



# **Implementation of Article 37(4) of the Cotonou Agreement**

## **Provision of technical support to assist the Pacific ACP Region in the Review of EPA Negotiations**

### **Draft Interim Report**

**Submitted to:  
Pacific Islands Forum Secretariat**

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\*The views expressed in this report are those of the author only and should not be attributed to the Pacific Islands Forum Secretariat or to ECDPM, which is an independent and non-partisan foundation working on ACP-EU relations and development policy.

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## Executive Summary

The overall work programme for EPA negotiations established by PACP and EU through the Joint Road Map is behind schedule and the outlook to the end of 2007 is bleak. Both weaknesses of the overall process and the actual state of play of the PACP-EU EPA talks lead stakeholders in the Pacific to believe that the successful conclusion of negotiations by the agreed deadline looks currently unlikely. This is partly due to the slow responses by the EC on PACP proposals and the prevalence of the 'non-papers' process (informal discussions) over the formal process (actual negotiations).

Substantial disagreement between the PACP Group and the EU prevails in most areas, and is particularly serious on rules of origin, temporary movement of labour (including mode 4 market access in services), investment provisions, fisheries, and development cooperation. Agreement between the parties could only be registered on the architecture of the possible EPA Agreement. Goods market access issues have not been negotiated yet (more technical work at PACP level is planned), but there is serious disagreement between the two sides on rules of origin and the treatment of certain sectors of particular interest to the Pacific, such as fisheries. Negotiations on trade in services registered serious disagreement between the PACP and the EU on the major offensive interest of the Pacific (mode 4), while full negotiations on market access demands and offers have not started yet. The degree of special and differential treatment granted to PACP countries through the trade provisions of an EPA is unclear as negotiations are still ongoing, but serious disagreement between the parties persists on development cooperation aspects and ways to address possible adjustment costs and other accompanying measures in the context of EPA. Many stakeholders noted that differences between individual Pacific ACP countries still exist in terms of specific positions on certain topics, expectations from EPA and their potential positive and negative effects, as well as degree of interest in successfully concluding negotiations.

With respect to the EPA process, participation of national governments to the overall EPA regional negotiations through the official channels established by the regional negotiating structures has been reasonably satisfactory (though partly lacking from some of the smaller countries in the region). However, apart from national negotiators (mainly representatives from the ministry responsible for EPA and in few cases from the private sector), participation of stakeholders from individual PACP countries (non-state actors, government officials from other ministries and parliamentarians) has been disappointing. The general perception emerging from consulted stakeholders is that the EPA process is reasonably transparent, but the way national priorities are reflected in regional-level EPA negotiations should be improved.

In terms of EPA preparations at the *regional level*, there is general consensus among negotiators and government officials that the EU was financially very generous in supporting EPA negotiations (though quality of the assistance could have been better). Stakeholders instead concurred that at *national level* much more should have been done.

Though alternatives were never discussed with the EU and PACP governments prefer to focus on current negotiations, there is general consensus that alternatives need to be explored and urgently so as disagreements between the parties are not solved. All stakeholders believe that more time is needed to conclude the negotiations, and that more capacity especially at national level is required to both complete preparatory work and to raise awareness and support for the EPA in general. Though some think that the EPA process was a useful tool for learning on trade policy matters (and for future negotiations), all consulted stakeholders concurred that institutional preparedness and trade-policy capacity are too weak in the Pacific for implementation of a complex agreement such as EPA.

A number of conditions seem to be required for successful conclusion of negotiations by 2007.

Firstly, as the deadlock appears to be political rather than technical, only intervention at the highest political level (beyond the EC and the Forum) could solve the impasse. Full ministerial-level negotiating sessions between PACP and the EU in 2007 as well as increased commitment to the EPA process by certain PACP national governments were mentioned as key (taking into account also delicate political issues such as the Coup in Fiji); more national-level consultations in the PACP countries also appear necessary to improve the legitimacy, credibility, and ownership of EPA. Secondly, given the very serious disagreements over most areas of negotiations, the two parties may have to lower their respective ambitions which means that the EC will have to get more responsive on some of the technical negotiating proposal by PACP and the PACP negotiators may have to accept some compromises on their ambitious proposal of an EPA text. Finally, realism on the timing of the negotiations will be necessary as one year may not be sufficient to solve the weaknesses of the EPA process and the deadlock in terms of substance of the negotiations.

# 1 Introduction

## 1.1 Purpose and Methodology of the Report

This Report reviews the negotiations for an Economic Partnership Agreement (EPA) between the Pacific ACP countries (PACP) and the European Union (EU), in accordance with Article 37(4) of the Cotonou Partnership Agreement (CPA):

"The Parties will regularly review the progress of the preparations and negotiations and, will in 2006 carry out a formal and comprehensive review of the arrangements planned for all countries to ensure that no further time is needed for preparations or negotiations".

The Report does not intend to analyse the merits of EPA or to assess whether concluding an EPA by 2007 is good or bad for the Pacific ACP region. It presents and discuss the views of PACP stakeholders on the structure, process and substance of the negotiations, their trade and development dimensions, as well as the capacity and preparedness of the region to conclude EPA, in accordance with the terms of reference (ToR) as approved by the PACP Trade Ministers<sup>1</sup> (and reproduced as Annex I to this Report).

Within the time limits and resources available, and in line with the ToR, this review attempted to be comprehensive and inclusive and, as much as possible, consultative with all stakeholders. The methodology adopted to prepare this Report rests on extensive informal consultations, specific interviews, a written questionnaire circulated among stakeholders, as well as analysis of official documents<sup>2</sup>, press statements, communiqués, and newspapers articles. Consulted actors include PACP trade negotiators and other national government officials, experts assisting the Regional Negotiating Team (including the Forum Secretariat<sup>3</sup> staff), and representatives from the private sector and civil society organisations (the list of consulted stakeholders constitutes Annex II of the Report).<sup>4</sup>

The Report focuses on both the process and the substance of EPA negotiations, and the discussion is structured accordingly. Section 2 examines the degree of capacity, ownership and preparedness as perceived by stakeholders at different levels of the negotiating structures in the Pacific region. Section 3 outlines the state of play of the negotiations, highlighting areas of agreement and disagreement between the parties. Section 4 presents some concluding remarks.

Consulted stakeholders were requested to outline their perspectives on EPA in a constructive manner, with the objective of discussing possible solutions to the obstacles encountered in the negotiations, as this may prove useful also for other similar processes (in the context of both the broader ACP-EU relations and other regional and multilateral negotiations). Moreover, this Report attempts to support the observations and arguments presented by PACP actors with concrete examples on the positive and negative aspects of the EPA, so that the reality of PACP countries can emerge to the extent possible. As the following subsection shows, while reviewing EPA, it is important to take into account the uniqueness of the Pacific region, so little known in other parts of the world.

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<sup>1</sup> Trade Ministers approved the conduct by the PACP Group of its own Article 37(4) assessment in accordance with the proposed terms of reference set out in Attachment 4 of the Pacific ACP Trade Ministers Meeting Outcomes Document (Port Vila, Vanuatu, 16 November 2006).

<sup>2</sup> Such as PACP Trade Ministers Meeting Outcome Documents and PACP EPA National Workshops Outcome Documents.

<sup>3</sup> The Forum Secretariat is the administrative arm of the Pacific Islands Forum, the region's premier political and economic policy organisation. In this Report the Forum Secretariat is referred to as 'the Forum'.

<sup>4</sup> Unfortunately, due to limited time and resources, it was not possible to interview members of parliaments of PACP countries.

## **1.2 Context: EPA negotiations and the Pacific**

The Pacific ACP region is composed of small island states spread across a large portion of the Central and South Pacific Ocean. The development challenges facing the region are largely a function of the peculiar characteristics of its island states. They are diminutive in size, geographically dispersed, isolated, vulnerable to natural forces (including climate change and sea-level rise) and have scarce resources (energy in particular). Their geographical features, diversity of cultures and languages and the breadth of the ocean contribute to the beauty of the Pacific Islands, but also constitute a serious obstacle to their economic development, and especially to the expansion of markets (both domestic and regional) and foreign trade. Indeed, the region suffers from significant competitive disadvantages and stagnant economic growth, particularly due to high transport costs (affecting both imports and exports) and low and declining investment flows (both domestic and foreign).

These features of the region make the Pacific EPA process peculiar and to some extent different from other ACP regions. Several stakeholders referred to such specificity as background to their arguments and observations on the EPA process, mentioning amongst others the following points<sup>5</sup>:

- As the ACP region that is the most remote from the EU and has little or no trade in goods with Europe<sup>6</sup>, the negotiating interests of the Pacific are very distinctive. In addition to distance, the size, remoteness, and weak infrastructure systems of PACP countries are likely to reduce the magnitude of any positive or negative impact of EPA, including on trade and investment flows.
- For the PACP countries the indirect effects of an EPA, in particular on the obligations under regional integration commitments, will be more important than the direct impacts of any trade arrangement with the EU. One of the most distinguishing features of regional dynamics within the PACP is that well before initiating their own integration, PACP countries bound themselves into a broader regional integration process with Australia and New Zealand (ANZ), the two most proximate developed economies, which are also their major donors and trade partners. Under the Pacific Agreement on Closer Economic Relations (PACER) Pacific ACP are obliged to start negotiating free trade agreements (FTAs) with ANZ as soon as they commence negotiations with another developed country (including the EU). This situation is unique among ACP regions. It causes major concerns and influences the incentives to join EPA since those PACP that sign an FTA with the EU will automatically trigger negotiations with ANZ.
- The Pacific region currently experiences a period of unprecedented instability. For the last few years the Solomon Islands has had major civil unrest and upheavals<sup>7</sup>. Likewise, last November Tonga went through social tensions never experienced before, resulting in 80% of the Central Business District of its capital being rampaged and destroyed. Fiji last December suffered a military coup, with implications on the overall relationship with the EU and possibly on EPA<sup>8</sup>.

