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Original Article

Labour Mobility in the PACER Plus

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Abstract

Since the commencement of the Pacific Agreement on Closer Economic Relations Plus negotiations in 2009, the Pacific Forum Island Countries have maintained that their main gain from this Free Trade Agreement is in labour mobility. Free Trade Agreements, such as the Pacific Agreement on Closer Economic Relations Plus, are considered crucial for enhancing labour mobility gains for Pacific Forum Island Countries, particularly given the constraints associated with multilateral trade agreements and unilateral initiatives. In June 2017, the Pacific Agreement on Closer Economic Relations Plus was signed and included a side-arrangement on labour mobility. This article discusses the role of the Agreement in enhancing the development impact of labour mobility in Pacific sending countries and examines the text of the Movement of Natural Persons Chapter and the Arrangement on Labour Mobility to determine the potential gains for Pacific Forum Island Countries.

Key words: labour mobility, PACER Plus, Pacific, international trade, SWP

Labour mobility presents one of the few viable opportunities for sustainable development in most Pacific Forum Island Countries (FICs).[1] The prospects of development for these island nations are highly constrained by the inherent disadvantages of their smallness, isolation, vulnerability to natural disasters and, in some cases, rapid population growth. For these small economies, trade integration is particularly essential for sustainable development. The gains from trade lie in the exploitation of differences in factor endowment ratio and preferences, and the largest difference that FICs can gain from is in labour mobility, particularly of its low-skilled workers. This is the factor endowment that they have in relative abundance and the endowment that developed countries are increasingly lacking due mostly to their ageing demographics. But how can these small island nations maximise their gains from labour mobility; and what is the role of trade agreements in this?

Trade negotiations provide an important opportunity for the promotion of conducive policy cooperation between sending and receiving countries to enhance their mutual gains from labour mobility. A number of feasible trade negotiation opportunities exist for FICs: at the multilateral level, FICs who are World Trade Organization (WTO) members could

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1. Forum Island Countries refer to the 14 sovereign island countries in the Pacific, which are members of the Pacific Island Forum States. These are Cook Islands, Fiji, Kiribati, Republic of the Marshall Islands, Federated States of Micronesia, Nauru, Niue, Palau, Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. It is important to note that PNG does not share the geographical disadvantages of smallness that are characteristic of most FICs.

push for non-preferential legally binding reforms under the WTO General Agreement on Trade in Services (GATS); or they could negotiate labour mobility reforms through reciprocal Free Trade Agreements (FTAs) such as in the case of the Pacific Agreement on Closer Economic Relations (PACER) Plus between Australia, New Zealand and the FICs. Alternatively, countries could unilaterally undertake regulatory reforms, as in the case of Australia's Seasonal Worker Program (SWP), to address constraints to labour mobility from FICs.

While noting these opportunities, this article focuses on examining the role of the PACER Plus in enhancing the development impact of labour mobility for Pacific sending countries.

1. The Importance of Free Trade Agreements for the Pacific

Free Trade Agreements have become a crucial and irreversible feature of today's international trading system. Since the inception of the WTO, FTAs (in force) have increased from 7 in 1994 to 280 in February 2016 (World Trade Organization 2016). Crawford and Fiorentino (2005) explain that this proliferation of FTAs reflects the increasing number of countries turning to FTAs as a medium for achieving deeper economic integration than that currently available to them through the WTO.

In the case of the Pacific, the reality is that these small economies continue to be marginalised in world trade even under the multilateral non-discrimination framework. FICs have thus pursued FTAs in the belief that it is a framework that better addresses their special development needs and would help develop the necessary institutional framework for further economic integration. Fink and Jansen (2007) support this regional approach for the Pacific when they claimed that the sequence of liberalisation is important, and FTAs provide the stepping stone for multilateral trade liberalisation.

Within these Pacific FTAs is the PACER Plus Agreement. The PACER Plus builds on the original PACER Agreement, 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. Because of the relatively high volume of trade between FICs and Australia and New Zealand, the PACER Plus is 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 (Jayaraman 2005). From this perspective, the PACER Plus could most likely be the most important FTA for FICs.

