



# **Labour Mobility in the PACER Plus**

**2018 Pacific Update**

Alisi Kautoke-Holani

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# Labour Mobility and the Growth Imperative for the Pacific

- The growth imperative for the Pacific requires trade integration- the gains from international trade lie in the exploitation of differences and the largest difference that FICs can exploit is in labour mobility, particularly of its low-skilled workers
- The growth imperative for the Pacific is an employment imperative - an average of about 40% of the region's working age population is either unemployed or underemployed in the informal sector
- Given the current demographic and economic status of the region, it is highly unlikely that all FIC labour can be productively employed within their own countries. The only alternative solution is for FIC labour to access the labour markets of developed countries.



# The role of Trade Agreements

- Trade negotiations provide an important opportunity to increase labour mobility access for FICs
- It provides an opportunity to increase policy cooperation between sending and receiving countries to address constraints at both ends of the migration process

## WTO (Multilateral Level)

- Non-preferential legally binding reforms under the WTO General Agreement on Trade in Services (GATS)

## RTA/FTAs (Regional)

- Negotiate labour mobility reforms through Regional Trade Agreements/Free Trade Agreements

## Unilateral Initiatives

- unilaterally undertake regulatory reforms to facilitate labour mobility e.g: SWP & RSE

# Importance of the PACER Plus

- The PACER Plus builds on the original PACER Agreement, which was ratified in 2001 as a framework for the “gradual trade and economic integration” of the economies of FICs and their largest neighbouring countries of Australia and New Zealand
  - Due to the relatively high volume of trade between most FICs and Australia and New Zealand, the PACER Plus was expected to be the most welfare enhancing for FICs as the trade creation benefits of such an integration would outweigh the trade diversion effects, thereby accruing net benefits to members
  - From this perspective, the PACER Plus would be considered the most important FTA for the Pacific.
  - *FICs have argued against a conventional Free Trade Agreement (FTA) due to the adjustment implications and revenue loss implications particularly for FICs which have continued to depend on tariffs for a substantial share of government revenue*
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# Labour Mobility in the PACER Plus

- Since the commencement of the negotiations in 2009, FICs have argued that given their special development disadvantages and inefficiencies, their main gain from PACER Plus would be in labour mobility, particularly for low-skilled and semi-skilled Pacific workers.
- Labour mobility was therefore included as a priority area in the PACER Plus negotiations with the expectation that the Agreement would increase access for Pacific low-skilled and semi-skilled workers to Australia and New Zealand.

- **FTMM Outcomes Document 2013:**

32. The Lead Spokesperson highlighted that [labour mobility and development assistance](#) are the two most important negotiating priorities for the FICs in PACER Plus negotiations.

- **FTMM Outcomes Document 2014:**

15.....He stressed the need for PACER Plus to be a balanced agreement and called on [Australia and New Zealand](#) to open up their labour markets to the FICs and ensure consistency between their trade and immigration policies. He emphasised that without substantive commitments on labour mobility and development assistance, it would be difficult to reach an agreement on PACER Plus on the legal texts by December 2014.

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# FIC Conditions for Maximising Labour Mobility Gains in the PACER Plus

## FIC Condition: ANZ to exceed their GATS Mode 4 commitments by including a Labour Mobility Chapter that covers low-skilled and semi-skilled labour mobility

- Article V of the GATS allows derogation from the MFN rule in the case of Regional Trade Agreements subject to the conditions of “substantial sectoral coverage” and “elimination of substantially all discrimination”.
- Article V 3a provides that “where developing countries are parties to an agreement...flexibility shall be provided regarding the conditions” (World Trade Organization 1995, p. 288).
- Treatment of labour mobility in other FTAs suggest that labour mobility commitments can go beyond the skilled oriented scope of the GATS Mode 4. Canada for example, in its FTAs with Colombia in 2007 and with Peru in 2008, substantially expanded the scope of commitments to include 50 categories of semi-skilled technicians including plumbers, electricians and gas and oil well drillers

**ANZ Position:**  
**Labour Mobility arrangements for low skilled and semi skilled to be outside of the Agreement-** they may be challenged under the Most Favoured Nation (MFN) obligation to offer the concessions granted to FICs, to other WTO members.

## **FIC Condition: A more binding labour mobility agreement to complement the existing RSE and SWP**

- BLAs are primarily subject to the conditions set by receiving countries thus exposing sending countries to high risks of uncertainty
- Because of its nonbinding nature, BLAs have been heavily criticised for the exploitation of workers and the violation of their rights under these programmes.
- The SWP and RSE cannot exist as a substitute for the more binding PACER Plus Agreement but can be complementary

## **ANZ Position: Prefer the Bilateral Labour Agreement approach - SWP and RSE**

- BLAs are not subject to MFN rules as are the GATS and RTAs therefore the issue of non-discrimination against a third country does not apply;
- parties have the flexibility to establish the scope, access conditions and labour management measures that best caters to their development

## Where is Labour Mobility in the PACER Plus?

- The PACER Plus Agreement was signed on 14<sup>th</sup> June 2017
  - Labour mobility provisions for low-skilled and semi-skilled workers are not covered in a binding agreement within PACER Plus but in a side-arrangement titled the “Arrangement on Labour Mobility”
  - The binding agreement on temporary labour migration is provided in the “Movement of Natural Persons” chapter (chapter 8)
  - Australia’s commitments in this chapter are limited to highly-skilled intra-corporate transferees, independent executives, business visitors, and contractual service suppliers and these commitments are equally applied to all sectors. New Zealand’s schedule of commitments slightly varies due to its inclusion of installers/servicers and independent service suppliers **but the scope of both schedules are essentially limited to highly skilled professionals.**
  - **Australia and New Zealand’s labour mobility commitments in the PACER Plus have not exceeded their Mode 4 commitments in the GATS**
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# FICs' Fall-Back Position: Conditions for the Side-Arrangement