These and other complex political, social and economic dynamics characterizing the Pacific affect not only the nature of the EPA negotiations but are also likely to shape any new trading arrangement with the EU. This point was reflected in the continuous return by contacted stakeholders on the difficulties related to the policy process itself also when dealing with the substance of EPA negotiations.

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<sup>5</sup> These and other key features of the region are very well captured in 'The Way Forward' (PIFS, 2004) published in preparation for EPA; please refer to it for a comprehensive discussion of the unique situation of the Pacific vis-à-vis the EU and global integration challenges.

<sup>6</sup> The PACP countries have extremely little trade with the European Union, and with the exception of Fiji, Papua New Guinea and Vanuatu, the share of imports and exports from and to Europe in total trade is negligible.

<sup>7</sup> The Australian-led Regional Assistance Mission to Solomon Islands (RAMSI) was necessary to re-establish law and order.

<sup>8</sup> The EU has condemned the 'unlawful act by Fiji's military' and called for an immediate return to the constitutional order; failure to do so may lead to a suspension of EU cooperation ([http://ec.europa.eu/development/body/news/news\\_en.htm](http://ec.europa.eu/development/body/news/news_en.htm))

## 2 The EPA Process

At the launch of the negotiations, in September 2004 in Fiji, the Pacific region and the EU adopted a Joint Roadmap, outlining the principles, timing and structures underpinning the PACP-EU EPA process. At the Ministerial level the Pacific region appointed then Minister of Foreign Affairs and External Trade of Fiji, as the Lead Spokesperson and the Minister for Commerce, Industry and Labour of Samoa as the alternate. Since Fiji Foreign Minister Tavola was ousted during the December 2006 Coup, Minister Joachim Keil of Samoa replaces him as chief Pacific EPA Negotiator. The European Commission (EC), negotiating on behalf of the EU, has been represented by the European Commissioner for Trade.

At the level of Senior Negotiators, the Pacific region has been represented by the Chief Executive Officer of the Fiji Ministry of Foreign Affairs and Trade, while the EC by the European Commission's Deputy Director General for Trade. At technical level, a Joint Technical Working Group (JTWG) has conducted discussions comprising Pacific and EC coordinators and experts as appropriate.

Negotiations were divided into two phases: the first one to last from Oct. 2004 to Dec. 2006 where parties would agree on basic principles and elements; the second phase, to start in January 2007, aimed at the finalisation of outstanding issues and formulation of a binding legal text until December 2007.<sup>9</sup>

The EPA negotiations are talks between two regions. When considering the EPA process in the Pacific therefore this Report tries and deal with both of its parts: the *national level* preparations within individual countries; and the procedures and work at *regional level* that are put in place to prepare negotiating positions of the PACP as a group.

### **2.1 Progress in implementation of the EPA negotiation work plans and outlook to the end of 2007**

**The overall work programme established by PACP and EU through the Joint Road Map is behind schedule.** Despite seven Joint Technical Working Group meetings having taken place, PACP and EU Senior Negotiators met only once during the first phase (Oct. 2004-Dec. 2006), and, as detailed in Section 3, agreement has been reached on very few elements of a possible Pacific EPA. In addition, due to disagreements over the relationship between trade provisions and development cooperation discussed in the EPA framework, the parties have not yet established the Regional Preparatory Task Force (RPTF), envisaged in the Road Map to explore the crucial links between the trade and development dimensions of EPA. Many of the consulted stakeholders pointed to the fact that, unlike in the negotiations involving other ACP regions, PACP and EU never had a Joint Ministerial Meeting since the 2004 EPA launching<sup>10</sup>, which caused a lack of direction and momentum. Others considered the delays not surprising given the degree of ambition laid out in the Joint Roadmap vis-à-vis the complexities of the topics covered in the negotiations.

All PACP actors concurred that rather than the actual delay in the Joint Road Map (that few followed literally for their preparation at national level), it is the very little progress on the

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<sup>9</sup> For more information on the PACP-EU EPA process see European Centre for Development Policy Management, 2006.

<sup>10</sup> PACP Ministers met the European Commissioner for Trade in Brussels for one hour soon after he assumed office in 2004 but that was not a ministerial-level negotiating session. Only general terms about goals and aspirations of EPA were discussed.

substance of negotiations and the weakness of the EPA process itself that make **the outlook to the end of 2007 bleak**. EPA negotiations, at the beginning of their final year, look extremely *shaky* and very few stakeholders, for various reasons, believe the Pacific will be able to complete them by end-2007. It was mentioned that this will depend substantially on the agreement/disagreement dynamics and the level of ambition of the two parties, especially on rules of origin (ROO), temporary movement of labour (Mode 4 in services), investment provisions, fisheries, and development cooperation. A recent statement by the former Pacific chief negotiator, Minister Tavola, confirms that the outlook is bleak:

*"We will not merely rush to conclude negotiations due to the deadline and risk ending up with a bad EPA. That would be disastrous. We will therefore continue to negotiate earnestly and in good faith. However, we have to start seeing some substantial and positive gains to convince us that we are on the right track and that there will be real benefits that will accrue to us"*<sup>11</sup>

In terms of implementation of the internal work plans for EPA within the Pacific, consulted stakeholders noted that most of the planned activities for preparing the negotiations at regional level normally take place reasonably on time. Six regional Technical Working Groups (TWG) were established to prepare for EPA, covering: trade in goods (including agriculture/forestry/mining/bio-diversity); tourism; fisheries; legal issues; investment; services. However, due to the slow response from individual PACP Members or the EU, as well as the resource constraints at both national and regional level, substantial progress on regional work plans may not be made in time. It was mentioned that so far the more active TWG were those preparing negotiations on fisheries, investment, and the proposal for an EPA legal text. In 2007 those dealing with market access for goods and for services are expected to be gaining centre stage.

## ***2.2 Degree of participation by different actors in the EPA process and perception of ownership***

In general, the perceptions about the degree of ownership of the EPA process may vary substantially between different actors in the Pacific region, but there seems to be an emerging consensus on two points. **Firstly, participation of national governments to the overall EPA regional process through the official channels established by the regional negotiating structures has been reasonably satisfactory, though partly lacking from some of the smaller countries in the region. Secondly, a part from national negotiators (mainly representatives from the ministry responsible for EPA and in few cases from the private sector), participation of stakeholders from individual PACP countries (non-state actors<sup>12</sup>, government officials from other ministries and parliamentarians) has been disappointing.**

In terms of national input into the *regional negotiating process*, part of the difficulty in achieving effective participation is the lack of understanding among different stakeholders of the complex issues at stake, and thus their inability to engage critically in the substantive issues. Consulted actors stressed that at national level there is still little, though growing, understanding on EPA. A second problem they mentioned on the regional process to prepare positions of the PACP as a group is lack of funding, aggravated by the logistical difficulty of bringing together national representatives from countries so distant from each other. For instance not all six TWG could be run simultaneously in parallel, and priority had to be given to a limited number of them at a time, depending on the pace of negotiations with the EU side and the specific topic addressed at that particular stage. Moreover, not all PACP countries could be represented in all TWGs (though those with substantive interest in a particular topic would tend to participate) and only one

<sup>11</sup> Islands Business International, 2007.

<sup>12</sup> In this Report 'non-state actors' is meant to include the private sector and civil society.

national representative could be part of a specific TWG (which often left no other choice than selecting only one senior official, sometimes accompanied by a private sector representative from an industry directly concerned by the negotiations).

At the regional level, non-state actors (NSA) participation has been only recently taking root. Most civil society representatives expressed serious concern about lack of meaningful consultation and transparency on the EPA, observing that it is difficult to follow progress in the negotiations as the public flow of information is very limited<sup>13</sup>. The consulted members of private sector organizations were also concerned about their degree of ownership of the regional process, though awareness on EPA increased over time<sup>14</sup>. In the whole Pacific region it was extremely difficult to find even a handful of members of national parliaments who have been involved or are even aware of EPA negotiations<sup>15</sup> (which is of serious concern to some, given that according to plans PACP parliaments will have to ratify any EPA agreement relatively soon).