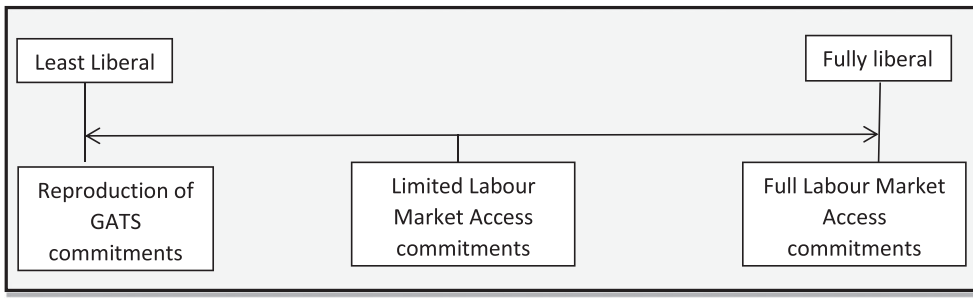
Nonetheless, FICs have argued that a conventional FTA would have little impact on their development, given their special development disadvantages and inefficiencies (Pacific Islands Forum Secretariat 2008). Because Australia and New Zealand account for about half of all FIC imports, the adjustment implications of PACER Plus would be more substantial. It would imply greater revenue losses particularly for FICs that have continued to depend on tariffs for a substantial share of government revenue (Nathan Associates Inc. 2007; Institute for International Trade 2008).

Forum island countries have maintained that the main gain that they could achieve from a PACER Plus Agreement is in labour mobility, particularly of low-skilled workers (Pacific Islands Forum Secretariat 2008). FICs stand to potentially gain more from labour mobility negotiations in the PACER Plus relative to the multilateral framework, because in terms of labour migration, receiving countries prefer discriminatory FTAs that would allow them to carefully manage labour flows into their countries (Sáez 2013). But have Australia's labour mobility commitments in FTAs been more liberal than its Mode 4 commitments under the GATS?

2. Nature of Australia's Labour Mobility Commitments in its Existing Free Trade Agreements

Free Trade Agreements among countries with similar levels of development, strong historical ties, and in some cases, geographic proximity,

Figure 1 Spectrum of the level of impact of FTAs on Labour Market Access.



Source: Adapted from Fink & Jansen 2007

have included fully liberal commitments that allow free movement of labour between their borders (refer to Figure 1). The Australia–New Zealand Closer Economic Relations is an example of such FTAs. In cases where parties differ in their levels of development, commitments have been more liberal than their temporary movement of natural persons (Mode 4) commitments in the General Agreement on Trade in Services (GATS) commitments but only for a limited range of occupations and skill levels. These FTAs include the North American Free Trade Agreement and the Canada–Chile Agreement. The least liberal FTAs are those that replicate the GATS Mode 4 commitments, which are specifically limited to highly skilled professionals such as intra-corporate transferees, senior managers, executives, business visitors and specialists. Analysis of Australia's FTAs by the Productivity Commission (2010) identified that most of these trade agreements were of this category, hence establishing Australia's labour mobility commitments as among the least liberal.

For FICs to benefit from a labour mobility agreement under PACER Plus, it was crucial for Australia and New Zealand to undertake commitments that substantially exceeded their GATS Mode 4 commitments. Australia and New Zealand, however, hesitated to go beyond their GATS commitments because of the concern that they may be challenged under the most favoured nation (MFN)[2] obligation to offer the concessions granted to FICs, to other WTO members (Institute for International Trade 2008). This concern may be unfounded, because Article V of the GATS exempts FTAs from the MFN obligation 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). As such, the inclusion of FIC developing countries and least developed countries suggests that flexibility can be undertaken to qualify PACER Plus under Article V.

Australia and New Zealand's concern stems from the limited scope and ambiguities of these conditions. The Institute for International Trade (2008) claims that it would be difficult to ensure compliance with the conditions for 'substantial sectoral coverage' and 'substantially all discrimination' because of the difficulties associated with measuring trade in services. They suggest that these difficulties could complicate any quantitative analysis required to determine whether PACER Plus complies (Institute for International Trade 2008). Moreover, the condition of 'elimination of substantially all discrimination' negatively implies that Australia and New Zealand (and FIC WTO members) can retain some discrimination against FIC labour under PACER Plus (Institute for International Trade 2008). As such, Australia and New Zealand can maintain the right to discriminate against FIC labour and not provide concessions that exceed their Mode 4 commitments in GATS.

2. The MFN is a fundamental WTO principle that promotes non-discrimination among members and requires all members to treat all other members equally.

Notwithstanding the issues relating to the exemption of the PACER Plus from the MFN obligation, the treatment of labour mobility by other FTAs suggests that labour mobility commitments in these agreements 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. Stephenson and Hufbauer (2011) explain that this dynamic shift in Canada's temporary labour migration commitments was prompted by pressure from the private sector to meet labour shortages in the Canadian market. Thus, Canada's FTAs are predominantly more liberal relative to most other FTAs in the world.

