs have impacts that extend well beyond the economic sphere. The impacts that changes in economic relations can have on communities can be enormous and disastrous, yet such potential impacts are seldom addressed in the initial scoping for an FTA.

> ***Recommendation:*** Before Australia enters into negotiations for a Free Trade Agreement with the states of the Southwest Pacific, it must ensure that the social, environmental and economic impacts are incorporated into the assessment of an agreement.

> ***Recommendation:*** The adoption of ALP Policy that "prior to commencing negotiations for bilateral or regional free trade agreements, a document will be tabled in both Houses setting out the Government's priorities and objectives, including independent assessments of the costs and benefits of any proposals that may be negotiated. This assessment should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise" (Chapter 3, Section 26).

> ***Recommendation:*** The adoption of ALP Policy that states "A Labor Government will also ensure that all major trade agreements into which Australia enters, bilateral and multilateral, are assessed to ensure that they are consistent with the principles of sustainable development and

environmental protection for all regions of Australia" (Chapter 3, Section 22).

4.3 Trade Agreements Should Support International Standards on Environment Protection and Labour, Human, and Indigenous Rights

It should be a prerequisite of Australia pursuing trade agreements that parties to the agreement abide by international standards on human, labour, and Indigenous rights and environmental sustainability, as defined by the United Nations (UN) and the International Labour Organisation (ILO). Trade agreements should not undermine these standards.

Australia's recent entering into negotiations with China is a prime example of the need to have trade agreements that do not undermine international standards. AFTINET is concerned about China's compliance with the *ILO Declaration on Fundamental Principles and Rights at Work* and the failure of the Chinese Government to enforce some of its own labour laws. China has ratified only three of the eight ILO Conventions that form the basis of the ILO Declaration and there are numerous reports of labour rights abuses, many of which occur in export processing industries.

Australia must ensure that it does not give preferential access for goods and services from countries where labour rights and human rights are being violated. Australia has a responsibility to not support governments that are violating human rights and this extends to Australia's trade policy.

Environmental protection must not be undermined by Australia's trade policy. Australia's trading relationships should support and strengthen multilateral environmental agreements as well as actions taken by the United Nations Environment Program. This includes not only environmental protection but also the right to develop in a sustainable way.

On a domestic level, trade policy must not undermine the ability of governments to regulate in the interest of protecting the environment. This

includes ensuring that disputes settlement processes at both a multilateral and bilateral level do not erode the space for governments to regulate. As discussed below, Australia should avoid any mechanism such as the Investor-State Disputes Settlement process in its bilateral agreements. Such a mechanism has seen rulings against governments trying to regulate in the interests of environmental protection.

Trade policy must also work cohesively with measures to address climate change. Trade agreements should recognise the primacy of environmental agreements, and trade rules should not restrict governments from regulating to address climate change. WTO rules currently recognise the right of governments to regulate for environmental goals, but there is still debate about the legal meaning of this. If there is a conflict between trade rules and the ability of governments to regulate, we believe trade rules should be clarified or amended to enable such regulation.

The rights of Indigenous people's must also be respected in Australia's trade policy. This would involve ensuring that any trade agreement does not undermine the goals of the United Nations Declaration on the Rights of Indigenous Peoples. The current Government has stated that it would support Australia becoming a signatory to the agreement. If Australia is supportive of the Declaration then it needs to ensure that this is reflected in trade policy.

> ***Recommendation:*** Prior to undertaking any trade agreement Australia outline how it will strengthen and support international standards on the environment, labour rights, human rights and the rights of Indigenous Peoples.

> ***Recommendation:*** Australia becomes a signatory to the United Nations Declaration on the Rights of Indigenous Peoples.