In terms of perception of ownership of the *national-level preparations*, many stakeholders defined EPA an '*exclusive club*'. Since 2004 only one National Consultative Workshop per year was organized by the Forum Secretariat<sup>16</sup> (the Forum) to inform all stakeholders about EPA negotiations. Only for certain specific negotiating items there were additional visits to individual countries by consultants selected by the Forum to undertake background studies (who interviewed only a limited number of stakeholders). All contacted actors concurred that the extremely limited availability of funds for consultations and technical preparation is one of the root causes that prevented the EPA process to be a fully participatory one.

Within individual national governments it was difficult for the ministries responsible for EPA to involve other government agencies in the preparations (e.g. Fisheries, Attorney General, Labour and Immigration, Quarantine, Customs). In addition to serious lack of capacity and financial resources, according to some stakeholders participation was constrained also by scarce overall commitment by national governments to the EPA negotiations and the low profile of EPA in the political agenda<sup>17</sup>. Since often EPA is not considered a priority, Cabinets place little attention on this issue. Some recognized this as a systemic problem of trade policy making in developing countries: the low profile of trade ministries and seniority of trade ministers compared to others (like treasury, economic development and planning, aid management and so forth)<sup>18</sup>. As a consequence, within governments effective participation and consultation in the national EPA process take place in several PACP at informal/'one to one level' rather than through formal meetings and input.

Recently, civil society organisations (CSOs) in the Pacific have begun to address some of the direct consequences of trade liberalisation policies in the region. However civil society representatives noted that CSOs have limited capacity to engage with the technical issues involved with a complicated trade deal such as the EPA (and its links with regional integration

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<sup>13</sup> See Regional CSO Communiqué. This document (endorsed by the Pacific CSO Forum in October 2006) will be used throughout this Report as reference for CSOs' positions and views. As it complements well the information collected through interviews it is reproduced in full as Annex III.

<sup>14</sup> See November 2006 Regional Private Sector Outcome Document. It is reproduced in full as Annex IV.

<sup>15</sup> It was also mentioned that the PACP representatives to the Joint ACP-EU Parliamentary Assembly keep changing from one session to the next, which prevents consistent input from national-level legislators.

<sup>16</sup> The Pacific Islands Forum Secretariat (based in Suva, Fiji) acts as the Secretariat for Forum-related events, implements decisions by the Pacific ministers, facilitates the delivery of development assistance to member states, and undertakes the political and legal mandates of Forum meetings. Accordingly, the Forum facilitates and coordinates the EPA process at regional level.

<sup>17</sup> It was stressed that for the smaller PACP states it is somewhat natural to delegate fully the negotiations to the Forum.

<sup>18</sup> For example, recently in one PACP country the department responsible for international trade negotiations was not involved in the decision to raise tariff rates. Competence laid elsewhere in the administration but those increased rates may be incompatible with internationally agreed commitments to reduce tariffs, which questions the decision not to involve the department responsible for trade negotiations.

and the WTO). This lack of capacity stems from both a lack of knowledge (and often understanding) of government policy and Forum negotiating positions, as well as lack of financial support to co-ordinate across the considerable distances inherent in a region spread over such a large area. Despite CSO complaints about little meaningful consultation by governments or the Forum on assessments, impact studies or other EPA-related work, other actors have noted that turn up in consultations is often low, even in those countries where government officials increased their efforts for broadening participation of civil society.

In terms of private sector, the contribution so far to the EPA process at national level has been fairly limited, with the exception of few individual PACP as well as the representatives from the industries with higher stakes in EPA negotiations (fisheries in particular). Consulted actors emphasized that the reason is systemic, relating to both scarce capacity of private sector on trade policy issues and lack of structures primarily at national level to involve systematically producers and exporters in economic decision making. Most contacted representatives however mentioned that an improvement of this situation could be one of the major results of the EPA process as negotiations with EU triggered already the establishment of the Pacific Islands Private Sector Organisation (PIPSO)<sup>19</sup>. Furthermore, over the last couple of months, private sector has moved away from a general state of confusion because of too many EPA-related workshops with little substantial discussion to a better understanding of issues, with more concrete proposals being put on the table and a sense of improved ownership<sup>20</sup>.

Views differ among PACP stakeholders also on the possible solutions to the perceived scarce ownership of EPA at national level. Some stressed the importance of increasing resources and the overall profile of ministries responsible for trade. Others noted that national consultative mechanisms should be established and equipped with human and financial resources for them to run regularly and efficiently. It was also noted that if the objective of some CSOs is to be seated at the negotiating table, they will wait since that does not happen in any trade negotiation; others on the contrary believe that this should be the case (and mentioned that in certain African countries EPA delegations include also CSOs).

### ***2.3 Transparency of the EPA process and linkages between regional and national decision-making***

**The general perception emerging from consulted stakeholders is that the EPA process is reasonably transparent, but the way national priorities are reflected in regional-level EPA negotiations should be improved.**

In terms of opportunity, all PACP countries have had the chance to make their positions known and reflected in regional decision-making. In practice however, according to most consulted actors, only few countries in the region can consistently articulate their positions and priorities, and the lack of engagement from many PACP has resulted in few countries driving the process. This is seen in two ways: by some stakeholders as a natural consequence mainly of scarce capacity at national level resulting in the smaller governments delegating de facto negotiations to the Forum Secretariat; by others as the Forum driving the agenda, even without fully

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<sup>19</sup> It was also mentioned that in few countries the issue of the roles of foreign investors and domestic producers in national development is becoming sensitive and that the two groups may have different perspectives, including on EPA. For instance a domestic producer stated: "National private sector businesses would like to see Government apply National Treatment for them in the same manner it is extended to foreign direct investors. As an example an overseas investor and I were interested in exactly the same project. The Government guaranteed tariff free entry for all his needs and tax holidays and also drove him to the various sites and facilitated his access to information whereas I was unable to receive any information at all."

<sup>20</sup> It was noted that the more proactive private sector representatives have increased their involvement in EPA because they see such exercise as a learning tool for future PACER negotiations.

representing the interests of some of the larger economies, both on avenues for participation<sup>21</sup> and substance of the negotiations<sup>22</sup>. The ambitious timelines for EPA, the slow regional integration (RI) process and the governance structure of regional cooperation institutions, lack of capacity (especially on technical matters discussed in negotiations like EPA), lack of national governments' consistency on trade policy matters in most PACP, were mentioned as responsible to some degree.

Consulted actors noted that since it is the Forum Secretariat policy to distribute communication only through official contact points in Foreign Affairs ministries, and due to internal communication breakdowns, some negotiators often do not receive information early enough to make optimal position, reducing the opportunity for careful elaboration of the discussion as well as consultation with relevant stakeholders in the capital for effective decision making. Most NSA observed that they have only been able to gain access to draft legal texts for EPA through leaks and that background papers have also been difficult to obtain (although recently some official papers have been posted on the Forum websites, which was considered an improvement).

While understanding the difficulty and the need to reach consensus in making regional positions, some actors felt that they are not always given the opportunity to make their case. One national EPA consultation a year was not enough to developing consensus on national and regional positions and strategies in the different subjects to be covered by the EPA and some had the feeling that often consultations were a ceremony rather than contribution to developing policy positions. It was mentioned also that the internal PACP road map for preparation facilitated by the Forum was a quite formal outline of the broad principles, expected timing and number of meetings for EPA negotiations but that did not really lead the process (especially as it did not contain clear indications of what to be undertaken and achieved at national level) .

Stakeholders also recognized that individually each PACP should be held accountable for not pursuing sufficiently and consistently its own interests. Despite at national level there are severe human resources constraints<sup>23</sup> and exogenous difficulties in ensuring that positions and priorities are in place<sup>24</sup>, it was felt that certain governments should increase their overall commitment to EPA and do more to establish a transparent process of national-level preparation (for instance, it was reported that in one of the major PACP economies only one official of the ministry responsible for EPA has remained in office and consistently following EPA since the start of the negotiations). According to some actors, in certain countries the situation worsened over time<sup>25</sup>; in others it improved, especially where assistance was successfully sought to do national-level technical work and consultation even to remote provinces to engage and raise awareness in the larger community. Finally, it was noted that the process through which decision-making at regional level reflects national positions and priorities was to some extent rendered less smooth

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<sup>21</sup> For instance, a country complained that at the regional level it is only represented at TWG level. The government submitted a request to the Forum to be allowed to participate in the Regional Negotiating Team, but is yet to receive a response.

<sup>22</sup> Some stakeholders pointed specifically to the issue of mining, not captured in the regional positions so far. An additional chapter of the proposed EPA legal text by PACP could be on Mining and Energy, given the importance for few PACP countries of improving trade facilitation and promotion in this sector and opportunities for carbon trading in EU markets (PNG minerals sector already trades in carbon credits of value approximately USD 3 million per year ).

<sup>23</sup> For instance, at the time of writing in Fiji the top officials and permanent secretaries of all ministries were sacked by the military government, including the chief trade negotiator with obvious implications on the country's ability to consistently pursue its objectives in EPA (Fiji Times, 2007).

<sup>24</sup> For logistical and financial constraints very few countries have established separate TWG to discuss internally each negotiating area before participating in the regional EPA process.