While Canada's example confirms the possibility of adopting a more liberal scope for PACER Plus, Australia's FTAs show that they have mainly limited their commitments to provisions contained in the GATS. In fact, Australia's labour mobility commitments in its FTAs have been mostly limited to highly skilled workers associated with Mode 3. The most outstanding departure from Australia's GATS commitments was in the Australia–New Zealand Closer Economic Relations Trade Agreement with New Zealand, where free labour migration was granted to citizens of both countries. Jayaraman (2013) indicates that this was the level of regional economic integration that the Pacific leaders were anticipating when they agreed to commence the PACER Plus negotiations in 2009.

It was also evident that the Pacific wanted an agreement that went beyond the Australian SWP and the New Zealand Recognized Seasonal Employer (RSE) scheme. Although low-skilled labour mobility is facilitated under these labour mobility programs, the Pacific wanted more binding commitments in the PACER Plus Agreement that would ensure that the region's gains from labour mobility are safeguarded (Jayaraman 2014). Such binding commitments have not been given by Australia in any of its FTAs and thus required a substantial departure from its labour mobility commitments in both the GATS and FTAs concluded thus far.

3. Labour Mobility Provisions in the Pacific Agreement on Closer Economic Relations Plus Agreement

The PACER Plus was signed on 14 June 2017 by Australia, New Zealand and 8 of the 14 FICs, namely, Cook Islands, Kiribati, Nauru, Niue, Samoa, Solomon Islands, Tonga and Tuvalu. Vanuatu became the ninth FIC party in September 2017.[3] Labour mobility provisions that are consistent with the GATS Mode 4 are provided in the *Movement of Natural Persons Chapter*, while labour mobility provisions for low-skilled and semi-skilled, which are not within the scope of the GATS, are provided in a non-binding side-arrangement titled the *Arrangement on Labour Mobility*. This section seeks to determine the potential labour mobility gains for FICs from the PACER Plus by assessing the text of the *Movement of Natural Persons Chapter* and the *Arrangement on Labour Mobility*.

- Scope of the Pacific Agreement on Closer Economic Relations Plus labour mobility provisions

The limited scope of the GATS relative to Mode 4 is considered to be one of the primary constraints to the achievement of greater liberalisation in labour mobility at the multilateral level. This experience suggests that it would be crucial for FICs to ensure that the scope of the labour mobility agreement in the PACER Plus effectively covers the skills and occupations that are of interest to them that is, semi-skilled and low-skilled workers. This scope may not necessarily be limited to existing sectors where FICs already have access but should also consider an extension to new potential areas that may increase FIC labour mobility gains.

3. Fiji and PNG withdrew from the PACER Plus negotiations before its conclusion in April 2017 because of dissatisfaction with Australia and New Zealand's positions. Palau, Republic of the Marshall Islands and the Federated States of Micronesia have yet to sign the agreement.

One way of doing this would have been through the provision of a non-exclusive list of sectors, skills and occupations to prevent potential ambiguities. FICs could have used the projections made by the Department of Employment in their Employment Outlook to November 2019 report, to establish a list of the low-skilled and semi-skilled occupations that are or will be experiencing the highest labour shortages in Australia, to form their labour mobility negotiations. According to the Department of Employment, the low-skilled occupations with the highest growth rates are general clerks, aged and disabled carers, child carers, education aides, waiters, truck drivers, inquiry clerks, sales assistants, check out operators and office cashiers, as well as kitchenhands (Department of Employment 2015). It is possible that Australia may not have agreed to all the occupations in the list, but such a list could have provided leverage for FICs to negotiate market access outcomes that are better than what is currently available to them.

The binding agreement on labour mobility in the PACER Plus is provided in the 'Movement of Natural Persons' chapter (chapter 8) where commitments on temporary labour migration is provided in schedules of commitments provided by each country. 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 because of its inclusion of installers/servicers and independent service suppliers, but the scope of both schedules is essentially limited to highly skilled professionals. Australia and New Zealand have thus maintained their GATS commitments in the PACER Plus meaning that the labour mobility gains for FICs from the agreement could be highly limited.

Given the limited scope of the binding Movement of Natural Persons chapter, the role of the PACER Plus in increasing labour market access for low-skilled and semi-skilled Pacific workers is now highly contingent on the scope of the Arrangement on Labour Mobility. As mentioned previously, FICs could have increased their market access gains by aligning the scope of the arrangement with the key growth sectors in the Australian economy, including those listed in Table 1. They could have also locked-in market access liberalisation commitments that exceeded what is currently available to FICs under the SWP and RSE. Unfortunately, the official text of the arrangement on Labour Mobility shows that neither of these conditions are met.

