

RELATIONS OF DEPENDENCE  
AND  
THE PAPUA NEW GUINEA/AUSTRALIA TRADE AGREEMENT  
BY  
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A year after attaining political independence, the government of Papua New Guinea (PNG), signed an "Agreement on Trade and Commercial Relations" (PACTRA) with the erstwhile colonial power, Australia. This agreement, which came into effect on February 1, 1977, sought to put on a regular footing trade and commercial relations between what had become two separate sovereign states, by setting up a kind of "Free Trade Area" incorporating the two economies. The stated objectives were the expansion and diversification of trade between the two states, the development and use of the resources of the Area, the promotion of direct investment and, in general, industrial, administrative and technical co-operation between the two states. (PACTRA Art. 2)

It is proposed in this paper to examine briefly the terms of this agreement and its operation to date. To do this effectively the agreement must be seen against the background of the pre-existing relationship between PNG and Australia which it sought to regularise. While this relationship, in turn, can be properly grasped only if it is looked at historically and in its complexity -- economic, political and social -- it will take us too far afield in a paper this length to do more than outline its main features as they have developed.

Our discussion will be broken down into three parts. Part I will consist of a brief presentation of the main features of the prime quality of the PNG-Australia relationship, namely, *dependency*. We will then take up in Part II the terms and operation of PACTRA, and in Part III give a summary and our conclusions.

PART I: PAPUA NEW GUINEA/AUSTRALIA RELATIONS

Relations between Papua New Guinea and Australia have been shaped in

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large part by Australia's historic domination of the economy and society of Papua New Guinea, and the emergence within the latter of the general manifestations of underdevelopment and dependency. It is beyond the scope of this paper to substantiate this statement at any length. A good deal of the material and the arguments in support have been adequately set out by others (see e.g. Amarshi et al.; Donaldson and Turner; Garnaut; and Utrecht)<sup>1</sup>. What we propose to do to provide a background against which to view PACTRA, is to indicate the salient features of the political economy of Papua New Guinea and the continuing role of Australian interests therein.

### Main features of PNG Political Economy

#### 1. Export-Orientation

A notable feature of the PNG economy is the fact that a large proportion of modern-sector production -- whether it be of cash crops, timber, fish or minerals -- is aimed at the export market. Indeed, one of the pillars of government policy for self-reliance and development has been, and remains, the promotion of cash crop production for export (W.B. Rep:40) and the setting up of "enclave projects", that is "very large foreign-owned project(s) involved in the exploitation of natural resources" (id. 6). By reason of the scale of production and the character of the product, such projects are necessarily export-oriented. Thus the prospects for the PNG economy are for increasing export-orientation.

This export-orientation displays in unmistakable form the distinctive character of underdevelopment and external dependency. To illustrate this let us look at Table A.

TABLE A

VALUE OF EXPORTS OF DOMESTIC PRODUCE\*  
Twelve months ended December 1980  
(K'000 f.o.b. port of shipment)

Cocoa beans	46,493	Coffee	118,695
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1 The complexities of this relationship have been fully explored in a number of major contributions to underdevelopment theory, e.g., Szentes, Pt. Two, Chap. II; Thomas, Pt. 1. *Ibid.*, and Amarshi et al., esp. Pt. 1.

TABLE A (Continuation)

Copper ore		Rubber	3,751
and concentrate	316,264	Tea	8,507
Copra	24,594	Timber, logs	30,076
Copra oil	16,610	Timber, lumber	6,058
Crayfish and		Tuna	24,656
prawns	6,560	Woodchips	7,092
Gold	7,811	Other	9,157
Palm oil	11,956		
Plywood	2,520		
		TOTAL	<u><u>640,800</u></u>

SOURCE: PNG Statistical Bulletin - Preliminary Export  
Statistics  
December 1980, (Table 1)

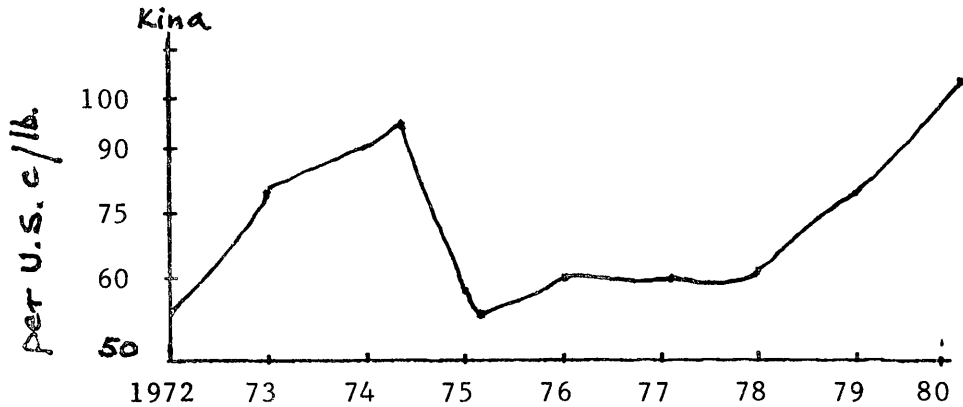
\* List excludes reexports and specifies only exports fetching over K2 million during the period.

The following features stand out:

1. Almost all items were primary products.<sup>2</sup> The only exceptions -- chopsticks, paints, plywood, veneer and woodchips -- were not particularly advanced manufactures, and in any event accounted for less than 2% of total earnings from the export of domestic produce.
2. Three items -- cocoa, coffee and copper -- accounted for over 75% of the total of such earnings (displaying the typical dependence of underdeveloped economies on the export of a limited range of primary products)<sup>3</sup>.

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2. This expression is used to describe "any produce of farm, forest or fishery, or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade": General Agreement on Tariffs and Trade (GATT), Annex 1, Ad. Art. XVI, Section B para. 2.
  3. During the copper price booms of 1973 and 1974, copper ore and concentrate alone accounted for as much as 62.6% and 68.9%, respectively, of total exported domestic produce.

3. Fluctuations in the world market price of these particular products are too well-known to warrant more than a mention here. Suffice it to say that a graph of the average copper prices for the period 1972-79 looks like this:



SOURCE: Bougainville Copper Ltd. Annual Report, 1979.

4. Though this does not appear from Table A, exports to three countries -- Australia, Germany and Japan accounted for over 75% of export earnings (a clear case of market dependency)<sup>4</sup>.
2. Import Dependency

A vast proportion of the "needs" of the modern sector of the PNG economy is supplied by imports. Thus the machinery, the technology and the fuel that move production, as well as the consumer goods that enable the new classes thrown up by "development" to begin to approximate to the level and style of living of their counterparts in the industrialised countries, are all imported. To quote from the 1976 World Bank Report:

"Papua New Guinea has one of the highest propensities to import (measured by the ratio of imports to the total value of goods and services bought) of any country in the world. The best estimate suggests that roughly half of every kina spent in Papua New Guinea is spent on an imported good or service, and this proportion applies almost equally to kinas spent by nationals and ... the

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<sup>4</sup> See PNG Statistical Bulletin: Preliminary Export Statistics, December 1980 Table 1.

expatriate population ... There is some concern that the present high import propensity may even be rising as increasing numbers of Papua New Guineans enter the cash economy". (W.B. Rep.: 113-14)

An alarming general trend in underdeveloped countries is the rapid increase in the proportion of food and other essential consumer items that become dependent on imports (see Table B.).