<sup>25</sup> For instance, according to some stakeholders the situation has worsened in PNG compared to 2003. Progress on institutionalising arrangements for the EPA with other PACP countries and with the EU had been extremely disappointing, as reported by the 'Cooperation Between EU and Papua New Guinea Joint Annual Report 2003' (based on the study 'Evaluation of the Economic Partnership Agreement Preparation in the Government of Papua New Guinea', Draft Final Report - Gavin Jones, EU-PMU in Support of the NAO, 17 March 2004 ([http://ec.europa.eu/development/body/csp\\_rsp/reviews/2004/PG\\_final\\_2004.pdf](http://ec.europa.eu/development/body/csp_rsp/reviews/2004/PG_final_2004.pdf))).

and expeditious than expected by regional politics (as in other policy processes, the three distinct groupings of PACP countries -Melanesia, Micronesia and Polynesia- identified by their ethnic, cultural and historical features, tend to approach issues at stake through different perspectives).

Most consulted stakeholders acknowledged that recently the general perception of transparency has been improving, which is a good sign since the EPA process could be seen as a learning tool for the region to act as a whole on the international arena. In June 2006 for instance for the first time a large number of CSOs discussed trade liberalisation matters with trade negotiators from both PACP governments and the Forum<sup>26</sup>. Also, a new round of national EPA consultations is scheduled to address and analyse the EPA legal text proposed by the PACP Group. Finally, the recent proposal by the Forum for the establishment of Trade Advisory Committees at national level and other consultative structures at regional level provide important mechanisms to engage in formal and ongoing discussion on the content of any partnership agreements.

The wide heterogeneity between and within PACP on stakeholders' perception of degree of transparency may also be due to the varying general attention to trade issues, and in particular media attention. Though this has been increasing in general (particularly interesting was the case of the correspondence on EPA through open letters and newspapers between Oxfam and the EC Delegation in Fiji<sup>27</sup>), cross-country differences still remain<sup>28</sup>. Finally, it is interesting to note the role of the media and leaked correspondences between the EU and ACP sides in increasing transparency on the substance of negotiations and areas of agreement and disagreement, in particular the letters between the EC's chief EPA negotiator Mr Falkenberg (and Mr Manservisi, Director General for Development) and his PACP counterpart Mr Tavola (see Manservisi and Falkenberg 2006, and Mr Tavola's response in Islands Business International, 2007). Such exchanges could be considered a sort of informal Art. 37(4) Review among top negotiators and their appearance on the media was not experienced in other ACP regions negotiating an EPA. They will be used especially in section 3 when discussing the substance of negotiations.

## **2.4 Support received to prepare EPA negotiations from the EU, the Forum, and others**

**In terms of EPA preparations at the *regional level*, there is general consensus among negotiators and government officials that the EU was financially very generous in supporting EPA negotiations (though quality of the assistance could have been better). Stakeholders instead concurred that at *national level* much more should have been done.**

The emerging general assessment is that the quantity of EPA-related support for regional preparations was adequate (though it was mentioned that more resources could have meant: more staff working on EPA at the Forum, more technical work, more national consultations possible, etc.).<sup>29</sup> Official figures show that Pacific countries benefited from a total of some € 1,3 million of the € 24 million project management unit (PMU) for EPA preparation for all ACP countries. Of this, the Pacific has received € 1,2 million at the regional level, managed by the

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<sup>26</sup> "Valuable discussions with officials from the Forum Secretariat and trade negotiators from PACP governments, who shared their perspectives on the current preparations for an EPA" (Pacific Civil Society Communiqué).

<sup>27</sup> See EC Delegation (2006) and Oxfam International (2006).

<sup>28</sup> Vanuatu for instance stands out as a positive exception to the general trend of very low attention of the media on EPA. There, certain newspapers regularly featured issues related to the negotiations with the EU, while in the majority of the PACP countries hardly any news article ever appeared since the beginning of the EPA process (also due to more pressing security and political issues, such as upcoming elections in PNG or the Coup in Fiji).

<sup>29</sup> Some stakeholders also stressed that 'EU assistance procedures are so cumbersome that it comes in at a slow pace; though this is not unique to the Pacific, it has slowed down the EPA process, preventing certain meetings to take place'.

Forum Secretariat<sup>30</sup>. The activities funded covered four main areas: intra-regional and national consultations; participation of both Pacific negotiators and trade national representatives in the meetings of the technical negotiating sessions, Senior Officials and Joint Technical Working Groups; technical assistance (TA) on specific issues arising from the negotiations to supplement the limited technical capacity of the region (12 studies on all priority issues identified by the Pacific region); national studies to assist some Pacific countries with identifying offensive and defensive interests. In addition, the PACP region is at present benefiting from five national trade policy advisers and a regional policy adviser based at Forum, for a period of four years (under the EU funded TradeCom facility, 'Hubs & Spokes' component).

In addition, under the 9th EDF € 9,2 million have been allocated under the regional indicative programme (RIP) for the Pacific Regional Economic Integration Programme (PACREIP) managed by the Forum. PACREIP supports participation of PACP countries in WTO and capacity for the implementation of the Pacific Island Countries Trade Agreement (PICTA) as well as for EPA preparation efforts.

However, many consulted actors emphasized firstly that the major issue was not lack of funds but lack of human resources to adequately prepare EPA negotiations<sup>31</sup>. Secondly it is a matter of effective (qualitative) assistance rather than of enough (quantitative) assistance. Regional-level TA in the early stages of the process was very weak, also in terms of the sequencing of TA and negotiations. The pervasive lack of a trade policy framework in most countries in the region has prevented them from driving the EPA process (or any trade negotiation) as an extension of national policies and interests. The result was an ad-hoc 'catch bag' of issues coming onto the agenda from various domestic and external actors. Stakeholders also acknowledged that as things have progressed to more technical terrain, the Forum TA has improved. Part of this phenomenon may result from the presence of better and more informed country officials, who improved their absorptive capacity for the TA being delivered.

It was mentioned that private sector was initially skeptical about regional-level TA: the terms of reference directed too broad analysis and conceptual rather than practical approach; and involved foreign consultants were perceived as lecturing the stakeholders. When those types of consultations and technical work moved to concrete matters instead, for instance tariff lines to be liberalized and their timeframes, the private sector participated actively.

CSOs criticized the methodology for many of the studies conducted on EPA<sup>32</sup>, deemed as unrealistic in the context of Pacific countries where market 'failures' are commonplace. According to civil society, economic analyses need to be grounded in the realities of communities and enterprises in the particular countries, not in the application of models to data and policies; similarly, on the approach to consultations and TA, there needs to be proper independent training for NSA to participate.

In terms of support to the *national level* preparations, very little financial resources and TA were made available; and there was nothing earmarked specifically for NSA. Some stakeholders complained that the support to negotiate EPA from EU went through the Forum only, with too little resources for national level activities (capacity building, studies, consultations, etc.). As a consequence also the focus of regional-level support and work did not coincide with individual PACP needs<sup>33</sup>. It was noted that the results of support from Forum to national governments and

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<sup>30</sup> Grant Agreement lasting from 1 April 2004 to 30 June 2009.

<sup>31</sup> An interesting example is the case of the Social Impact study requested by regional CSOs. The Forum supported it and launched the tender, but no consultant responded to it, signaling that there are very limited human resources to do this kind of analysis in the PACP region.

<sup>32</sup> It was stressed that "to date the EPA impact studies have been purely economic in nature and rather cursory in depth. Economic models assume responses that are likely to occur only in cases with well functioning markets, competition, enterprises able to respond to price signals, infrastructure for markets and trade, information available to all, etc."

<sup>33</sup> Some of the contacted actors focusing on national-level stated that they have "yet to see a single RIP initiative that is even vaguely relevant to the interest of the country; too much is spent on foreign consultants and the best that regional

NSA were mixed: some very positive and constructive ('the Forum did a good job in facilitating the formulation of regional positions, and a number of studies and projects are conducted to support formulation of national and regional positions'); others shallow and unproductive in terms of substance ('mixed quality of the studies'; 'national consultations were like lectures and too much information was provided in too limited time'; 'consultations from governments, and from the Forum, were very top-down, with little or no information available before the meetings, and little opportunity for feedback'). This was partly due to the general problems of low profile of trade compared for instance to aid planning and management and lack of coordination between EDF 'national authorizing officers' (NAOs) and EPA negotiators. This also led to perceive EPA preparations as a low priority in using EDF9 for national indicative programmes (NIP) and other sources of bilateral aid.

Some stakeholders acknowledged the EPA-related support received from other sources. In particular the currently ongoing Demand and Offers Project funded by the Commonwealth Secretariat is considered by both government and NSA at national level as very useful in speeding up the process of formulating goods and services positions, and as a good starting point for improved involvement in EPA.

Very few countries<sup>34</sup> received direct support for national-level work on EPA from EU or other donors. According to consulted stakeholders national capacity-building projects of the type successfully implemented in one or two PACP countries (in particular to raise awareness on EPA in the outer provinces) would have improved substantially the technical national preparations and ownership of the EPA process.