The key objectives of the arrangement include 'enhance(ing) labour mobility schemes, including Australia's SWP and New Zealand's RSE to maximise the development benefits for all participating countries' and to 'promote the utilisation of other labour mobility opportunities in Australia and New Zealand for the Developing Country Participants' (Department of Foreign Affairs and Trade 2017a). These objectives suggest that the Arrangement has the intention of exceeding the existing market access levels provided under the SWP and RSE. The problem, however, is that the arrangement does not clarify the scope of the arrangement nor does it outline the skills and occupations which Australia and New Zealand are committed to liberalise. Without clarity in these commitments, it would be difficult for FICs to lock-in market access

Table 1 Basis for a non-exclusive list of occupations in PACER Plus

Occupation	*Skill level*
Carpenters and joiners	3
Gardeners	3
Electricians	3
General clerks	4
Aged and disabled carers	4
Child carers	4
Education aides	4
Waiters	4
Truck drivers	4
Inquiry clerks	4
Sales assistants (general)	5
Check out operators and office cashiers	5
Kitchenhands	5

PACER, Pacific Agreement on Closer Economic Relations.
Source: Department of Employment 2015, p. 8.

commitments that exceed what is currently available to them under the SWP and RSE.

This constraint is made more explicit in paragraph 5 of the Arrangement. This paragraph is specifically for the 'Enhancement of Labour Mobility', but there are no commitments on how this objective will be achieved. Although the parties recognise the mutual gains from labour mobility, the paragraph merely states that '… possibilities of operational improvements and expanding labour mobility opportunities to new occupational areas where there are labour shortages in the receiving countries will be explored' (Department of Foreign Affairs and Trade 2017a). Furthermore, according to the paragraph, the responsibilities of Australia and New Zealand in the enhancement of labour mobility for FICs are limited only to the SWP and RSE. These responsibilities, however, do 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.

The only commitment relating to market access liberalisation in the Arrangement on Labour Mobility is the establishment of a Pacific Labour Mobility Annual Meeting. According to paragraph 4, the Pacific Labour Mobility Annual Meeting is established as 'a mechanism to advance the areas of cooperation identified' in the Arrangement and 'will be responsible for reviewing progress against the key objectives' including the 'enhancement of existing labour mobility schemes and facilitation of other forms of temporary labour mobility' (Department of Foreign Affairs and Trade 2017a). Although it is not a market access commitment, it provides an opportunity for FICs to continue to lobby for increased market access for their low-skilled and semi-skilled workers.

- Reduction/elimination of implicit regulatory barriers

Establishing a broad scope for labour mobility negotiations may not result in increased labour market access for FICs unless immigration barriers are reduced. Australia's Free Trade Agreement with China, known as the China–Australia Free Trade Agreement, addresses some of these barriers by negotiating specific removal of skills assessment requirements for occupations in a Side Letter on Skills Assessment and Licensing (Figure 2). The side letter explicitly states that 'Australia will remove the requirement for the mandatory skills assessment' for 10 semi-skilled occupations negotiated in the Agreement (Department of Foreign Affairs and Trade 2015). Similarly, under the Singapore–Australia FTA, chapter 11 Article 12 provides that 'neither party shall require labour market testing, labour certification tests or other procedures of similar effect as a condition for temporary entry in respect of natural persons on whom the benefits of this chapter are conferred' (Department of Foreign Affairs and Trade 2016b). FICs could benefit by negotiating similar provisions to reduce immigration barriers to low-skilled and semi-skilled labour migration in the labour mobility arrangement within PACER Plus.

The example of the Side Letter on Skills Assessment and Licensing in the China–Australia FTA indicates that specific commitments can be included in a side-arrangement, to remove certain mandatory immigration requirements that may be barriers to labour market access for semi-skilled and low-skilled workers. These regulatory barriers may include strict visa procedures, certification and licensing requirements. The PACER Plus Arrangement on Labour Mobility, however, clearly states in paragraph 3.2 that

> 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.(Department of Foreign Affairs and Trade 2017a)

As such, the Arrangement does not include commitments to reduce regulatory barriers to labour market access.

- Provisions to facilitate regulatory cooperation among parties

Although provisions to exempt FICs from regulatory market access barriers may

Figure 2 Excerpt from China–Australia Free Trade Agreement Side Letter on Skills Assessment and Licensing

The Parties undertake to cooperate to streamline relevant skills assessment processes for temporary skilled labour visas, including through reducing the number of occupations currently subject to mandatory skills assessment for Chinese applicants for an Australian Temporary Work (Skilled) visa (subclass 457). Australia will remove the requirement for mandatory skills assessment for the following ten occupations on the date of entry into force of the Agreement.

Automotive Electrician [321111]
Cabinetmaker [394111]
Carpenter [331212]
Carpenter and Joiner [331211]
Diesel Motor Mechanic [321212]
Electrician (General) [341111]
Electrician (Special Class) [341112]
Joiner [331213]
Motor Mechanic (General) [321211]
Motorcycle Mechanic [321213]

The remaining occupations will be reviewed within two years of the date of entry into force, with the aim of further reducing the number of occupations, or eliminating the requirement within five years.