TABLE B

	VALUE OF IMPORTS					
	(Millions of Kina, f.o.b.)					
	FISCAL YEARS					
	1971	1972	1973	1974	1975	1980 (Jan. - June)
Food and live animals	41.5	45.4	47.7	57.4	71.4	61.6
Beverages and tobacco	6.3	6.0	5.0	4.3	5.6	4.3
Crude materials	1.0	1.0	0.7	0.8	1.2	0.9
Mineral fuels, lubricants and related materials	8.7	12.8	11.1	19.6	38.3	57.1
Animal vegetable oil and fats	0.3	0.3	0.4	0.5	0.8	0.9
Chemicals	11.4	12.7	12.4	13.6	22.9	17.1
Manufactured goods	45.8	41.4	39.2	39.0	61.6	41.2
Machinery and transport equipment	101.4	93.1	73.5	61.7	112.2	97.9
Miscellaneous manufac- tured articles	25.4	24.0	21.8	22.2	30.1	23.8
Other	9.8	16.1	13.6	6.9	9.3	15.5
<b>All Sections</b>	<b>251.6</b>	<b>252.8</b>	<b>224.7</b>	<b>226.0</b>	<b>353.4</b>	<b>320.3</b>

SOURCE: 1971-75: PNG Bureau of Statistics (reproduced from World Bank Report, 1976, Table 7.3).  
1980: PNG Statistical Bulletin: Preliminary Import Statistics, June 1980, (Table 2).

To quote the World Bank Report again:

"The largest category of consumer goods and the

one with the most persistent import growth is food and live animals, which increased 72 per cent between 1971 and 1975". (Id.: 122)

### 3. Foreign Domination of Economy

Production and exchange, especially within the modern sector, are heavily dominated by foreign capital. The process of establishing this domination started with the very first contacts with foreign traders and entrepreneurs. From the introduction into PNG of the products of European industry, through the establishment of the first copra plantations, the "discovery" of gold and the formalisation of colonial rule in 1884, this dominance was consolidated. In brief, the "modern sector" of the economy was initiated by the activities of foreign elements, and with the rise of finance capital at the turn of the nineteenth century, came to serve the needs of finance capital, through the mediation of Australian institutions.

In recent times, and inspite of political independence, foreign domination of the PNG economy has become embarrassingly obvious. According to figures put out by the National Investment and Development Agency (NIDA) in 1974, the 20 largest companies in each of three categories determined on the basis of size of labour force, output value, and book value of assets, were foreign companies (NIDA 1974). These companies were engaged in the dynamic sectors of the economy, namely, primary production for export, commerce, shipping, manufacturing, transportation, finance and services. Again, it has been estimated that 80% of the gross monetary sector was generated by, and accrued to, foreign interests, and that foreign investment "constituted 80% or more" of the private sector of the economy (NIDA 1974). Other indications of the extent and scope of foreign control of the economy are, for instance, that the proportion of land held under mining claims and mining leases by expatriates ranged from 72.9% in 1976 to 93.2% in 1974 (Summary of Statistics, 1976/77, Table 66), and that under cultivation for the principal export crops in 1973 ranged from 28.2% for coffee to 96.6% for rubber (W.B. Rep.: Table 8.3). Further, as the World Bank Report put it, "For several years almost all factory-scale investment in manufacturing is likely to be foreign or joint venture. Much construction activity (including all large projects) also will be in foreign hands for the next several years as will specialised technical and professional services". Though the data relied on above may be considered slightly outdated, there is no reason to doubt their essential validity today, particularly in view of the

PNG government's current practice of inviting and encouraging foreign investment in the almost exclusively foreign-dominated "enclave projects".

#### 4. Uneven Development and Class Differentiation

The colonial economy was characterised by the injection of capitalist production relations into pre-capitalist societies. The predictable result was the uneven development of the different elements and parts of those societies. Among the manifestations of this phenomenon the following can be isolated:

- a) a "modern sector" linked to the outside world separating off from, but living off, the "traditional sector", which continues to stagnate as a result of the essentially one-sided extraction of value from it (the urban/rural dichotomy); and
- b) the increasing definition of various social classes in both the "traditional" and the "modern" sectors, consequent on the increasing private appropriation of land and other resources and access to state services, and the emergence of a huge bureaucracy.

Superficially, this phenomenon can be grasped from a few contrasts. On the one hand advanced production processes in the factories of Port Moresby and Lae, the mines at Panguna, and plantation agriculture, and on the other hand, traditional crafts and subsistence farming; on the one side the Waigani Office complex, the top-crust residential areas and supermarkets of Port Moresby, and on the other, the surrounding villages, not to venture farther into some of the Highlands areas; on the one hand the incomes and style of life of the bureaucrats and professional people, national and expatriate, on the other, the incomes and living conditions of the vast mass of the people of the country.

An aspect of these developments of relevance to our discussion is the rise of social classes whose interests are so closely tied to the development of capitalist production relations that in the context of a PNG-type economy, they tend to favour the continuation and strengthening of the dependency relations that we have outlined above. We speak here of those indigenous people who are the prime beneficiaries of aid, loans and technical assistance projects; who partner foreign investors; who act as agents for foreign interests; who import and trade in foreign products and export to foreign bodies; and the top echelons of the public bureaucracy who thrive on budgetary

supports from abroad and who promote and service aid grants, and loans, and generally so manage the economy and the state as to preserve the status quo.

It is persons within these categories who respond most readily to the pressure of foreign capital, and who are objectively responsible for the conclusion of arrangements such as PACTRA.

#### The Australian Connection

The dependency of the PNG economy described in general terms above is in the first instance on Australia. To anyone who has ever spent any time in Port Moresby or any other major town in PNG this would need no demonstration. But should demonstration be needed it is easily supplied by a mere summary of the features of the PNG/Australia relationship.

- a) The PNG economy has to date been dominated by Australian interests. According to the latest figures put out by the PNG Bureau of Statistics, Australia's share of investment -- direct, portfolio or through institutional loans -- in the PNG economy stood at K367.4 million, or 66.6% of the total investment from all external sources by the end of June 1977 (Summary of Statistics, Table 112). These investments have, not surprisingly, been yielding the bulk of the returns on investment payable to foreign interests. As appears from Table C, Australia's share of investment income payable overseas for the period June 1969 June 1977, was never less than 80% of the total, peaking at almost 93% in 1974. That was the year of the wind-fall profits realised by Bougainville Copper Ltd. (BCL), 53% of whose shares are owned by Conzinc Riotinto of Australia Ltd. (CRA), a subsidiary of Rio Tinto Zinc of London.

TABLE C

INVESTMENT INCOME PAYABLE OVERSEAS  
BY PAPUA NEW GUINEAN ENTERPRISES,  
BY INVESTING COUNTRIES

YEAR ENDED	AUSTRALIA	U.K.	USA	JAPAN	OTHER COUNTRIES	TOTAL
	(K'000)					
1969	14,472	592	116		676	15,856
1970	18,113	1,451	216		515	20,295
1971	20,413	1,148	61		582	22,204
1972	31,258	2,429	2,199	835	276	36,992



TABLE C (Continuation)

YEAR ENDED	AUSTRALIA	U.K.	USA	JAPAN	OTHER COUNTRIES	TOTAL
	(K'000)					
1973	76,608	6,172	3,580	2,515	-700	88,175
1974	156,245	4,865	3,062	3,233	795	168,200
1975	56,872	2,051	3,897	2,486	834	66,140
1976	47,768	2,506	733	2,562	1,142	54,711
1977	47,566	3,296	1,443	3,831	2,489	59,005

- b) As is often the case this massive Australian investment is reflected in her share of PNG's imports. The latest figures put out by the PNG Bureau of Statistics reveal that Australia's share of the import market of PNG between 1973 and 1976 ranged from a peak of 51.6% in 1974 to 42.7% in 1973, while that of Japan, the second most important import source, never exceeded 16.6%. (Id.: Table 157)

It has more recently been reported that Australia's share held steady at 47% from 1977 to 1980, with Japan's rising to 19% in 1978. (Overseas Trading, 1980 : 251).

- c) Australia's dominance of commerce in PNG cannot be better summed up than was done in the World Bank Report:

"From capital goods through almost every type of durable and non-durable consumer good ... the things people saw, came to want, and could buy were things that came from Australia. They were ordered by Australian buyers, supplied by Australian suppliers, carried in Australian ships and financed through branches of Australian banks. Three large importing and distributing companies, two headquartered in Australia, and the third in Port Moresby but owned and run by Australians, distributed most imports." (W.B. Rep.: 28)

- d) Side by side with this economic dominance is an incredible degree of political and cultural dominance. This takes the form not only of personnel in top positions in government and business, in the universities and schools, but also in patterns of consumption, administration, university and school curricula, sports, etc. Not only does this cultural and political situation result from the

economic preeminence described above, but also reinforces it. For instance, the presence of a large body of influential expatriates, mostly Australian, creates the strong import demand, and biases it in favour of Australian products and processes.