## **2.5 Consideration of possible alternatives to EPA**

**Though alternatives were never discussed with the EU and PACP governments prefer to focus on current negotiations, there is general consensus that alternatives need to be explored, especially since disagreements between the parties persist.** Some actors believe this is the only way to fully assess the cost/benefit of signing onto an EPA. The majority however sees this only as a fallback position, gaining now the centre stage, given the frustration with EU's rejection of most PACP proposals and that conclusion of the Pacific EPA looks increasingly difficult. In addition, negotiating a goods agreement as part of an EPA will trigger PACER negotiations with ANZ before the 2011 scheduled commencement, and many actors mentioned that for the Pacific this is an additional important element on the alternatives to EPA debate (that other EPA regions do not have). PACP governments deal with EPA bearing in mind that soon they will likely have to offer to ANZ the same treatment they may offer to the EU (which makes alternative options to EPA with no reciprocal liberalisation extremely attractive).

Most of the national and regional negotiators maintained over time the position that no deal is better than a bad deal, but a win-win deal is definitely preferred to status quo. For them, while alternatives to EPA should be explored, given the current resources constraints, it seems now optimal to concentrate them on bettering the PACP positions in the current EPA negotiation. CSOs explicitly call for an alternative to EPA and have started working towards it<sup>35</sup>. They maintain that the EU should offer the ACP alternatives with at least as good preferential treatment as in the Cotonou trade preferences (as indicated in Art.37.6 of the CPA). The private sector instead did not devote much effort to the alternatives debate and within the limited resources chose to focus on EPA negotiations. Naturally, however, the industries more directly involved such as sugar or

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organizations do is poach our people from public service to give them better paid jobs and some international exposure".  
<sup>34</sup> According to contacted actors, only Vanuatu and PNG satisfactorily received some national specific support from the EU. This is confirmed in the PMU website: <http://www.euacpepa.org:8080/index.php?page=23&lg=en>

<sup>35</sup> See Oxfam New Zealand (2006a).

tuna fishing and processing did more, and started comparing possible liberalisation options under EPA with existing preferences and possible alternatives to EPA such as the Generalized System of Preferences (GSP).

It was emphasized that LDC PACP countries have the fall back position of the EU's 'Everything But Arms' initiative (EBA), (i.e. without requirements to liberalize to EU imports), and thus feel less pressured to settle for a 'bad deal' from the EPA.<sup>36</sup> Others mentioned as an alternative to the current EPA an arrangement involving a different geographical configuration: an EPA comprising only the Melanesian Spearhead Group Trade Agreement (MSG) countries, given the existing trade flows with the EU and actual interest in the EPA trade in goods agreement<sup>37</sup>. Some mentioned that the MSG option looks increasingly attractive for some countries. This, they note, is because actual progress and regional solidarity appears to be stronger between MSG members<sup>38</sup> than for broader regional integration plans (some see the MSG as an example of a truly endogenous regional integration process vis-à-vis what are defined as 'external pressures' towards broader RI, as this includes also ANZ).

At the regional level the issue of alternatives to EPA was discussed internally and some preliminary technical work had gone into emphasizing some of the elements of possible alternatives for the PACP (mainly GSP and EBA). At the national level virtually none of the governments have analysed alternatives to EPA and compared implications on tariff lines under GSP and proposed EPA, though some explicitly envisage this occurring soon in 2007. Most stakeholders noted that additional work on Alternatives is required: to assess preference utilisation into the EU, compare risks of preference erosion under GSP, consult NSA on the same (and thus provide a counterfactual to whatever EPA may be on the table at the end of the day). Importantly, the same problems applying to EPA such as little national-level capacity or low priority within Cabinets would arise also in the design of any alternative (which would as well require proactive engagement and technical preparations).

## ***2.6 Capacity and preparedness of the region to timely conclude EPA negotiations***

**All stakeholders believe that more time is needed to conclude the negotiations, and that more capacity especially at national level is required to both complete preparatory work and to raise awareness and support for the EPA in general.** It was mentioned that it would be unwise to conclude a 'bad' EPA for the sake of sticking to the 31 December 2007 deadline (even more so for the LDC PACP with the fallback option of EBA).

Many consulted actors also pointed to the fact that more time is a necessary though insufficient condition, i.e. without strengthened capacity extending the EPA deadline will not change substantially the picture. Capacity issues and institutional weaknesses are so deeply rooted and systemic that it is difficult to envisage any capacity-building intervention (even in the broadest sense) that could effectively support conclusion of an EPA by 2007, including since a truly nationally-owned position needs to be an extension of a broader trade policy framework (and the institutional infrastructure that underlies this).

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<sup>36</sup> Since the unilateral preferences option represented by EBA (despite having inferior rules of origin to CPA) would not lead to a dramatic situation in terms of competition from other more competitive developing countries.

<sup>37</sup> The MSG, aimed at liberalising trade among the Melanesian countries, comprises four of the larger economies in the region (Fiji, Papua New Guinea, the Solomon Islands and Vanuatu), which are also by far the largest EU trading partners among the PACP states.

<sup>38</sup> Entered into force in July 1993, the MSG has since shown considerable progress. Trade among the parties is now duty free (with the exception of goods on national 'negative lists') and an MSG Secretariat will open in 2007 in Vanuatu.

Despite the difficulties, the regional negotiators, most government officials, and private sector tend to acknowledge that if the EU and PACP were on the same page on the substance of the negotiations, probably eight months of hard work would be enough to conclude EPA (though at present the outlook is bleak with the current degree of disagreement). CSOs instead call explicitly for suspension of current negotiations to enable PACP to negotiate on an equal footing.<sup>39</sup>

For those who think there are still chances to conclude EPA on time, required measures include more meetings at ministerial level to formalise regional positions and more meetings with the EU at top political level to forward negotiation beyond technical issues. Especially according to private sector, clarifications by EU on some technical negotiating areas like ROO will also be fundamental to assess 'pros and cons' of the possible agreement. Other measures necessary to support completion of the negotiations in 2007 are: general awareness and understanding of issues at stake; more political will to solve the impasse; smooth political processes in certain countries<sup>40</sup>.

Those who believe the capacity gap is too wide to conclude an EPA that is fully owned by the region identify the capacity needs at institutional, personnel, physical, logistics, financial, and technical levels. More focus on tax reform measures (substituting away from discriminatory import taxes and thus dampening negative fiscal effects) as well as studies on economic diversification (to help identify the possible new areas of dynamic comparative advantage, especially in services) would help feed into the preparations. More focused negotiating training would assist the region to better argue for its position<sup>41</sup>. Furthermore, without both capacity and the political will to act upon preparatory studies, more TA will not be useful. Others pointed to the need for more resources to responsible ministries to prepare for the negotiations and to consult more broadly than at present.

Some stakeholders observed that the EU for various reasons could not care less about the Pacific EPA which makes the prospect of concluding by end 2007 unrealistic<sup>42</sup>. In parallel some point to the scarce relevance of EU as political and trade partner for the region (and for some countries as a donor) compared to other major players which is also a disincentive to act proactively<sup>43</sup>.

Despite general skepticism and the consensus that more time would be needed, the situation is still dynamic and the various actors from the Pacific region are still engaging the negotiations at their respective different levels. A mission by a PACP Ministerial delegation to visit EU capitals is under preparation for early 2007. Furthermore a number of TA is already in the pipeline: some national level adjustment costs studies; training (example for tax administrations); regional studies for the formulation of negotiating positions in specific sectors (Trade in Goods, Services, Fisheries, Investment Instruments). Finally, CSO representatives call for "independent and extensive studies on the impacts - social, cultural, gender, economic, developmental and environmental - of the EPA, PACER and other regional trade agreements"<sup>44</sup>.

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<sup>39</sup> Some mentioned that "the negotiations should not be completed unless they are based on what the people want. That requires not just more time and more capacity but a change in priorities at the international, regional and national levels of governance". Negotiating on equal footing would require more research on policy alternatives, consultation with civil society (churches, trade unions, local communities, environmental groups, business and parliamentarians), information dissemination and debate within the broader society".

<sup>40</sup> After the Coup the political situation in Fiji is very fluid and changes occur on a daily basis, so for many it is difficult to maintain focus and analyse fully the implications on the EPA process. Others mentioned the 2007 elections in PNG and noted that to build momentum on EPA the responsible minister should be confirmed and receive a strong mandate and commitment from the Cabinet.

<sup>41</sup> It was noted that "most EPA-related training only scratched the surface and was not targeted at all to the right actors; not a single person in attendance had ever sat at the negotiating table, nor was likely to during the EPA".

<sup>42</sup> Some mentioned as interesting example of this the recent closure of the European Centre on Pacific Issues (ECSIEP). ECSIEP (an information centre on developments in the Pacific and an interface between Pacific civil society and European organisations and institutions) could not get enough support to carry out its activities (see <http://www.ecsiep.org>).

<sup>43</sup> In 2005, overall PACP's share in EU trade was: 0.05% of EU-bound exports; 0.11% of imports from the EU.