The Parties undertake to cooperate to encourage the streamlining of relevant licensing procedures and to improve access to relevant skills assessments. As part of this work, Trades Recognition Australia (TRA), the China International Contractors Association (CHINCA) and other institutions[1] designated by the Chinese Government will cooperate with a view to expanding access to testing in China for an Australian Offshore Technical Skills Record (OTSR).

The Parties undertake to review progress in the above areas, as well as discuss avenues for further cooperation in the areas of skills recognition and licensing, within two years of the date of entry into force of the Agreement.

Source: Department of Foreign Affairs and Trade 2015, p. 1

establish regulatory standards to prevent the use of such barriers for protectionist purposes, in practice, they may not effectively improve market access (Fink & Jansen 2007). Requalification processes may not only take time but may also be highly costly and hence would restrict entry. Fink and Jansen (2007) recommended that the only solution for effectively overcoming these barriers is through positive cooperation between regulatory authorities in sending and receiving countries. Such cooperation could cover areas such as harmonisation of regulatory standards and information exchange.

One of the crucial provisions that could be established under this regulatory cooperation is a Mutual Recognition Arrangement to help address barriers arising from the recognition of qualifications and certifications. Chapter 11 of the Malaysia–Australia FTA is dedicated to a Mutual Recognition Arrangement between the two countries and aims to 'provide the framework for the development of Mutual Recognition Arrangements on qualifications, registration, licensing and certification requirements and experience for the fulfilment in whole or in part, of standards and criteria for authorisation, licensing or certification' (Department of Foreign Affairs and Trade 2016a). However, this framework is limited only to professional services and would do little to improve access for semi-skilled workers even though they are the most affected by these barriers.

The PACER Plus 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 (Department of Foreign Affairs and Trade 2017a). Australia and New Zealand are willing to establish a framework for cooperation in this area through the provision of capacity building support for FICs and information exchange between relevant authorities so as to facilitate the recognition of qualifications. It is important to note that the language used does not strictly impose these as

commitments that Australia and New Zealand must provide to FICs. As such, it does not promise concrete gains for FICs.

- Non-party most favoured nation clause

Fink and Jansen (2007) also recommended that FTAs should adopt non-party MFN clauses not only to secure benefits granted to third countries but also for transparency purposes. Although such non-party MFN clauses have not been included in any of Australia's FTAs, it is commonly used in the East Asian region. The Japan–Malaysia Economic Partnership Agreement for example, provides under Article 101 that 'each country shall accord to services and service suppliers of the other country treatment no less favourable than that it accords to like services and service suppliers of any third state'.

Because of the importance of labour mobility to FICs' sustainable development, a non-party MFN clause could be beneficial in the sense that it would secure for FICs the most favourable treatment. On the other hand, it could also concurrently reduce FICs' competitiveness in the Australia and New Zealand labour market if such provisions are also included in Australia and New Zealand's FTAs with other developing countries. Competition from popular labour sending countries such as the Philippines and China in the low-skilled and semi-skilled labour markets would most likely be detrimental for FIC temporary labour migration. The ideal scenario for FICs would be for Australia and New Zealand to restrict the provision of this non-party MFN clause only to the PACER Plus.

- Linking labour mobility to development assistance

Kautoke-Holani's (2017) analysis of Tonga's participation in the SWP revealed that enhancing the development impact of labour mobility requires not only improved labour market access for low-skilled workers but also targeted policy actions to increase remittances and skills flows to households and the transfer of these returns through household income diversification. The development and implementation of these policy actions requires substantial resources that FICs cannot afford. Analysis of the Tongan government budget appropriations in the last five years (2011–12 to 2015–16) revealed that the average budget for labour mobility was an average T$852,188 (A$501,858) per annum and T$981,209 (A$577,885) for investment and small and medium enterprises development (Tonga Ministry of Finance & National Planning 2011, 2012, 2015). These budget allocations underscore the lack of capacity that FICs have to develop the necessary mix of policies required to enhance the development impact of labour mobility for their countries.