- e) Perhaps the clearest indication of what we have called "the Australian connection" is the size and significance of Australia's programme of aid to PNG. To quote Michael Somare, then Prime Minister of PNG, speaking in 1979,

"When the first national coalition was formed in 1972, before self-government, 58 per cent of our budget was financed by direct transfers from Australia. Next year (1980) that figure will have been reduced to 31 per cent ... I am confident that the new agreement (to be signed in 1981) will allow us to reduce our reliance on aid in a planned and orderly way." (Inv. Rep.: 9)

Under the first aid scheme which ran from 1976 to 1980, Australia undertook to give to PNG each year in outright grants as well as payments to Australian officers working in PNG a minimum of A\$180 million plus annual supplements determined according to an agreed formula. For the year ended June 30, 1980, the total figure came to A\$223 million (Overseas Trading, 1980 : 521), accounting for about 29% of PNG's budgeted spending. Under a new agreement announced at the end of 1980, the indicative figures were:- 1981-82: A\$242 million; 1982-83: A\$235 million; 1983-84: A\$265 million; 1984-85: A\$277 million; and 1985-86: A\$289 million. These figures have been so calculated as to ensure both a 5% annual reduction of the grant in real terms (Courier 24/9/80:1; Times 26/9/80:1) and its gradual reduction as a proportion of the PNG budget. This new arrangement gives some confirmation to the World Bank observation that:

"There (were) reasonable grounds ... for believing that the country's dependence on Australian grant aid might end entirely within the next 20 to 25 years". (W.B. Rep.:6)

- f) Before leaving the question of PNG's extreme dependence on Australia, it needs to be emphasised that Australia too depends greatly upon the PNG market. This has nothing to do with the fraudulent nonsense about "interdependence",

which has recently become one of the means by which imperialism has sought to assuage the collective egos of the underdeveloped countries. The only picture conjured up by this expression is that of the rider shouting into the ears of his horse how "interdependent" they were!

We are referring here to the disproportionate role played by PNG, with its less than 3 million people, in the development and continued well-being of Australian capitalism. We need not dwell on the fact that during the period of wha' can only be described as "primitive accumulation of capital" (Amarshi P.4) in Australia, PNG constituted one of her sources: whether in the form of unequal exchange between early traders and coastal peoples, middlemen to the South Pacific-China-Europe trade, the profits of blackbirding, or the super-profits realised by the super-exploitation of "blackbirded" labour on the sugar-cane fields of Queensland.

- g) Our concern is with the current forms of dependence and exploitation. First, inspite of small size, PNG as a "captive market", constitutes Australia's 13th most important export market, and the 6th for manufactured products for 1978-79. Significantly too, PNG is reported to be the sole overseas market for a number of Australian products and companies. (Overseas Trading, 1980: 521, 522). A matter of additional importance is the fact that Australia has consistently run a favourable balance of trade against PNG because she imports so little from the latter. For the period 1973-76 this balance ranged from a low of K53.97 million in 1974 to a high of K126.75 million in 1975, averaging over K91 million per annum. That the situation has not improved from PNG's point of view is shown by PNG Prime Minister Chan's lament at the end of 1980 that "PNG was buying three times more from Australia than it was selling in return" and that "the way things (were) going ... the situation (would) continue to worsen unless something (was) done to restore the balance". (Courier, 9/12/80:1).

Emerging from this is a picture of PNG's disproportionate importance to Australia not only as a market for manufactures, but also as a boost to the latter's balance of payments position.

- h) Secondly, PNG is an extremely significant venue for the investment and operation of Australian capital. We have

already considered this from the point of view of the PNG economy. Now from the Australian view. During a decade of intensive overseas investment, Australian companies are reported to have increased direct investment overseas from A\$13 million in 1963/64 to A\$161 million in 1973/74. Significantly, PNG accounted for 50% of the total since 1967/68. Though there has been a gradual decline in investment in PNG since about 1972, it has been authoritatively stated that of the total of A\$1440 million invested by Australia in all countries in the past ten years, PNG accounts for A\$420 million, or over 20%. (Breit:269). This is not surprising since Australia, while holding just over 66% of all foreign investment in PNG, received annually, as already mentioned, over 80% of all investment income sent out of PNG. In money terms, Australian companies recovered from their PNG investments income ranging from over K20 million in 1971 to over K156 million in 1974, at an average of over K62 million per annum for the period 1970/71 to 1976/77. (Table C). When it is considered that these figures represent only investment income, i.e., dividends, profits and interest after tax, and thus do not include royalties, management fees, the fruits of transfer pricing etc., the earnings of Australian capital in PNG must be enormous indeed.

- i) Finally, on the Australian connection, attention must be drawn to a crucial consideration that will acquire greater relevance in the coming years. That is the fact that Australia herself, though now a major economic power in the South Pacific, is not an independently powerful imperial power. Indeed she has been described as a "semi-periphery" power (Amarshi:11) or "satellite industrial economy" (Crouch et al:191), that is, one exercising quasi-imperial dominance in a region essentially on behalf of U.S., European or Japanese capital. Thus while we have painted Australia as the dominant economic and political power in PNG, this image needs qualification in at least three ways:
  - 1) The Australian economy itself is subject to considerable foreign domination. This is revealed by the following estimates:
    - Up to 36% of Australian manufacturing and 67% of her mining industry is foreign-owned (Breit, 1976:265, Bosson and Varon, 1977:44; Crough et al:125; Mike-sell, 1979:35);

- 48.2% of balances outstanding in her finance companies, and 53.1% control of her money market corporations are held by foreign interests (Crough et al:176)
- Up to 70% of finance for the development of her new resources industries is foreign-owned (Times, 22/9/80:34).

Thus when we speak of Australian dominance we are actually speaking of indirect, non-Australian, dominance to something like the indicated extent. For instance, we know that though Conzinc Rio Tinto of Australia (CRA) controls Bougainville Copper Ltd. (BCL), such control is exercised on behalf of, and under the direction of CRA's parent company Rio Tinto Zinc of London.

- 2) Apart from such indirect control, the major multi-nationals are increasingly coming to the fore in the matter of direct exploitation and control of PNG's resources.

We noted earlier the PNG government policy of hinging development upon large "enclave projects". In the nature of things, projects on that scale are way beyond the capacity of Australian national capital to finance.

Thus we find mostly American, British, German and Japanese capital in all the major resource projects: copper and gold at Bougainville, Ok Tedi and the proposed Frieda River Basin development; forests products; and fishing and fish-canning.

Apart from tending to reduce Australian preeminence as to investment, this trend exposes the qualitative backwardness of Australian capitalism. For increasingly, Australian capital in PNG is being relegated to the backwaters of the plantation sector and commerce, while the giants move into the dynamic capital-intensive sectors.

- 3) Another indication of the surfacing of big capital is given by an examination of the trade patterns. Apart from the fact that the Federal Republic of Germany and Japan have each come to take almost three times as much of PNG's exports of domestic



factor to be borne in mind in assessing PACTRA.

Seen against the background of history and economics summarised above, and taken together with such Australian initiatives as the aid agreement and defence arrangements, PACTRA appears as but one of the measures by which Australia, a "mini-economic power", seeks to consolidate its control over a captive market which, left to itself, would develop tendencies to break away, and at the same time to ward off the challenges to its control posed by the real giants of imperialism.

We now turn to an examination of the terms and operations of PACTRA viewed against the background sketched above.

## PART II: P A C T R A

### A. Brief History

Beginning in 1926, when 8 categories of agricultural products from colonial Papua New Guinea were formally allowed duty-free entry into Australia under the latter's Customs Tariff (Papua New Guinea) Act, 1926, the trade relationship between the two has been characterised by concessionary treatment for the traditional products of PNG. The list of items given such treatment was added to periodically and extended to cover a few non-agricultural products. In the rare case of PNG products attracting duty, such duty was invariably lower than that charged to other suppliers, thus ensuring to PNG products a margin of preference.

