



Improving access to medicine?

The implications of including intellectual property rules under PACER-Plus

What is PACER-Plus?

At the 2009 Pacific Island Forum Leaders' Meeting, held in Cairns, Australia, Pacific leaders agreed to begin negotiations for a regional trade agreement between the Pacific island countries and Australia and New Zealand (PACER-Plus).

The PACER-Plus negotiations are likely to result in a binding international agreement that will affect Pacific economies and societies for decades to come. PACER-Plus will have wide-reaching implications for all Pacific islanders. A new agreement could affect ownership of land, employment, how much tax people pay, how much they pay for goods at the local store, the prices they get for their produce at the local market, and even their ability to access services (like local clinics and schools).

Both the Australian and New Zealand governments have shown they are interested in negotiating PACER-Plus as a free trade agreement that will allow their firms to export more goods and services to the Pacific and invest in new enterprises in the island countries¹. The Australian government explains that "Australia's primary motivation in supporting PACER Plus is to help the Forum Island Countries (FICs) to promote sustainable economic development. We nonetheless expect that improved market access may enhance some opportunities for Australian exporters, investors and service providers in Pacific markets"². The former Australian Trade Minister Simon Crean described PACER-Plus as a "trade-plus' free trade and economic integration agreement"³.

¹ A 'national interest' assessment undertaken regarding the Pacific Agreement on Closer Economic Relations (PACER), the precursor to PACER-Plus, found that "without ratification of PACER, Australia would be denied an enhanced opportunity to negotiate better market access to Pacific markets for Australian business and industry while any other country could enjoy duty free access to FIC's for their goods".

² 'Pacific trade negotiations commence', see: <http://www.aei.gov.au/AEI/MIP/Activities/09Activity24.htm>

³ Crean, S. McMullan, B. 2008. 'International engagement begins in own backyard'. *Canberra Times*. 26/8/08. Fairfax, Canberra

What is 'intellectual property'?

Intellectual property (IP) represents the specific ownership of an idea. This can include a new invention, a trade mark, or an original design. In business terms intellectual property rights guarantee that the 'owner' of an idea is able to make a profit from selling that idea or invention to other people.

How will PACER-Plus affect intellectual property?

It depends on the design of any agreement. If PACER-Plus is designed as a free trade agreement containing new rules on 'intellectual property rights', those rules will protect the 'rights' of people and companies that produce new inventions. This would mean that only the companies who produce an invention, or people they license, would be allowed to sell that invention, and they can sell it for whatever price they like. 'Inventions' can include things like new medicines and education materials (like books, magazines and online journals).

Australia and New Zealand are likely to want PACER-Plus to include new rules on intellectual property at least as strong as the rules included in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) at the World Trade Organisation (WTO).

Will new rules on intellectual property reduce people's access to medicine?

Yes. If PACER-Plus contains new rules similar to the TRIPS agreement at the WTO, then some medicines will become more expensive in the Pacific island countries. The WTO rules grant drug companies a monopoly on selling new medicines (as a 'patented invention') for 20 years. This means that, in countries that have joined the WTO, pharmaceutical companies

can sell their drugs – without any competition, and at high prices, for 20 years – even if that means poor people who need those drugs cannot buy them. The same will apply in the Pacific if PACER-Plus contains similar rules.

As things stand today, most countries in the Pacific are not members of the WTO and so these kinds of intellectual property rules don't apply. This means that they could import or manufacture generic medicines to provide to the public at a much cheaper rate than their patented alternatives. It is widely acknowledged that where generic drugs have been introduced to compete with monopoly patented medicines, the price of those medicines have fallen – sometimes by up to 95 per cent. The option of importing generic medicines (that are not protected by WTO-style intellectual property rules) could prove to be even more important in the future as the Pacific island countries face the growing health burden of an HIV/AIDS epidemic.

Have intellectual property rules already reduced people's access to medicine in the Pacific?

Yes. There are already examples in the region of Pacific governments being forced to stop importing a cheaper generic drug, and switch to the more expensive 'protected' medicine. In Fiji, the anti-psychotic drug Olanzapine is a patented drug that is costing the Fiji government considerably more to procure than generic versions that used to be available – due to Fiji's intellectual property rights commitments at the WTO⁴.

But isn't access to medicine a basic human right?

Yes. Under Article 12 of the International Covenant on Economic, Social and Cultural Rights, everyone enjoys the right to "highest attainable standard of health". Realising, protecting and fulfilling the right to health is the responsibility of government. Australia and New Zealand have a responsibility to ensure that any new trade agreements they sign with other parties do not adversely affect the realisation of the right to health in those countries.

Under the International Covenant on Economic, Social and Cultural Rights, which Australia and New Zealand ratified in 1975 and 1978 respectively, State parties are obliged to take steps (individually or through international assistance and cooperation) towards the full realization of Covenant rights (article 2(1), as

⁴ For details, see: Meads, S. 2008. *Trade, Medicines and Human Rights: Protecting Access to Medicine in Fiji and the Pacific*. Masters Thesis, Victoria University of Wellington.

interpreted by CESCR General Comment No. 3 (1990)). In relation to the right to health, this includes the obligation to respect the right to health in other countries, to give due attention to the right to health in international agreements and to take steps to ensure those agreements do not adversely impact on the right to health (article 12, as interpreted by CESCR General Comment No. 14 (2000))⁵.

Does PACER-Plus have to include intellectual property rules?

No. There is no requirement that PACER-Plus be negotiated as a free trade agreement, and there is also no requirement that PACER-Plus must include an agreement on intellectual property. In fact, as part of negotiations for another trade agreement – an 'Economic Partnership Agreement' (EPA) between the Pacific island countries and the European Union (EU) – an assessment on including intellectual property rules 'strongly recommended that the Pacific countries do not agree to the inclusion of an intellectual property section in the EU-Pacific EPA'⁶.

Find out more

This fact sheet is produced by the People's Health Movement (Australia) and the Public Health Association of Australia (Victorian Branch). For further information visit www.phmoz.org or email pacifictrade@gmail.com.

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⁵Committee on Economic, Social and Cultural Rights (CESCR), *General Comments No.14 (2000), The right to the highest attainable standard of health*. E/C.12/2000/4, 11 August 2000

⁶ Musungu, S. 2007. An analysis of the EU Non-Paper on the Objectives and Possible Elements of an IPR Section in the EU-Pacific EPA. International Centre for Trade and Sustainable Development, Geneva.