## **FIC Condition: Lock in commitments to increase labour market access for low skilled and semi-skilled Pacific workers**

- Lock-in market access liberalisation commitments that exceeded what is currently available to FICs in the SWP and RSE
- Align the scope of the Arrangement to the key growth sectors in the ANZ economies particularly for low-skilled occupations (e.g: general clerks, aged and disabled carers, child carers, education aides, waiters, truck drivers, inquiry clerks, sales assistants, check out operators and office cashiers, kitchenhands)

### **Arrangement on Labour Mobility:**

- Arrangement does not clarify the scope nor does it outline the skills and occupations which ANZ are committed to liberalise
- Does not include commitments to increase market access for FIC low-skilled and semi-skilled workers beyond what is currently available to them under these bilateral agreements
- only commitment relating to market access liberalisation is the establishment of a Pacific Labour Mobility Annual Meeting (PLMAM) - “a mechanism to advance the areas of cooperation identified”, and “will be responsible for reviewing progress against the key objectives”

## **FIC Condition: Commitments to Reduce Immigration Barriers**

- Include specific commitments to remove certain mandatory immigration requirements that may be barriers to labour market access for semi-skilled and low-skilled workers e.g: strict visa procedures, certification and licensing requirements.
- Australia's Free Trade Agreement with China, known as the China-Australia Free Trade Agreement (CHAFTA), and the Singapore-Australia FTA revealed that Australia has made such commitments even for semi-skilled workers

### **Arrangement on Labour Mobility:**

- Arrangement does not include commitments to reduce regulatory barriers to labour market access
- “These objectives are without prejudice to the right of each Participant to impartially and fairly establish, administer and enforce its immigration, workplace and employment policies and laws, including eligibility criteria.” (Para 3.2)

## **FIC Condition: Commitments to Increase Regulatory Cooperation**

- Regulatory cooperation frameworks, such as Mutual Recognition Arrangement (MRA), are necessary to reducing regulatory barriers to entry particularly in terms of qualifications and certification requirements.

### **Arrangement on Labour Mobility:**

- Recognises the importance of qualifications recognition and includes a provision for the “Facilitation of Recognition of Qualifications and Registration of Occupations” in paragraph 9
- ANZ are willing to provide capacity building support and information exchange between relevant authorities so as to facilitate the recognition of qualifications.
- Language used does not strictly impose these as commitments that Australia and New Zealand must provide to FICs

# FIC Condition: Include Labour Standard Provisions to protect Pacific Workers' Rights

- Research into Tonga's participation in the SWP has found potential violations of workers' rights and labour standards – important to cover this issue in the Arrangement
- Several developed countries have included labour standard provisions in their FTAs e.g: US in the NAFTA, its FTAs with Jordan, Chile, Singapore, Australia, Morocco, Bahrain, Oman, and the six CAFTA-DR countries. NZ in its FTAs with Thailand, China and Chile.
- FICs to also consider the reciprocal nature of the PACER Plus and that the inclusion of labour standard provisions may result in unnecessary costs to FICs, particularly for those with very small and nascent private sectors.

## Arrangement on Labour Mobility:

- Protection of workers' rights is not explicitly featured in the PACER Plus Arrangement on Labour Mobility and it is therefore unlikely to be covered in the Arrangement

## **FIC Condition: Link Labour Mobility to Development Assistance**

- Enhancing the FICs' labour mobility gains require targeted policy development and resources that FICs do not have.
- Important to link labour mobility arrangements to sufficient development assistance specifically through a labour mobility work programme under the Development Cooperation chapter
- Development assistance to facilitate the implementation of the labour mobility agreement as well as build the capacity of FICs to enhance the development impact of labour mobility in their respective countries.

### **Arrangement on Labour Mobility:**

- No linkage in the side-Arrangement
- Development Cooperation Chapter
  - i) Australia and New Zealand will provide AUD19 million and NZD7 million to assist FICs in implementing the PACER Plus Agreement.
  - ii) ANZ also committed 20% their ODA to the Pacific as 'aid for trade' to address the broader trade and investment development needs of FICs.
- Labour Mobility is not included in the work programme of the PACER Plus but is included as one of the broader trade and investment development areas that could be funded through the 'aid for trade' funds.

## Conclusion:

- The conditions for FICs to increase their labour mobility gains in the PACER Plus and the Arrangement on Labour Mobility were mostly unmet
  - The role of the Arrangement on Labour Mobility in increasing the labour mobility gains for FICs is therefore unclear
  - The main gain for FICs from the Arrangement on Labour Mobility appears to be the Pacific Labour Mobility Annual Meeting (PLMAM)
  - The PLMAM would be beneficial for FICs if it effectively delivers concrete commitments from ANZ on:
    - increasing market access for low-skilled and semi-skilled FIC workers;
    - reducing regulatory barriers;
    - increasing regulatory cooperation to address regulatory barriers;
    - improving the protection of FIC workers' rights in ANZ; and
    - providing direct development assistance to build the capacity of sending countries and enable the development of conducive policies in sending countries
  - Such commitments could perhaps provide an incentive for the remaining 5 FICs to sign the Agreement and to progress the PACER Plus to ratification - it therefore warrants further consideration in the deliberations on the way forward for PACER Plus including the meetings next week in Samoa
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**Malo 'Aupito!**

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