Such preferential trade treatment was in violation of the basic obligation of non-discrimination in trade relations, imposed by the General Agreement on Tariffs and Trade (GATT). Thus Australia, a Contracting Party to GATT, had to obtain a waiver of the relevant obligations. This waiver, first granted in 1953 was renewed and extended periodically thereafter.

Thus by amendments to her Customs Tariff legislation and GATT waivers Australia was able to accord duty-free or other preferential treatment to virtually all her imports of PNG's traditional primary products. Though there was no reciprocal arrangement by PNG, her liberal tariff policy and most-favoured-nation treatment of Australian imports ensured that in practice up to 70% of those imports entered PNG duty-free. (Burnett and Lucas:44).

With the approach of self-government, and later independence, for PNG in the early 1970's, thought was given to the preservation of these relations over the long haul. It was felt that a special arrangement adopted and internationally-approved for regulating trade relations between Australia and her colony, one for whose development she held a special responsibility under a United Nations Trusteeship, was not likely to survive the impending independence of that colony. To deal with this problem discussions were held between Australia and officials in PNG. The outcome was a Memorandum of Understanding signed in December 1973, the object of which was to institutionalise and preserve the then existing arrangements pending more definitive negotiations to cover the post-Independence period.

The main features of this Memorandum were:

- (i) An undertaking by the two sides to establish by further negotiations their post-Independence trade and commercial relations;
- (ii) An undertaking by Australia to maintain existing preferences in favour of PNG -- namely, duty-free treatment for PNG goods listed in Part IV of Schedule 5 of the Australian Customs Tariff Act; by-law treatment for those goods so treated at the date of the Memorandum; and British Preferential Tariff (BPT) treatment for all other PNG exports to Australia. In return, a PNG undertaking to continue to accord to imports from Australia treatment no less favourable than she accords to imports from any other country; and
- (iii) An undertaking by each of the parties to consult the other whenever possible prior to taking any action in respect of trade policy which might adversely affect that other.

This Memorandum, whose operation was once extended in 1975, governed trade and commercial relations between PNG and Australia till Independence.

Meanwhile, as proposed in the Memorandum, negotiations continued between officials of the two countries. These were concerned with establishing the form that the post-Independence arrangements should take; the items to be accorded preferential treatment; protection for existing Australian, and prospective PNG, industry; and the attraction and protection of Australian investments in PNG.

The upshot of these negotiations, PACTRA, came into effect on February 1, 1977, and to that we now turn.



B. Main Features

PACTRA is constituted by the following documents:

- (i) The Agreement on Trade and Commercial Relations between the Government of Australia and the Government of Papua New Guinea -- 24 articles and 4 schedules;
- (ii) Agreed Minutes and an attachment, placing on record various "understandings regarding the interpretation and operation of the Agreement"; and
- (iii) An exchange of 8 letters in November 1976, clarifying certain matters covered by the Agreement.

We consider PACTRA in its three main aspects -- as it relates to tariffs and trade, to investments and to consultation and review.

1. Tariffs and Trade

(a) Free Trade Area

The first matter of importance is the character of the Agreement under the general notions of international trade law.

In the words of Article 3

"1. A Free Trade Area is hereby established. The Area consists of Papua New Guinea and Australia."

"2. Subject to the provisions of this Agreement, trade between the member states shall be free of duties and other restrictive regulations of commerce."

On the face of it this conforms to the GATT notion of a Free Trade Area, which requires that "duties and other restrictive regulations of commerce ... (be) eliminated on substantially all the trade between the constituent territories in products originating in such territories." (GATT Art. 24.8 (b))

As will appear below PACTRA does not even purport to eliminate all restrictive regulations of commerce in PNG-Australia trade. Article 3 is qualified by a long list of PNG products and potential products, set out in Schedules A and B and the

attachment to the Agreed Minutes, in respect of which Australia has imposed, or reserves the right at any time to impose, duties and other restrictions on importation. More significantly, PNG did not remove a single Australian product from her tariffs list. Indeed, by setting out the whole of her tariff in Schedule C, which is supposed to list Australian goods in respect of which PNG is free to impose duties, PNG gave Australia customs treatment no different from that given "non-member" states.

To be sure, a substantial proportion of trade between the parties has always been duty- and restriction-free -- ranging from 96.2% to 99.6% as to PNG exports to Australia and from 76.9% to 78.5% in the reverse direction in the 1974-78 period. But this had more to do with the liberal tariff policy of PNG and her colonial relations with Australia than with any Free Trade Area idea. Moreover, the explicit reservation of such a substantial list of products from free trade treatment under Article 3 would appear to contradict the very heart of the Free Trade Area concept.

On this ground there was considerable reluctance at the GATT to approve this arrangement as a Free Trade Area within the terms of Article 24 of the GATT. In light of the special relationship between Australia and PNG, and because of differences among the contracting parties, the waiver was finally allowed, but on condition that Australia reported back to the GATT every two years. (Burnett and Lucas: 439-40).

It might be noted here that it was found necessary to put this special PNG-Australia trade arrangement forward as a "free trade area" within Article 24 of the GATT because that was considered the least troublesome method for ensuring non-violation of the most-favoured-nation treatment required by Article 1.

(b) Coverage

In the terms of Article 3 of PACTRA, all trade between PNG and Australia shall be free of duties and other restrictions, "subject to the provisions of (PACTRA)". In order to determine the limits of this freedom of trade, and thus the true coverage of the PACTRA, it is therefore, necessary to consider many provisions, in particular the various "exceptions" and the schedules of goods exempted or exemptible from free-trade treatment.

(i) Australian Exports to PNG

PACTRA provides in Article 5.

"(c) the goods specified in Schedule C to this Agreement when imported into (PNG) from Australia, shall be subject to the rate of import duty specified from time to time in the (PNG) Customs Tariff as being applicable to Australian goods."

Schedule C reproduces the PNG customs tariff, but since that tariff applies one set of duty rates to imports from all countries, *including Australia*, the concluding phrase in Article 5(c), "as being applicable to Australian goods", is without substance. Thus, neither under the PNG Customs Tariff, *nor under Article 3* of PACTRA, do Australian goods obtain any special treatment upon importation into PNG.<sup>6</sup>

While Australia thus gets no *special* treatment under the PNG Customs Tariff,<sup>7</sup> she, in common with all other exporters to PNG, gets the benefit of the low-tariff policy of PNG. The point then is that such liberal treatment is *not* special to Australia and *does not arise out of Article 3 of PACTRA*. The importance of this last point will become more apparent when we come to interpret other parts of the Agreement.

However, any impression that Australia obtains no trade advantages from PACTRA needs to be corrected immediately. In the first place, PNG undertakes to accord most-favoured-nation treatment to Australia. (PACTRA Art. 7). As far as concerns the discussions at this stage, this means that Australian imports are entitled to "treatment no less favourable" than

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6 Tentative enquiries about reciprocal preferences for Australian goods were promptly dropped for two main reasons. It was felt that a "reverse preference" in favour of a developed country would make it impossible to get the Agreement past GATT. Again, under the United States Trade Bill, s. 504(b)(2), PNG would lose its status as a beneficiary country under the U.S. General Scheme of Preferences.

7 In colonial times, the Australian Administration extended a 10% preference to Australian suppliers of Government purchases. This advantage over other suppliers no doubt boosted Australian exports to PNG.

that accorded to goods of any third country. Thus PNG has forgone her right to impose on Australian goods special obligations that she does not impose on goods from other countries, except in accordance with PACTRA. Further, should PNG give any special treatment to any third country, Australia is automatically entitled to claim similar treatment, unless the matter falls within stated exceptional situations. (PACTRA Article 7.2).

Secondly, the setting out of the PNG Customs Tariff in the schedule makes it, as far as concerns Australian goods, a part of PACTRA, and therefore variable only to the extent and in the manner provided thereunder. It is provided that PNG may unilaterally alter the "rate of import duty" applicable to the items specified in the Tariff and therefore the Schedule. However, there is no such right of unilateral variation as to the items covered. This can only be done under Article 22.3, which provides for the variation of the Schedules.