It is therefore crucial for the PACER Plus to link its labour mobility arrangements to sufficient development assistance. This required linkage is not new and was in fact considered by Australia in the inception of the PACER Plus negotiations. In his 2009 speech titled 'Our Pacific Agenda: The Opportunity of PACER Plus', the former Australian Minister for Trade, the Honourable Crean, stated:

> Our approach with PACER Plus is entirely consistent with the twin pillars approach that we implement here in Australia: reform at the border and structural reform behind the border. In the case of our region, we see building the capacity of Pacific nations as an essential pillar of PACER Plus - putting substance into the Plus through practical initiatives and capacity building responsive to the needs of Pacific nations… Unlike the EPA, PACER Plus is not just a trade agreement: it is fundamentally concerned with developing the capacity of the Pacific region. (Crean 2009)

This linkage could potentially be established through creating a labour mobility work program under the Development Cooperation chapter 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. Tonga's participation in the SWP suggests that this work program could include measures to improve access to finance; increase access to business development skills services; Technical Vocational Education and

Training skills development programs for SWP migrants and their households; development and promotion of collective entrepreneurship including community businesses; programs to develop and promote women's entrepreneurship; and policies to effectively capture the development benefits of diaspora networks. These components may vary among FICs given the diversity within the region; hence, further research would be required to confirm how the findings from Tonga's experience in the SWP best apply to other FICs.

The Implementing Arrangement for Development and Economic Cooperation under the PACER Plus (Department of Foreign Affairs and Trade 2017b) outlines the level of development assistance allocated for the PACER Plus and the key priorities to which this assistance is appropriated. According to this Implementing Arrangement, Australia and New Zealand will provide A$19 million and NZ$7 million, respectively, for the implementation of a work program that is designed to assist FICs in implementing the PACER Plus Agreement. In addition, Australia has committed 20 per cent of its official development assistance to the Pacific, and New Zealand 20 per cent of its total official development assistance, to be provided to FICs as 'aid for trade'. This 'aid for trade' is to address the broader trade and investment development needs of FICs.

Labour Mobility is not included in the work program of the PACER Plus but is included as one of the six broader trade and investment development areas that will be funded through the 'aid for trade' funds. This inclusion in the broader trade and investment development areas indicate that funds will be made available to facilitate the development of programs to increase remittances and skills flows to households and the transfer of these returns through household income diversification strategies. The question that remains is how much of this 'aid for trade' funds will be allocated for labour mobility given that there are five other priority development needs vying for these limited funds.

- Protection of workers' rights

Kautoke-Holani's (2017) research on Tonga's participation in the SWP also found that there are potential violations of workers' rights and labour standards, which affect productivity and the returns from labour mobility. This suggests that FICs may gain from the inclusion of labour standards provision in the PACER Plus labour mobility arrangement. Although labour principles and standards are under the umbrella of the International Labour Organization (ILO) and not subject to WTO rules, several developed countries including the United States and Europe have included labour standard provisions in their FTAs. The United States for example, has included labour standard provisions in the North American Free Trade Agreement, its FTAs with Jordan, Chile, Singapore, Australia, Morocco, Bahrain, Oman and the six countries that are party to the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR). New Zealand has also included labour standard provisions in its FTAs including with Thailand, China and Chile (Pablo 2009).

The concern, however, arises from 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. Most of the labour standard provisions in FTAs are related to the ILO Declaration on Fundamental Principles and Rights at Work yet not all FICs are ILO members.[4] Moreover, FICs that are members of the ILO are at different stages of ratifying ILO conventions and may not have the capacity to enforce the required labour standards. Further assessment is therefore necessary to determine how the PACER Plus can best facilitate the protection of Pacific workers' rights and deliver mutual gains for both sending and receiving countries. The assessment of Tonga's participation in the SWP suggest that lessons learnt from the SWP could help ascertain the approach that the PACER Plus should adopt. The protection of

4. Eleven of the 14 FICs are ILO members. These are Fiji, PNG, Solomon Islands, Kriibati, Vnauatu, Samoa, Republic of the Marshall Islands, Tuvalu, Palau, Tonga and the Cook Islands.

workers' rights, however, is not explicitly featured in the PACER Plus Arrangement on Labour Mobility, and it is therefore unlikely to be covered under the Arrangement.

4. The Role of the Seasonal Worker Program and Recognized Seasonal Employer Relative to the Pacific Agreement on Closer Economic Relations Plus

Notwithstanding the importance of the PACER Plus, Bilateral Labour Agreements (BLAs), such as the SWP and the RSE, are the most commonly used approach for the facilitation and management of labour mobility (Goswami et al. 2013; Wickramasekara 2015). The first wave of BLAs dates back to as early as 1900, predating the Uruguay Round and the conception of FTAs. As of 2014, an estimated 358 BLAs have been identified; 61.7 per cent of which are operating in Europe and the Americas (Wickramasekara 2015). The only operating BLAs in the Pacific are the SWP and the RSE.