<sup>44</sup> CSOs maintain that a social impact assessment should be undertaken by all PACP at national level and through deeper and consultative analysis (Pacific Civil Society Communiqué 2006). It was noted that the Terms of Reference for

## **2.7 Capacity and preparedness of the region to implement an EPA**

**In general, though some think that the EPA process was a useful tool for learning on trade policy matters (and for future negotiations), all consulted stakeholders concurred that institutional preparedness and trade-policy capacity are too weak in the Pacific for implementation of a complex agreement such as EPA.**

Consulted actors pointed to the extremely large asymmetry in capacity between the PACP and EU as implementation will require human resources, expertise, funds, data etc., especially on technical and legal aspects such as services regulations, legislative reforms, and dispute settlement preparations. Awareness and understanding are not enough among public servants, local administration and NSA who at different levels and in different ways will carry on the implementation of the new partnership agreement.

Given all the difficulties discussed above on preparing for negotiations, very little resources and time in the Pacific region could be devoted to considering concretely the PACP's needs for implementation of an EPA. Many stressed that much more work is required to identify regional and national needs for EPA implementation assistance and economic integration assistance more broadly, in line with each PACP country's development plan. However a number of actors were able to identify some preliminary proposals. The range of capacity building (CB) initiatives needed to implement EPA appears extremely large: upgrading infrastructure; strengthening human resources; clarification of issues of intellectual property; CB for businesses to meet SPS and other technical standards; capacity building and training to enable a supply response from businesses and building marketing expertise; CB for government regulators; trade facilitation (Customs, Quarantine, S&C); training for trade policy making in general (e.g. Customs, Finance, Trade Division, Trade Policy Advisory Committee-interdepartmental discussion forum) and trade promotion (Trade and Investment Board, Market Information, Suppliers Buyers database, Standards information, Export Import procedures and simplified licensing). CSOs noted that if there is to be capacity building related to EPAs, it is very important that the poorest and most vulnerable people in Pacific society are able to benefit from it<sup>45</sup>.

It seemed clear to consulted actors that the current resources allocated to the RIP and especially NIPs under EU development cooperation are wholly inadequate to address all the EPA implementation needs, especially since the PACP group's position is that allocation of aid funding for trade adjustment measures should not come at the expense of RIP/NIP aid programmes that are directed to meet the needs of the poor. Trade adjustment should be additional to existing funding mechanisms and levels of aid. The EPA legal text proposed by the PACP Group reflects this and is ambitious in proposing for the EU to cover several of the implementation-related costs, including for example all legal expenses of a possible EPA dispute settlement system.

Some of the difficulties in this area reflect the more general problem of not having trade issues effectively integrated into national aid and economic planning programmes; which means that in most countries NIPs do not cover trade issues at all and EDF10 programming makes no reference to EPAs. Stakeholders maintain that some work to bridge that gap could prove helpful; but again this and other problems of institutional failures at different levels of the PACP administrations are more general and go well beyond EPA.

In terms of possible targets of capacity building to implement EPA, some actors mentioned that

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such a study, set to be completed by the end of January 2007, allowed for only 45 working days (at US\$350/day) to complete a study of the social impacts on 14 countries. Neither the time allowed nor the Terms of Reference adequately provide for the nature of the assessments required.

<sup>45</sup> For instance, in the tourism sector, capacity-building should be aimed at making it possible for small and medium-sized enterprises owned by Pacific Islanders to get a fair share of the market, rather than being aimed at large, foreign-owned operations that usually contribute little to the local economy and people.

EPA implementation will be at national level so that is where the bulk of accompanying measures (including financial assistance and institutional strengthening) should be implemented, not at regional level<sup>46</sup>. According to some, the major beneficiaries of capacity building should be relevant government departments and implementing bodies. Private sector representatives noted that in this kind of international trade negotiations CB is generally too focused on public sector and often ineffective, and it should be targeted instead at removing obstacles to business<sup>47</sup>, since the engine of growth and employment is the private productive sector.

### 3 The substance of EPA: state of play of the negotiations

The difficulties related to the EPA process and reflected in the observations by stakeholders (reported in section 2) had an impact also on the substance of EPA negotiations. When discussing the state of play of negotiations, consulted actors referred to the following: institutional weaknesses led to inconsistent participation to technical working groups preparing EPA and subsequently regional negotiating agenda reflected the priorities of few countries; scarce national-level capacity resulted into delay in preparations and less-than-optimal presentation of arguments and country-specific needs; perception by those who could not participate satisfactorily in the EPA process that issues were not adequately discussed. However, with all ups and downs of the process, the PACP Group still achieved a common position and submitted to the EU a proposed EPA text. There is general consensus among all stakeholders contacted that such proposed text captures very well the interest of the region, reflects what the Pacific islands want and is acceptable to most of them. Before turning to the state of play in specific areas and the EU's response to the PACP proposals included in such EPA text, the following subsection presents a number of observations in general on the substance of negotiations.

#### 3.1 General observations

**In general, a number of actors felt that with the EU all topics could be raised and discussed informally, but not negotiated (or formally discussed)**<sup>48</sup>. This was not satisfactory, since the EC's attitude was one of dealing with certain areas proposed by PACP for negotiation differently (by referring to different legal frameworks, levels of negotiations, negotiating mandates, and responsible institutions within the EC) and therefore deeming them formally not negotiable under EPA. Examples include:

- different legal frameworks: development cooperation<sup>49</sup> and investment instruments & supporting institutions<sup>50</sup>. The Commission cannot review the instruments set out in Cotonou

<sup>46</sup> Some mentioned that they do not believe the Forum is a worthy institution to be accredited with any more responsibility for economic development in the Pacific region. Others noted that the credibility of the Forum is improving as new staff and methods of delivery have been adopted.

<sup>47</sup> It was noted that the reality of aid is that it tends to be between governments and ignores therefore development needs as perceived by the non-state actors.

<sup>48</sup> Vanuatu's Minister of Trade for instance recently noted that the "...inadequate response from the EC can only be construed as reluctance on their part in seriously addressing the issues raised by the PACPs." (PIFS 2006).

<sup>49</sup> "In our view, the overall framework for development assistance has to remain the Cotonou Agreement. What we have to do is to link development assistance and EPA, acknowledging that both should be mutually reinforcing" (Manservisi and Falkenberg, 2006). "The Cotonou Agreement itself is also clear that financial cooperation is regulated by other aspects of the agreement than EPA provisions" (p.27 European Commission 2005).

<sup>50</sup> "Other issues such as investment will be equally pursued on the basis of you submissions although again we will not be able to re-define what we already jointly agreed in Cotonou on investment related cooperation and the functioning of related institutions" (Manservisi and Falkenberg, 2006).

(EDF mechanisms and process, Adjustment Facility, ProInvest, CDE, etc) as part of EPA;

- levels of negotiations: mode 4 in services (M4). The PACP proposal on M4 does not concern a GATS-type commitment on movement of service providers but it is a labour market mobility scheme with implications on immigration policy which is exclusive competence of EU member states (MS)<sup>51</sup>; therefore it should be negotiated separately from EPA and *bilaterally* with each MS<sup>52</sup>.
- negotiating mandates: Development Cooperation issues<sup>53</sup>. The Directorate General (DG) for Trade (the EC agency conducting EPA negotiations) does not have the mandate from the European Council to negotiate development cooperation; RPTFs (not part of EPA negotiations) are there to explore the linkages between trade and development but development cooperation remains non-negotiable (and responsibility of DG Development).
- responsible institutions within the EC: ROO. Consulted negotiators mentioned that the EU's response on their proposal for reform of ROO is that if PACP countries do not accept the preference by DG Trade for a 'value added' criterion they should discuss the matter further with the Taxation and Customs Union Directorate General.

**An additional difficulty was the slow responses by the EC on PACP proposals and the prevalence of 'non-papers' process<sup>54</sup> (informal discussions) over the formal process (actual negotiations).** This led to a number of negotiating meetings being cancelled as well as to the PACP decision to turn all non-papers into official positions for formal negotiations in 2007<sup>55</sup>. Interestingly, private sector representatives noted that what is important to them are clarifications by the EC on some technical negotiating areas like ROO i.e. on what could be named 'mechanics' of trade while the parties officially negotiating remained mainly on the 'policy' aspect of trade. The private sector is interested in market access discussions and details on concrete impact on their industries rather than principles of the EPA and political issues surrounding the EPA process. Their representatives noted that more concreteness would lead to more agreements, while so far the expectations from PACP governments were too high and the two sides engaged in too much rhetoric and aimed mainly at defending points of principles.

**In terms of content of the negotiations, the general assessment is that substantial disagreement prevails in most areas** and agreement between the parties could only be registered on the architecture of the Agreement.<sup>56</sup>

**Many noted that differences between individual Pacific ACP countries still exist in terms of specific positions on certain topics, expectations from EPA and their potential positive and negative effects, as well as degree of interest in successfully concluding negotiations.** Those countries with specific objectives in particular negotiating areas, for instance maintaining levels of market access into Europe for sugar or improving rules of origin for export of processed tuna, took a more proactive stance in the negotiations and showed preparedness to offer concessions to the EU in order to achieve those objectives. Others, with

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<sup>51</sup> "[...] Your requests touch on a variety of aspects many of which fall within the competence of our Member States and are not covered under GATS such as social security schemes, visa arrangements or, most importantly, the temporary movement of unskilled workers" (Manservisi and Falkenberg, 2006).