"... at anytime by *mutual consent* of the relevant authorities of each Member State."

Thus, should PNG impose a duty on an item not included in her Customs Tariff at the date of the Agreement, then unless Australia consents to the modification of Schedule C to include that item, the application of the new duty to Australian goods will be in violation of PACTRA. In view of the rather liberal tariff policy of PNG, which allows the duty-free importation of most goods, and the fact that Australia is the chief supplier of a large proportion of those goods, this represents a serious limitation on PNG's fight to tighten up her policy and bring more items effectively within her tariff system.<sup>8</sup>

(ii) PNG Exports to Australia

When we turn to PNG exports to Australia, we note right off that PACTRA continues the concessionary treatment accorded the traditional PNG products by Australia for decades before Independence. Thus, under normal circumstances, PNG products not listed in Schedule A or B, enter Australia free of duty and other restrictive regulations as provided for under Article 3.

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8 There is, of course, a fair amount of room for manoeuvre under the permitted exceptions. But in practice too frequent recourse to such exceptions would tend to undermine the entire agreement.

As to products so listed they enter subject to such restrictions as are there indicated -- goods in Schedule A being subject to duty at rates specified from time to time in the Australian Customs Tariff as being applicable to PNG goods and to such quantitative restrictions as Australia may deem appropriate (PACTRA Art. 5(a); Minutes, para. 10) while those listed in Schedule B are made subject to rates of duty and other regulations specified in the Schedule. It should be added that Australia has under the "Agreed Minutes" reserved the right unilaterally to include in Schedule A a long list of potential PNG products attached to the Agreed Minutes, where by reason of Article 3 their importation poses a threat to competing Australian industry. (Minutes, para. 4 and attachment)

Upon closer examination of the provisions two important features emerge.

1. Subject to important qualifications to be examined later, the traditional raw unprocessed products of PNG enter the Australian market free of tariff and non-tariff restrictions. This free access is shared by PNG with all other suppliers in respect of raw coffee, cocoa beans, tea, copra, coconut oil, and palm oil, among items of export interest to PNG. As to other exports such as timber, frozen fish, frozen crayfish and peanuts, PNG has a special advantage in that while her products enter free of duty or other restriction, all other exporters, except New Zealand, attract import duty and other restrictions. It must be noted, however, that this special advantage is strictly limited in practice, since the only item of current export importance to PNG in that category is timber.<sup>9</sup>

Even where unprocessed PNG exports are subject to duty, they attract duty at the lowest rate payable by all but New Zealand suppliers. This margin of preference is of particular value to PNG producers since it enables them to outcompete suppliers from other underdeveloped countries who may be able to produce more cheaply than PNG.

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9 For the year ended December 1980, timber exports to Australia brought in K2,302,162, Barramundi K413,540, and the others are not even listed: PNG Statistical Bulletin: Preliminary Export Statistics, December 1980, Table 1 (See Table A above).

Coffee and rubber are accorded very special treatment outside PACTRA, under special by-laws dating back to the 1950's. Under these by-laws Australian importers are permitted to import raw coffee duty-free from any source they choose, provided they take at least 30% of all their raw coffee requirements from PNG. In similar vein, Australian rubber importers can avoid payment of import duty on their raw rubber imports by showing that they have accepted all PNG raw rubber on offer. By these means, not-so-gentle pressure is put upon Australian manufacturers to obtain their raw coffee and rubber from PNG, thereby giving the latter a guaranteed access to the Australian market for those products.

In sum, whether under PACTRA or under the by-laws, unprocessed goods from PNG have privileged access to the Australian market -- an encouragement to PNG exporters of unprocessed goods.

2. The picture is quite different when we turn to processed goods. For here Australia is more concerned to exercise control over what enters her market and how much of it. PACTRA therefore reserves to Australia the right to control unrestricted and duty-free access of processed products to her market. These reservations are set out in Article 5(a) and (b), and Schedules A and B, of PACTRA, and the Agreed Minutes, paragraphs 4 and 10, and the attachment.

Article 5 provides that notwithstanding Article 3 (which allows for general duty- and restriction-free entry for PNG goods),

- (a) PNG exports listed in Schedule A attract such duty as is provided in the Australian Customs Tariff from time to time; and
- (b) those listed in Schedule B are subject to the tariff and non-tariff treatment therein indicated.

Under the Agreed Minutes, Australia has the right unilaterally to expand Schedule A by incorporating in it any item out of a long list attached to those Minutes. She is further entitled to impose on any item in Schedule A quantitative restrictions consistent with her other international obligations, upon informing PNG of her intention to do so and providing an opportunity for consultations,

if the urgency of situation permits it. (Minutes, para. 10).

The significance of these reservations can only be gauged by noting the category of products they cover. Chief among the items covered by Schedule A and the attachment to the Agreed Minutes, being of current or potential export interest to PNG, are: prawns, processed coffee, canned tuna, frozen fish, preserved fruit and vegetables, fruit juices, peanut oil, coconut oil, palm oil, tobacco, copper products, and wood products. Under Schedule B we find only two items: passion fruit pulp and juice; and plywood. Passion fruit pulp and juice enter duty-free up to quantities of 273,000 litres single strength equivalent per annum. Plywood (moisture resistant, excluding plywood covered with any other material) is allowed in duty-free up to quantities of 7.1 million square metres on a 1 mm basis per annum. Above these limits these products attract duty at the rate specified in the Australian Customs Tariff.

What is common to the products mentioned in the preceding paragraph is the fact that they represent the first stage of manufacture of traditional PNG raw materials. They are products in respect of which PNG, because of her material and historical conditions, could be said to possess a comparative advantage. Thus the natural "next step" in industrial development in PNG would seem to be a move in the direction of processing those very products. It is widely acknowledged that because of the smallness of the local market and the relatively high cost of her labour, privileged access to the Australian market is a condition for successful development of this processing potential. This is based on the assumption that such access, by widening the market for such processed products, will enable PNG producers to take advantage of economies of scale and reduce the unit costs of their products, making them potentially export-competitive. Further, that such prospects will provide an incentive to foreign investors to come in and help develop PNG industry.

The rub is that these very prospects pose a threat to Australian interests in three main ways:

- PNG industry would compete with Australian industry for access to cheap PNG raw material sources;
- PNG products would tend to displace Australian

exports of competing products on the PNG market;  
and

- to the extent that they become export-competitive, PNG products would tend to challenge the products of Australian industry not only in its other traditional Pacific Island markets, but even in Australia herself.

This contradiction between Australian industry and true PNG development, though nowhere explicitly adverted to, though probably not fully appreciated in all its fundamentals by the PNG officials, nevertheless pervades the various compromises struck throughout PACTRA. Some of these will be pointed out as we go. But on the immediate question of tariff and non-tariff provisions, the compromise struck was that while PNG traditional products could go on enjoying traditional concessionary access to the Australian market, Australia reserves the right to regulate access in the case of so-called "sensitive" products.

c. Exceptions

After setting out the positive provisions outlining the Free Trade Area and its general scope, and providing for the suspension of obligations by mutual consent, the Agreement sets out a series of exceptional conditions under which a Member State is entitled ultimately to depart from its positive obligations to the extent necessary to defend or restore fundamental interests threatened or damaged in the implementation of those obligations.

(i) "Public Policy" Reservations (Article 8)

Each member state reserves the right to adopt and enforce such measures as it finds necessary for the defence of its territorial integrity and security, public health and morals and, generally, its public policy goals, to the extent that "such measures are not used as a means of arbitrary or unjustifiable discrimination, or as a disguised restriction on trade between member states". (PACTRA Article 8). The headings specified as falling within this reservation are the same as those set out in Articles 20 and 21 of the GATT, with the addition of measures for the prevention of disorder or crime; regulation of the use of the Royal Arms, flag, etc.; the protection of indigenous flora and fauna; and safeguarding of a Member State's external financial position and balance of payments.