The proliferation of BLAs can be attributed to the advantages associated with the fact that BLAs are not subject to MFN rules as are the GATS and FTAs. Because these are agreements between two parties, the issue of non-discrimination against a third country does not apply in these bilateral agreements (Goswami et al. 2013). Moreover, BLAs are mostly Memoranda of Understanding, which grants parties the flexibility to establish the scope, access conditions and labour management measures that best caters to their development interests (Wickramasekara 2015). It also allows the two parties to reach consensus on issues relating to regulatory barriers hence providing less restrictive market access provisions relative to the GATS Mode 4 and FTAs.

The flexibilities granted under BLAs allow these agreements to be predominantly driven by the demands of receiving countries. The scope of skills and sectors covered under BLAs can therefore range from skilled to low-skilled workers depending on the labour shortages in the receiving country party and are not limited only to skills and occupations associated with Mode 3 as in the case of GATS Mode 4 and FTAs (Goswami et al. 2013).

These advantages may cause some to consider the PACER Plus as redundant, but this may not be the case as BLAs also have a number of drawbacks. One of the key problems is their non-binding nature. In contrast to the GATS and FTAs, which are governed by set rules that determine the conditions under which trade is undertaken, BLAs are primarily subject to the conditions set by receiving countries thus exposing sending countries to high risks of uncertainty. Moreover, because of this non-binding nature, BLAs have been heavily criticised for the exploitation of workers and the violation of their rights under these programs (Hugo 2009). The disadvantages of BLAs, particularly their non-binding nature, suggest that the SWP cannot exist as a substitute for the more binding PACER Plus Agreement. Nonetheless, the benefits accruing from the flexibility of the SWP can be complementary to the PACER Plus and even to the GATS. This suggests that the gains to FICs may be maximised through a system where both agreements can coexist and complement each other.

Nonetheless, because of the non-binding nature of the Arrangement on Labour Mobility, the role of the PACER Plus relative to the SWP and RSE is unclear. The non-binding nature of the SWP and RSE meant that they were primarily subject to the conditions set by receiving countries thus requiring a binding labour mobility agreement to secure commitments for FICs (Goswami et al. 2013). The lack of a binding labour mobility agreement for low-skilled and semi-skilled workers within PACER Plus suggests that FICs no longer have a binding framework to safeguard them from the uncertainties associated with BLAs.

5. Conclusion

The analysis in this article suggests that FTAs, such as the PACER Plus, provide a critical opportunity for cooperation between the Pacific sending countries and key receiving countries such as Australia and New Zealand. Yet the analysis of the PACER Plus text suggests that the agreement may not provide

the much anticipated opportunity to enhance the positive development impact of labour mobility in FICs.

The benefits of the agreement were considered to be contingent on its inclusion of a legally binding labour mobility agreement that can facilitate increased labour market access for low-skilled and semi-skilled Pacific workers as well as enhance the development impact of this labour mobility in FICs. The PACER Plus Arrangement on Labour Mobility, however, is not only non-binding but it also does not include concrete commitments to ensure that FICs will gain development outcomes that exceed what they currently have under the SWP and RSE.

Given that both the SWP and the PACER Plus Arrangement on Labour Mobility are both non-binding labour mobility agreements, the role of the PACER Plus relative to the SWP and RSE is now unclear. What is certain is that the development gains from labour mobility for FICs are predominantly subject to the unilateral decisions of Australia and New Zealand. Nonetheless, the substantial positive expansions unilaterally undertaken by Australia to the SWP in recent years give hope that the development benefits of labour mobility can still be enhanced, even without the PACER Plus.

This article is part of the author's doctoral research at the University of Adelaide and has been developed as part of her work as a visiting fellow at the ANU Department of Pacific Affairs.The author is currently employed as the Deputy CEO of the Ministry of Commerce, Consumer, Trade, Innovation and Labour in Tonga. She is the Head of the Policy Division of the Ministry and has been engaged in trade negotiations for Tonga since 2009. She has completed a Doctor of Philosophy at the University of Adelaide with a thesis on the role of the Seasonal Worker Program and the PACER Plus in enhancing the development impact of labour mobility in Pacific Island sending countries.

References

Crawford JA, Fiorentino RV (2005) *The Changing Landscape of Free Trade Agreements*. World Trade Organization, Geneva.

Crean SF (2009) Our Pacific Agenda: The Opportunity of PACER Plus, viewed June 2017 <http://trademinister.gov.au/speeches/2009/090802_lowy.html>.

Department of Employment (2015). Employment Outlook to November 2019. Do Employment. Canberra Australian Government.

Department of Foreign Affairs and Trade (2016a) Malaysia–Australia FTA Chapter 11 – Framework on Mutual Recognition Arrangements, viewed March 2016 <http://dfat.gov.au/trade/agreements/mafta/Pages/malaysia-australia-free-trade-agreement.aspx#chap_11>.