<sup>52</sup> It was noted by many stakeholders that probably the EU's response to the PACP originates from the fact that EU MS are not prepared to set a precedent on M4 for other ACP regions negotiating EPAs and for future agreements.

<sup>53</sup> See European Commission (2002).

<sup>54</sup> "Several non-papers were exchanged with the European Commission but to date the Pacific ACP States have not received satisfactory responses from the EC on the issues of interest to PACPs" (Hon. James Bule, Chairman of the meeting and Vanuatu's Minister of Trade, Commerce, Industries and Tourism; PIFS 2006)

<sup>55</sup> PACP Ministers decided that "the draft EPA legal text and non-papers on rules of origin and services already given to the EC for informal discussion as non-papers now be elaborated and tabled formally as negotiating documents with the EU" (see PIFS, 2006).

<sup>56</sup> This is confirmed by the content of the leaked letter from the EC's chief EPA negotiator Mr Falkenberg to his PACP counterpart Mr Tavola on Pacific EPA; see Manservisi and Falkenberg (2006).

less direct offensive or defensive interests, displayed a more indifferent attitude towards the technical negotiations, though participating in discussions and fully supporting the PACP neighbours to maintain the 'Pacific regional solidarity'. It was stressed that small islands developing states characterised by some trading interests in the EU and already a high degree of tariff removal showed more confidence in the negotiations and believe that EPA will provide them with an opportunity to further support and develop niche market industries (for tropical products for instance). On the contrary the small PACP with no trading interests in the EU and concerned about possible effects of liberalisation could opt out if they fail to see the advantages of the new trading arrangement<sup>57</sup>. The same is true for the private sector: where EPA could have concrete benefits (especially in terms of market access) players came forward and showed willingness to compromise; those without direct interest in European markets mainly see EPA as a likely precedent for PACER and are concerned about future competition (therefore supporting the more critical views on the whole EPA exercise).

Finally, **the level of ambition is high within the PACP Group regarding the amount of studies and other technical work to be undertaken in 2007 on the substance of EPA.** Reflecting the different perceptions about TA to support EPA preparation so far (as outlined in section 2.4), consulted stakeholders have different views on the further technical work required to complete negotiations. There is general consensus however that an important part of it will be in early 2007 drawing negotiating redlines from the PACP proposed EPA text. Interestingly also the CSOs (more critical than others on the concept of EPA) concur that such proposal would lead to concluding a development-friendly EPA. They only add that there should be some non-negotiable issues, i.e. area excluded from any liberalization talks: customary land ownership and use, cultural heritage, essential public services, agricultural goods for food security and farmers' livelihood<sup>58</sup>.

## **3.2 State of play in specific negotiating areas**

### **3.2.1 Core objectives, principles and structure of an EPA agreement**

The topic was negotiated satisfactorily and there is a fairly coherent position throughout the region. Aside from fisheries and development cooperation issues, where principles and exact status in an EPA agreement are still unclear, **the PACP and the EU reached in this area the only agreement recorded so far.** Due to the unique features of the fourteen PACP states, the two parties have agreed that only those countries actually having an interest and capacity for trading with the EU will sign a Trade in Goods Agreement as part of an overall EPA, and an opt-in clause would allow the remaining PACP to join at a later stage<sup>59</sup>. Trade in services and all other components of an EPA would fall instead under the overall agreement.

### **3.2.2 Coherence between Pacific regional integration processes and EPA commitments**

The principle that EPA should foster and will build on RI has been stated repeatedly by all parties but **most stakeholders believe this issue needs more attention and was not adequately discussed.** Firstly, the implications on RI processes such as PICTA and PACER of the fact that

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<sup>57</sup> The former Pacific's lead negotiator Tavola noted in November 2006 that "At the beginning of negotiations, we expected a lot of the idea of the EPAs becoming a tool for development. But as things stand now, the agreement is threatening to overwhelm our fragile economies. Some small islands may just opt out of the agreement altogether." (Dhondt, 2006)

<sup>58</sup> "The Pacific is 'calling the EU's bluff' in proposing an EPA that includes a number of developmentally-friendly provisions [...] Even though this analysis acknowledges that the Pacific trade negotiators have put forward a number of innovative proposals, there are still significant dangers for the Pacific's development in the draft text" (Oxfam New Zealand, 2006b).

<sup>59</sup> "The annex on goods can be signed by a selection of interested PACP countries, but should be open to others who may join eventually" (Manservisi and Falkenberg, 2006).

some PACP may trigger PACER and others will not<sup>60</sup> have not been analysed in full. Secondly, the wavering support to regional integration undermines the ability to pursue the EPA effectively, while conversely the push to rush through the EPA undermines regionalism. Several consulted actors recognized that all this is the outcome of very different perceptions within the region and between PACP and EU on the role, directions, scope and timing of regional integration. Some stakeholders mentioned that relative for instance to other ACP regions the trade dimension of RI has a very different nature, since the Pacific has a variety of islands, cultures and resources spread across 2200 nautical miles and with a depth of over 600 nautical miles; as PACP states do not share borders and are separated by immense distances by the ocean any impact of RI on trade and investment flows is going to be very limited. For some this constitutes a fundamental flaw with the principle of Pacific integration and should be explicitly recognized; while a lot of rhetoric surrounds RI, to some extent under external pressure (including by ANZ) and without the issue having been enough thought through in each country. Such perceived flaws of Pacific RI would also result in an inadequate institutional structure of regional cooperation organisations.<sup>61</sup> Some actors maintained that the EPA concept follows the EU model of RI while the example of Melanesian integration should be pursued as truly endogenous process. Private sector representatives tended to acknowledge the complexity and somewhat uniqueness of RI in the Pacific, but stressed that certain relevant reforms will only happen through strengthened regionalism (for instance practical steps towards a regional competition authority). Some CSOs on the contrary hold a critical stance towards the idea itself of smoothly integrating PACP states with their region and then the global economy<sup>62</sup>.

### 3.2.3 Trade in goods

**Goods market access (MA) issues have not been negotiated yet (more technical work at PACP level is planned), but there is serious disagreement between the two sides on rules of origin and the treatment of certain sectors of particular interest to the Pacific, such as fisheries and sugar.**

PACP are in the process of drawing possible national MA demands and offers. There is consensus among negotiators and senior officials that more technical work is definitely needed on defining MA demands/offers in 2007, but also that this part of the national and regional preparations have improved over time and it is feasible to have a regional offer ready in time<sup>63</sup>. Differences among PACP relate to the existing and potential trade flows with the EU and their degree of interest in signing a trade in goods agreement; and subsequently to the sensitivity of liberalizing 'substantially all trade' as part of EPA. Some PACP have a relatively open regime already; for others tariff rates are still high (and therefore signing a goods agreement gets even less attractive due to the triggering of negotiations with New Zealand and Australia). Though Melanesian countries have confirmed their interest, other PACP remain undecided on whether they will join any goods arrangement.

In principle the parties agree on the overall objective of MA negotiations<sup>64</sup>, but without rules of origin MA cannot translate in actual access to markets and here there is disagreement. Though

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<sup>60</sup> Countries that do not sign a Trade in Goods Agreement with the EU would not trigger negotiations with ANZ.

<sup>61</sup> Few stakeholders indicated that none of the regional organizations concretely benefit their countries.

<sup>62</sup> One of the actors stated: "we used to be the peaceful Pacific. We are anything but peaceful under the current economic restructuring that is creating social inequalities without ensuring that the customary net that used to protect our citizens are not being degraded by policy decisions; these invalidate our customary values that have been developed in the fragile, disaster prone environment in which we live; values that were developed in the colonial era when resources were plentiful and available".

<sup>63</sup> Some private sector representatives mentioned that so far the approach to prepare for MA negotiations by PACP governments was too much from the revenue generation point of view, whereas they would prefer to focus on competition and other dynamic effects of liberalisation.

<sup>64</sup> "EPA should aim at achieving full market access for Pacific EPA countries to the greatest extent possible, while recognizing the need to address the import regime for a few sensitive products" (Manservisi and Falkenberg, 2006).

the EC has not announced yet formally its proposals on how to reform ROO<sup>65</sup>, according to PACP actors the European side is showing intransigence and their position risks to even reduce future trade between PACP and EU countries (it was mentioned that *"if the value added criterion is selected for EPA then the parties will have a 'Trade free area' rather than an FTA"*)<sup>66</sup>. Some noted that without a reform of ROO (the PACP proposal is for a 'change of tariff sub-heading' criterion<sup>67</sup>) the trade in goods agreement will become unattractive for almost all PACP countries.

Due to the nature and history of the region specific goods have a relatively higher weight in EPA. In relation to fisheries, the Pacific has argued that the best way to reap greater benefits from the region's enormous fish resource is to act together, not only for conservation of the resources, but also in terms of the development of the fishing and processing industries<sup>68</sup>. Therefore the PACP Group agreed to pursue a multilateral fisheries agreement within the EPA that will contain the current bilateral agreements but with additional components, especially simplified ROO. According to contacted stakeholders the EU has so far refused to entertain this, a stance that is deemed not coherent with the stated aim of the EPA to promote regional cooperation<sup>69</sup>. Many noted that initially some disagreements existed between PACP countries with and without a bilateral fisheries agreement with the EU, but the regional solidarity has been fully restored on fisheries issues within EPA<sup>70</sup> and the major problem is now convincing the EU side.