(ii) Safeguard Provision (Article 9)



Where a Member State considers that as a result of privileges conferred under Article 3 goods are being imported into its market from the other state in such amounts or under such conditions as to cause or threaten serious injury to its industry, existent or projected, it is entitled to initiate discussions with that other state with a view to containing the situation.

Should these discussions fail to yield a mutually acceptable solution within 60 days, the importing Member State is entitled, after giving due notice, unilaterally to suspend the application of Article 3 to the goods in question to the extent and for as long as it considers necessary. (PACTRA Art. 9).<sup>10</sup>

This so-called "safeguard" provision recognises the futility of insisting on full implementation of an agreement which is causing or threatening fundamental injury to the economy of one of the parties, and attempts to minimise the danger of long-term damage to the whole agreement. This it does by imposing an obligation of consultation with the right of the threatened party ultimately to take unilateral remedial action. This way there is a chance that the matter may be resolved by mutual consent. Failing that, the remedial action is in any event more likely to be seen as temporary and not aimed at the entire agreement.

On the face of it this provision appears to avail PNG and Australia equally. Slight reflection reveals, however, that it is really intended for the protection of Australian industry. In the first place, we note that Article 9 operates only if the threat results from importation "as a result of the operation of Article 3". But since, as we have argued earlier, Article 3 gives Australia no particular advantage, it is difficult to see how Australian exports into PNG can be said to be causing problems, as a result of Article 3, and thus under what conditions Article 9 can be invoked by PNG.

On the other hand, should PNG go in for manufactures not caught in Schedules A or B or the attachment to the Agreed Minutes, then such products could enter unrestricted by virtue of Article 3. There is no doubt that this provision was framed

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10 Subject to the mfn requirement that the other party be treated no worse than any third country within the terms of Article 7.

this way - inspite of the appearance of balance.<sup>11</sup>

(iii) Special Protection for PNG industry (Article 10)

In order to protect an existing primary industry or foster the development of one, PNG is entitled to suspend her obligations under Article 3, and therefore impose new duties, increase existing ones or impose quantitative restrictions on the "offending" imports from Australia. Unless delay would cause irreparable damage, PNG is required to give Australia 60 days notice prior to taking such action and in any case to enter into discussion as soon as practicable with a view to finding a mutually acceptable solution to the problem.

Whereas Article 9 protects Australian industry, Article 10 protects PNG Industry. A theoretical advantage of Article 10 is that PNG need not wait for Australian imports "to cause or threaten serious injury" to its industry, nor need it consult *before* taking action under Article 10. Again, PNG is not, in terms, required to suspend its Article 3 obligations only "to such extent and for as long as necessary" to meet any particular problem. Thus, technically PNG may, without prior consultation, impose or increase any duty or other restriction on the importation of any product of Australian primary industry for as long as it chose, subject only to the obligation to enter into consultations, "with a view to finding a mutually satisfactory solution to the problem". (*Ibid.* Art. 10)

This provision has been invoked to impose a quota on rice imports, a 30% import duty on fresh vegetables and temporary restrictions on the importation of frozen poultry.

Whatever the coverage of Article 10, the significant feature is that whereas Article 9 can be invoked in defence of *any* industry in the importing state (in this case Australia), Article 10 can only be invoked in defence of *primary* industry in PNG. Can PNG invoke Article 10 to protect a future laundry soap or electronics industry?

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11 It must be noted that as an alternative to the invocation of Art. 9, Australia is permitted unilaterally to add the "offending" products to Schedule A and even impose non-tariff restrictions if she chose: Agreed Minutes, paras. 4 and 10, provided always that she observes the mfn requirement of Art. 7. It should be further noted that while action under Art. 9 is necessarily temporary amendment of the schedule may be permanent.

(iv) Deflection of Trade (Article 11)

Goods may be produced in State A using raw materials or intermediate inputs imported from outside the Area, that is outside PNG or Australia. Such raw materials or inputs may be subject to rates of duty significantly lower than the rates in State B, or entitle the importer to drawback, exemption or remission of import duty in State A. Again, such raw materials and inputs may be unusually cheap as a result of dumping from outside the Area or subsidisation in State A. Where such raw materials or inputs are used in the production of any goods which are then exported to State B as "free goods" i.e., free from duties and other restrictions pursuant to Article 3 in such manner as to threaten or injure State B industry, then the latter is entitled to request consultations with State A with a view to finding a way around the difficulty. Should the parties fail to arrive at a mutually acceptable solution within 60 days, State B is entitled after due notice to State A to suspend the application of Article 3 to those goods to the extent and for as long as necessary. (PACTRA Art. 11)

It is not too clear what this provision adds to the safeguard provision of Article 9 for it would appear that in every situation covered by Article 11, the importing state can invoke Article 9, though the reverse is not necessarily true.

But putting aside such considerations for a moment, what is the ambit of this provision? In the absence of significant manufacturing industry in PNG to be threatened by Australian imports cheap *because of* subsidised or otherwise favoured importation of raw materials or intermediate inputs, it is difficult to envisage circumstances under which PNG would be able to invoke this provision. In any event, since Australia at the moment exports to PNG no "free goods", the provisions of Article 11 are inapplicable to Australian exports to PNG.

On the other hand, it is entirely conceivable that PNG, in order to foster the development of infant industry or promote exports, may take measures to assure to certain industries cheap inputs or rebates of duty, etc., upon exportation of their products. If this results in the export to Australia under Article 3 of competitively-priced products, Australia could promptly invoke Article 11.

Here again, inspite of the appearance of equal access for both parties, Article 11 onesidedly favours Australia (to the extent that it is not made redundant by Article 9).

(v) Subsidies and Dumping (Article 13)

Goods from State A are said to be *dumped* in State B where they are sold in the latter state at prices below what they fetch in the exporting State A. Under Article 13 where a member state considers that goods are being dumped in its market by the other, or subsidised by the latter, so as to cause or threaten injury to industry in the former consultations may be called for.

If a mutually acceptable solution does not emerge within 60 days, the importing state is entitled, in derogation of her obligations under Article 3, to levy dumping or countervailing duties, on those goods, that is to impose on them a special duty in such amounts as would bring the price of the offending imports on the local market to something like the price they would have been sold at but for the dumping or subsidy.

On this, only two points need to be made. First, Article 13 is likely to benefit Australian industry, since subsidies and dumping in PNG-Australia trade are more likely to result from PNG's attempt to build up or protect new industry, or attract new investment, than the other way round.

Secondly, Article 13 entitles a Member State to derogate from Article 3 to the extent necessary to impose a countervailing duty. But does it also enable it to derogate from Article 7 which entitles the other State to treatment no less favourable than that accorded any third state? In other words, can the importing state impose on goods from the other state an extra duty, under Article 13, which it does not impose on the same or similar goods from third states, without violating the "most-favoured-nation" provision of Article 7?

On the face of it the "offending" state would be entitled to insist that under Article 7, the importing state cannot impose a countervailing or anti-dumping duty on the former's products unless the duty applies equally to all similar products of all third states. This would enable the "offending" state to retain its "margin of dumping" over other suppliers in the market of the importing state, while giving the latter's products the necessary protection. Since Article 13 is directed to the protection of industry in the importing state this result, unsatisfactory as it may sound, seems inescapable.

If it is the intention that countervailing or anti-dumping duties penalise only the "offending" products, this would need

to be spelt out by, for instance, making the operation of Article 7 subject to Article 13.

d. Most-favoured-nation (MFN) Treatment

We have referred several times to Article 7 and the requirement that each Member State accord to the products of the other state treatment no less favourable than it accords to like products of any third state.

Article 7 adopts essentially the formula laid down in the GATT, extending mfn treatment to customs duties, the methods and formalities for their collection, and internal charges and regulations. (GATT Art. 1). To these Article 7 adds restrictions on importation or exportation of goods, and the allocation and administration of foreign exchange. Thus in relation to all these matters, and subject to exceptions indicated below, Australia is entitled to any benefit or advantage enjoyed in PNG by any third state, and PNG to any enjoyed by any third state in Australia.