Department of Foreign Affairs and Trade (2015) *CHAFTA Side Letter on Skills Assessment and Licensing Department of Foreign Affairs and Trade*. Australia, DFAT.

Department of Foreign Affairs and Trade (2016b) Singapore–Australia Free Trade Agreement Chapter 11 – Movement of Business Persons, viewed March 2016 <http://dfat.gov.au/trade/agreements/safta/official-documents/Documents/SAFTA-chapter-11.pdf>.

Department of Foreign Affairs and Trade (2017a) PACER Plus Labour Mobility Arrangement, viewed June 2017 <http://dfat.gov.au/trade/agreements/pacer/Documents/arrangement-on-labour-mobility.pdf>.

Department of Foreign Affairs and Trade (2017b) Implementing Arrangement for Development and Economic Cooperation under the Pacific Agreement on Closer Economic Relations Plus, viewed June 2017 <http://dfat.gov.au/trade/agreements/pacer/Documents/implementing-arrangement-for-development-and-economic-cooperation.pdf>.

Fink C, Jansen M (2007) *Services Provisions in Free Trade Agreements: Stumbling or Building Blocks for Multilateral Liberalization?* Multilateralising Regionalism, Geneva.

Goswami AG, Luthria M, Malaulau M, Sáez S (2013) In: Saez S (ed) *When and Why Should Bilateral Labor Agreements Be Used? Let Workers Move; Using Bilateral Labour Agreements to Increase Trade in*

Services, pp. 39–64. World Bank Publications, Herndon, VA, USA.

Hugo G (2009) Best Practice in Temporary Labour Migration for Development: A Perspective from Asia and the Pacific. *International Migration* 47(5), 23–74.

Institute for International Trade (2008) *Research Study on the Benefits, Challenges and Ways Forward for PACER Plus*. Adelaide University of Adelaide.

Jayaraman TK (2005) *Regional Integration in the Pacific*. Fiji University of the South Pacific, Suva.

Jayaraman TK (2013) In: Fanta E, Shaw TM, Tang VT (eds) *Regional Integration in the Pacific Comparative Regionalisms for Development in the 21st Century: Insights from the Global South*, pp. 103–26. Ashgate Publishing, NY, USA.

Jayaraman TK (2014) In: Sun F (ed) *PACER Plus and Getting Island Nations a Better Deal*. Fiji Sun, Fiji.

Kautoke-Holani A (2017) Enhancing the Development Impact of Labour Mobility in Pacific Island Countries: The Role of the Seasonal Worker Program and the PACER Plus. Doctor of Philosophy, University of Adelaide.

Nathan Associates Inc (2007). Pacific Regional Trade and Economic Cooperation Joint Baseline and Gap Analysis. Fiji Pacific Islands Forum Secretariat.

Pablo G (2009) *Trade Agreements and their Relation to Labour Standards–The Current Situation*. Geneva, Switzerland, International Centre for Trade and Sustainable Development.

Pacific Islands Forum Secretariat (2008) Thirty Ninth Pacific Islands Forum Communique Suva, Fiji Pacific Island Forum Secretariat.

Productivity Commission (2010) Bilateral and Labour Trade Agreements Canberra, Productivity Commission.

Sáez S (2013) *Let Workers Move: Using Bilateral Labor Agreements to Increase Trade in Services*. World Bank Publications, Herndon, VA, USA.

Stephenson S, Hufbauer G (2011) In: Chauffour J-P, Maur J-C, Provider WBC (eds) *Labor Mobility. Preferential Trade Agreement Policies for Development: A Handbook*, pp. 275–306. World Bank Publications, Washington, DC.

Tonga Ministry of Finance & National Planning (2011) *Budget Statement 2011/2012. Tonga Ministry of Finance & National Planning*. Tonga Government of Tonga, Nuku'alofa.

Tonga Ministry of Finance & National Planning (2012). *Budget Statement 2012–2013 "Creating Opportunity in Extraordinary Times"*. Tonga Ministry of Finance & National Planning. Nuku'alofa, Tonga Government of Tonga

Tonga Ministry of Finance & National Planning (2015). *Budget Statement 2015/16"A More Progressive Tonga": enhancing our inheritance*. Tonga Ministry of Finance & National Planning. Nuku'alofa, Tonga Government of Tonga

Wickramasekara P (2015) *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*. Global Migration Policy Associates, Geneva.

World Trade Organization (1995) *General Agreement on Trade in Services WTO*, pp. 285–316. WTO, Geneva, Switzerland.

World Trade Organization (2016) Free Trade Agreements, viewed October 2016 <https://www.wto.org/english/Tratop_e/region_e/region_e.htm>.