Excepted from this requirement of mfn treatment are advantages granted

- (i) to facilitate border traffic;
- (ii) by a Member State to other states with which that state forms a Free Trade Area or Customs Union;
- (iii) specially to underdeveloped countries; or
- (iv) in consequence of obligations under a multilateral international commodity agreement (PACTRA Art. 7.2)

e. General Observations

We pause to reflect briefly on the lessons of our study so far. The first lesson is that the trade and tariff provisions of PACTRA provide a positive inducement to PNG to continue with the production of her traditional raw materials for export. This is the expressed purpose of the concessionary treatment accorded such exports. It also provides for Australia an assured supply of cheap food and raw materials for her industry.

Not so neat is the situation of processed products from PNG. Here the contradiction between PNG development and Australian interests begins to surface. True development of the PNG economy calls for the increased local processing of PNG's raw material products for home consumption and for export. We

saw earlier how any such development threatens Australian industry.

To deal with this contradiction, such provisions of PACTRA as we have considered so far seek to leave in Australian hands a large measure of control over the directions in which PNG industry is to develop.

How does this work? As we have already indicated access to the Australian market, preferably on concessionary terms, is under present conditions an important condition for the viability of PNG industry, at least in its infancy. Thus, by regulating and restricting this access in the case of manufacturing industry, while encouraging it in the case of unprocessed goods, Australia has the power through the manipulation of its tariff and import policy generally to bias PNG production away from "sensitive" products, and keep it within "safe" traditional channels.

The manipulation works not only through Schedules A and B and the attachment to the Agreed Minutes, but also through the exceptions in Articles 8, 9, 11 and 13, which as we have indicated, give Australia power, consistently with PACTRA, to move to protect her sensitive industry against threats by PNG manufactured products sneaking in under the protective umbrella of preferential tariffs.

In the circumstances, one might well ask, what kind of "development" can PNG expect under PACTRA? More of the same -- dependent "development"?

## 2. Investment

The second major aspect of PACTRA concerns the attraction and protection of Australian private investment in PNG. We have discussed at some length the size, the nature and the current importance of Australian private investment in PNG. It is the case, however, that the rate of Australian investment in PNG has in recent years been on the decline -- \$51 m in 1975-76, \$26 m in 1976-77 and \$25 m in 1977-78. (Inv. Rep.:4)

Among the many reasons that could be given for this are: A "natural" reaction to the unusually intensive overseas investment activity in the decade 1963-73 (Breit 269; Good: 76), increased scope within Australia itself for profitable investment in the natural resources industries, and to some extent, a hardening of government policy on foreign investment (Breit). This has led to the convening of a rather

expensive seminar in Melbourne, Australia "to review opportunities for investment in Papua New Guinea" and obviously to promote such investment. PNG therefore wishes to encourage Australians to invest in her economy.

For her part, Australia, while wishing to push such investment efforts, is conscious of the challenge to her preeminent position in the PNG economy. This challenge comes from the non-Australian multinational corporations, and is concentrated in the so-called priority sectors of the economy. For this reason Australia is concerned to ensure that her influence on policy-making in PNG is not eroded to such an extent that her capital is put at a disadvantage as against other capitals.

A second concern of Australia is to ensure that investment generally in PNG goes into areas that complement, rather than threaten competition to, Australian industry. In the negotiations leading up to the drawing up of PACTRA it seems to have been assumed by both sides that PNG would press ahead with the "enclave strategy" of development, and thereby focus on raw material production on a large scale, rather than move seriously in the direction of true industrialisation. (Burnett and Lucas: 438; Fifth N.I.P.S.). This assumption is somewhat subverted by statements such as that made by PNG Prime Minister Chan in a speech to Australian businessmen at a Canberra luncheon inviting them to "promote manufacturing industries in PNG and sell the products back to Australia". (Courier, 9/12/80:1)

These concerns to PNG and Australia underlie the provisions of Article 14 regarding Australian investments. Thus in the first place, PNG undertakes to draw to the attention of Australia "those specific fields of development in which it would particularly welcome Australian investment", while Australia undertakes to "endeavour to interest and encourage Australian enterprises to participate in those PNG-specified fields except where such investment would not be in the interest of both countries". (PACTRA Art. 14.2 - emphasis added).

The emphasised words in the quoted sentence lead us to our second observation, that is the extent to which Australia wishes to retain control over the kinds of investment that are made in PNG, at any rate by Australian capital. For when investment in fields specifically indicated as appropriate by PNG is considered "not in the interest of both countries", does it not mean, "not in the interest of Australia?" Australia thus makes it clear that she does not intend to encourage the investment of Australian capital in areas of the PNG economy that she considers against her interest, even if they are areas PNG considers essential to her development.

While this posture of Australia is neither too surprising nor too outrageous, what of the general oversight she acquires under Article 14.3? That provision reads: -

"In relation to a proposed investment in Papua New Guinea which might result in the export of free goods to Australia, the Member States recognise the need for prior consultations on any matter which might affect the export to Australia of those goods. It shall be a matter for the Papua New Guinean Government to determine whether or not such consultations should take place."

Given the fact, already adverted to, that privileged access to the Australian market was seen by PNG officials as a condition for viable secondary industry, this provision means that any proposed investment, whatever its origin, in secondary industry in PNG must be subject to Australian oversight prior to its implementation.<sup>12</sup> This is so because should PNG exercise her supposed discretion to withhold discussion, Australia could threaten to exercise her discretion to shut out the products of the proposed industry under any of the many qualifications to the operation of Article 3 noted above.

Thus in practice PNG is obliged to keep Australia posted about any proposed investment in any secondary industry with any potential for producing for export to the Australian market. This gives Australia the opportunity not only to discourage such investment if its products could present any threat to Australian industry, but probably to press the case for Australian investors on the basis of inside information about the proposed investment. Should all this fail, and the non-Australian investment go ahead, it still enables Australia to devise appropriate defences to the threat by means of tariff or non-tariff measures, or if this does not avail, at least to give the threatened industry advance warning to enable it to take appropriate remedial action.<sup>13</sup>

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12 This oversight extends beyond foreign investment. In the words of the National Public Expenditure Plan, 1980-83 "... PNG and Australian Government officials consider that there is much to be gained by instituting an annual review of development policies and programmes in PNG by senior officials from both countries ... the Australian Government needs to be fully aware of the whole range of PNG development policies and NPEP programmes, all of which are partly financed by the Australian grant". Not a hint of potential conflict between the interests of the two countries! I am grateful to Sao Gabi for bringing this statement to my attention.

13 Indeed this was one of the reasons given by the Australian negotiators for wanting this provision in.



Our third and final observation on the investment provision concerns Australian insistence that her investments attract "treatment no less favourable than that accorded to the investment of any third country". (PACTRA Art. 14.4). Early on in the preliminary thinking about a trade agreement, one of the options considered by PNG officials was the possibility of extending to Australian investors special privileges. This was seen as a way of overcoming the expressed uneasiness of some Australian producers at the prospect of PNG manufactures entering the Australian market under privileged conditions and outcompeting local industry. But the idea seems to have been given up in favour of that of most-favoured-nation treatment for Australian investment.

This provision if unqualified would mean not only that no Australian investor could be subjected to any exactions or limitations not demanded of all other non-Australian investors, but that any new advantages to any such investor enures immediately and automatically to the benefit of all Australian investors in a comparable situation. Controversy arose over whether incentives granted to attract new investment would extend to existing and long-established Australian investment; whether special incentives extended to investment, say, to get it to locate outside the Port Moresby/Lae industrial centres will automatically extend to existing or new Australian industry in those centres.

As finally drafted, the provision retained the ambiguity of a compromise. It reads:

14.4 "Papua New Guinea will accord to Australian investment, in accordance with Papua New Guinea laws and related policies, treatment no less favourable..."

But this ambiguity is largely removed by an exchange of letters in November 1976, which purported to set out the PNG policies on foreign investment, in light of which the mfn provision was to be interpreted. The relevant elements of these policies were

- that investments will be evaluated each on its own merits, taking into account such matters as employment potential, local content or location;
- incentives and other conditions will turn on the characteristics of specific projects rather than their nationality;
- additional incentives, granted to encourage new investment in an industry, may be denied existing investments in the same industry.

This seems to reduce Article 14.4 to no more than an assurance that Australian investors will suffer no particular disadvantage on the ground of their being Australian. If this were all, it would still be quite worthwhile.

But given the position of Australia in the PNG economy and bureaucracy — not to mention the huge grant-in-aid; the defence pact and the tariff concessions in PACTRA — it would be unrealistic to expect such a limited interpretation in practice.<sup>14</sup> What is likely is that upon the request of Australia that an advantage granted to a non-Australian investor be extended to Australian investors in the same industry, PNG would be hard put to it to make and sustain a distinction which would justify a refusal of the request.

### 3. Consultation, Review, etc.

In order to ensure the smooth operation of PACTRA provision is made for a general annual review. At such a review each member may raise for discussion "any matters related to the implementation of the Agreement or bearing on trade or commercial relations between the Member States." (PACTRA Art. 22.1)

To illustrate the kinds of matters dealt with at the Annual Review, let us look briefly at the main items covered at one such session.<sup>15</sup> After noting that PACTRA had operated satisfactorily since the previous Review, the matter of the removal of canned tuna from Schedule A was considered. PNG proposed, and Australia agreed, that though duty-free treatment had been extended to canned tuna, substantive discussions be deferred till the proposed PNG tuna processing plant was further advanced.

Later, the PNG delegation briefed the Australians on their import-replacement programme, outlining the items likely to come under some form of import restriction. In response the Australian delegation, noting PNG's policies and intentions, asked that Australian industries which have had satisfactory commercial relations with PNG be

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14 Recently, the Government of the Federal Republic of Germany concluded an investment protection agreement with the PNG government, in which it extracted important concessions about the treatment of German investments in PNG. No doubt the Australians noted the negotiations and the agreement with interest.

15 Third Annual Review, held during September 18-20, 1979.

given ample warning to reduce the impact of any loss of their markets.

They then suggested a programme of voluntary restraint by Australian exporters; differentiation between geographical markets and attention to seasonal purchasing. They also drew attention to the difficulties caused to Australian producers by PNG's import licensing systems as applied to flour, stockfeed and poultry.

Finally, Australia gave an assurance that no development in the New Zealand/Australia Free Trade Area (NAFTA) would detract from the benefits obtained by PNG under PACTRA.

In addition to the Annual Review, we have already noted the many situations in which consultations are called for. Thus consultations were held in June 1976 under Article 3 of the Memorandum of Understanding on PNG's restriction on the importation of frozen poultry. At this session the PNG delegation reported that as a result of unexpected internal marketing problems PNG had been forced in effect to prohibit the importation of frozen whole chickens into the Port Moresby, but *not* the Lae or other markets, where importation is regulated by a licensing system. It gave the assurance that the situation was expected to correct itself within a few months, when the prohibition would be removed.

The Australian delegation, while expressing its respect for PNG's desire for self-sufficiency in the frozen poultry industry, doubted if prohibition was the most desirable method for achieving it. It warned that should the surplus turn into a short-fall it would not be easily met by Australian suppliers.

Ultimately, agreement was reached on the following matters:

- every effort must be made to avoid further disruption in the frozen poultry industry in both countries;
- frequent consultations should be held between government and industry representatives;
- industry representatives were to consult regularly on developments in the PNG market;
- the parties accept PNG's aim of self-sufficiency in poultry production;
- there being scope for growth in the PNG market, the two industries were to co-operate closely in

expanding the market for poultry products.

A later consultation, this time under Article 10 of PACTRA, was concerned with PNG's ban on the importation of certain fruits and vegetables. While acknowledging PNG's policy of moving towards self-sufficiency, the Australian delegation noted that the implementation of the then recent decision to ban imports of certain fruits and vegetables would have an impact on the traditional Australian suppliers. It suggested what it called a phase-in, phase-out arrangement, with PNG giving adequate notice of each phasing step. It further suggested that consideration be given to setting up a special arrangement for Australian suppliers, especially in times of shortfalls in PNG production. It then offered to discuss with the Australian producers the idea of voluntary restraint where appropriate.<sup>16</sup>

We have not had access to reports on all the reviews and consultations held by the parties under the Memorandum of Understanding and PACTRA, and so are in no position to do more than draw tentative conclusions about their nature or their impact.

However, the instances referred to above show a fairly consistent and predictable pattern. In the first place, the reviews enable the parties to keep each other informed of developments in their policies and practice, and of their concerns about movements within their relationship. In the second place, we see Australia using this special relationship to minimise injury to the interests of her producers in the PNG market resulting from PNG's attempt to build up her own industry. Generally, we see Australia moving to press the case of her industry in the privileged atmosphere of bilateral talks.

### PART III: SUMMARY AND CONCLUSIONS

It has been argued that the special relationship that has existed between Australia and her erstwhile colony, PNG, is under threat. Viewed from the perspective of its impact on PNG, this threat arises from two developments. The first is the tendency of the PNG economy to move away from its dependence on the Australian. This tendency has two sources: the pressure of the dominant classes within PNG society for greater control of the national economy and the related pressure to move the economy out of exclusively primary production

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16 In the end a 30% duty was imposed on the importation of fresh vegetables. This has been attacked by, among others, Finance Minister John Kaputin, who would like it removed (Post Courier 2/9/80:16), and defended by others including the Deputy Leader of the Parliamentary Opposition (Post Courier 5/9/80:2)/

in the direction of increasing local processing. The second development is the increasingly direct appearance in the PNG economy of the giant monopolies of Japan, Germany, the U.K. and the U.S. To some extent the presence of these giants is not new, in that by their control over Australian capital they have been indirectly on the scene for sometime. The new feature is the directness of their penetration by means of large-scale projects, the export of manufactures, and, predictably, in relation to the service and other sectors of the economy.

It is our contention that PACTRA should be viewed as one of the measures by which Australian capital has sought to maintain its hegemony over PNG's economy and society. Other measures are the specially "generous" aid agreement, the various technical support programmes and the military cooperation arrangement.

Turning to PACTRA itself, it seeks to preserve the essence of the commercial relations developed between Australia and PNG. This it does by encouraging the concentration of PNG economic activity in the area of primary production for export as a complement to manufacture in Australia. Recognising that the tendency towards increasing local processing in PNG cannot be forever stayed, PACTRA makes it possible for Australia, by tight control and manipulation of access to her market for PNG manufacturers, and a general oversight over investment in PNG, to slow down and minimise the real threat to Australian manufacturing interests.

Thus, while PNG primary products enter the Australian market duty-free or with a decided margin of preference over all other suppliers (except New Zealand), Australia has retained the right to regulate the entry of PNG processed products. Again, by reserving the right to determine the areas of the PNG economy in respect of which she will encourage or discourage her investors, Australia is in a position to influence PNG's industrial development in her favour.

As to the threat from non-Australian capital, there is little that PACTRA could do. But that little it did do, by providing that Australian investments be given treatment no less favourable than that given investments from any third countries by requiring that Australia be consulted whenever any proposed investment, from whatever source, is liable to produce goods that would seek entry into the Australian market; and finally, by giving Australia privileged access to PNG officials in the many consultation and review sessions provided for in PACTRA.

What is one to make of all this?

First, that by itself PACTRA, as a legal document can do little to

stem the tide of change that threatens the fundamental character of the relationship between PNG and Australia. Thus the pressure towards increased national control over the PNG economy and increased local processing will continue and become stronger, as will the displacement of Australian capital in the dynamic sectors by non-Australian capital.

Secondly, however, that the underlying and historic reality of the PNG/Australia connection, reinforced by such initiatives as PACTRA, will tend to extend the life of the Australian hegemony -- without guaranteeing its immortality.

Finally, that while the dependence of PNG's economy on Australia, in spite of PACTRA and the other initiatives, declines more or less slowly, its "dependency" continues. Indeed, that given present trends, PNG will only "graduate" from dependency through the mediation of backward Australian capital to dependency directly on finance capital, represented by the multinational corporations based in Japan, the U.S., U.K., and Germany.

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