Given its importance for national economic development, the sugar protocol and its future in relation to European internal market reforms necessarily affect Fiji's conduct in the EPA negotiations.<sup>71</sup> Despite some think this may divide the country from the rest of the region in EPA negotiations, most consulted stakeholders believe that the two processes are separate, including sugar adjustment payments to ACP sugar protocol countries as part of sugar market reforms. In Fiji industry adjustment programmes have been designed already and the process is now at the stage of delivery of the support. In terms of MA, it was mentioned that PACP press for an EBA-equivalent market access for the region's sugar exports, beginning in January 2008, but the EU is not willing to make any such commitments.

### **3.2.4 Trade in services**

**Negotiations on trade in services registered serious disagreement between the PACP and the EU on the major offensive interest of the Pacific (mode 4), while full negotiations on MA demands and offers have not started yet.**

Most stakeholders noted that there is enough time to prepare for the PACP offers for services MA but that without M4 there is not going to be a Services Agreement (which means there may not be in the end the need to prepare concessions on services if the EU does not accept

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<sup>65</sup> "As regards rules of origin we have already provided some indications as to your requests regarding fisheries but will come back as soon as our internal reflection on the ROO will be concluded later this year" (Manservisi and Falkenberg, 2006).

<sup>66</sup> Some EU actors recognize the restrictiveness of EU ROO: "Rules of Origin determine the real level of market access which is provided under trading schemes. In the EU's current schemes these Rules are out-of-date, complex and restrictive, impeding take-up by developing countries" (UK Government, 2006).

<sup>67</sup> The PACP ministers decided "to re-iterate the region's position for a rule of origin based on a change in tariff sub-heading (CTSH) at the six-digit level" (PIFS, 2006).

<sup>68</sup> For instance in the tuna sector one or two PACP countries have the characteristics to become the Pacific hub for processing. It was mentioned that for this to happen both a reform of ROO and clearer national strategy are needed (as canneries policies remain uncertain in concerned PACP countries).

<sup>69</sup> According to them, this can be gathered by the fact that the EU negotiates fisheries access deals bilaterally (existing bilateral agreements with Federated States of Micronesia, Kiribati, and Solomon Islands) and the most recent negotiations for renewal of the agreement with Kiribati were concluded as recently as July 2006, after the Pacific trade negotiators had made repeated calls for a regional agreement (see Oxfam International 2006).

<sup>70</sup> It was indeed agreed that the multilateral framework for fisheries would be negotiated to the extent of what countries have agreed at the bilateral level and would not leave them in a worst position.

<sup>71</sup> The CEO of Fiji's Foreign Affairs and External Trade, has stated that "Fiji's position on EPA is going to [be] dictated on what will happen to the sugar negotiations which are running parallel to this and with EU" (Fiji Times, 8 Nov. 2006).

negotiations on M4).

In terms of offensive interests, the major disagreement<sup>72</sup> relates to M4. The PACP submitted a non-paper on a quota regulation for the temporary movement of skilled and semi-skilled workers from the Pacific in crucial sectors. Since Mode 4 concessions would fall into the competence of the member states, the EC suggested discussing this issue with the individual EU members. The PACP accept that argument but most stakeholders maintain that there is no reason why with the EU MS involvement an agreement could not be found on how to integrate this into EPA. Private sector representatives stressed that PACP have qualified nurses, doctors, electrician, drivers, seamen, carpenters, construction workers, and so forth; they should be given similar job opportunities in Europe (though some warned of a possible 'brain drain' of those trained). Tourism represents another offensive interest and the PACP EPA text proposes a chapter on its own, but more in relation to investment promotion and industry development rather than services liberalization.

In terms of PACP defensive interests, many actors pointed out that more time is necessary to complete background technical work for each interested PACP to define and analyse what sectors could be open to European competition. They stressed that complicated issues such as services need much greater discussion and understanding, both by governments and CSOs, before any commitments are made. In particular, GATS is one of the world's most complex agreements with many of its terms as yet undefined, or in the case of issues such as emergency safeguards and domestic regulation, still in the process of negotiation<sup>73</sup>. The experience of countries with services, even among EU member states, would show that liberalisation in advance of sound regulatory systems may translate into risks of poor services provision, particularly for essential services.

Some consulted stakeholders noted that if a services agreement becomes unattractive the Pacific EPA would become basically a trade in goods agreement with only very few countries participating. This in turn would be very different from the way EPA was originally conceived.

### 3.2.5 Trade-related aspects

**Trade-related issues have not figured as prominent in the negotiations so far, but the two parties approach them differently which is likely to create disagreements.** The EC considers this an area for rule-making and domestic reforms accompanying EPAs (towards liberalization of investment and government procurement, competition policy, stronger IPRs, etc.) while PACP as areas where technical and financial support from the EU is needed.<sup>74</sup>

An investment chapter was included in the draft EPA text submitted to the EC in July 2006, where PACP ask for the inclusion of provisions to regionalize existing investment funds (EIB, CDE, PROINVEST) and to re-organize the related institutions to better serve development needs of SMEs (since in the past EU funds were mainly invested in large infrastructure projects which do not meet the Pacific needs where mostly small scale enterprises operate). There is consensus among consulted actors that the Pacific draft investment text is a good attempt at balancing the rights of investors and the rights of Pacific citizens, as well attempting to encourage investment at the SME-level. The EU's position that they are unwilling to include flexibilities for PACP and even look at reforming the existing investment instruments such as the CDE and EIB<sup>75</sup> is of serious concern to most PACP stakeholders.

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<sup>72</sup> "As regards the issue of services, we have taken good note of your various submissions and noted carefully your emphasis on one particular aspect which is Mode 4. Let us be clear about the fact that your ambitions in this area go far beyond the possible offers that we will be able to make in the end." (Manservisi and Falkenberg, 2006).

<sup>73</sup> It was noted that with such complex issues there is a high risk of over-committing to liberalization, as it happened to even the US in gambling services (a complaint by another member was brought to the WTO Dispute Settlement Body).

<sup>74</sup> "The draft EPA Text does not yet reflect a number of issues of high importance for development and regional integration on which we still need to discuss appropriate language such as on government procurement, competition, or intellectual property rights, partly already agreed in the Cotonou Agreement" (Manservisi and Falkenberg, 2006).

<sup>75</sup> See footnote 50.

### 3.2.6 Institutional and legal issues

**Institutional and legal aspects of EPA were not adequately discussed due to the slow progress of negotiations so far.** It was noted that the priority for PACP is to overcome the EU's inflexible responses over other EPA issues of much higher priority for the region. The implications on WTO compatibility of a possible postponement of the 2007 deadline did not feature in the EPA talks as parties focused on completing negotiations by 2007. Many consulted actors however acknowledge that given the current bleak picture this is becoming an urgent issue, especially if the region might have to ask for extension of the deadline.

The PACP proposals for joint institutions to implement an EPA are in their proposed EPA text but this was not discussed at length and at present there appears to be some disagreements. On the RPTF for instance, the PACP fail to see its role if no additional financial resources will be there to be managed as outcome of EPA, while the EU side insists it is important to establish one<sup>76</sup>. Finally, some actors noted that refusal can be expected from the EU side on the PACP proposal that EU should be financing all possible trade disputes even when brought about by PACP.

### 3.2.7 The trade and development dimensions

**The degree of special and differential treatment granted to PACP countries through the trade provisions of an EPA are unclear as negotiations are still ongoing; while there is serious disagreement between the parties on development cooperation aspects and ways to address possible adjustment costs and other accompanying measures in the context of EPA.**

In terms of assessment of the development content of trade and trade-related provisions discussed under EPA so far, some negotiators and government officials, and most NSA, stressed that so far there seems to be very limited special and differential treatment (SDT) in the EU concept of an EPA, given their responses to PACP proposals<sup>77</sup>. These are very disappointing as discussed above, and include the EU's response that the EPA will cover only the 'trade pillar' of the CPA. It was also emphasized that despite fully captured in the PACP proposed text, the special needs of LDCs and SIS have not received adequate attention, with the thrust of such SDT appearing to be simply an extra 5 years for implementing liberalization of trade in goods and possibly the allowance for lower sectoral coverage in services. Some other elements are shared by the EU, like asymmetry of liberalisation commitments, longer transition periods for PACP and possibly safeguard mechanisms<sup>78</sup>, but according to consulted stakeholders it is still unclear to what degree the EU is going to accept deeper SDT.

In addition to trade and trade-related provisions, another element of the development dimension of EPA is development cooperation and how capacity-building, strengthening of regional organisations, adjustment costs, infrastructure upgrading, and other competitiveness-enhancing measures could be addressed in the context of the new partnership agreement. Some stakeholders noted that many in the region unfortunately still seem stuck on the equivalence between development dimension and additional funds. But as mentioned in subsection 3.1, according to the majority of stakeholders one of the key underlying problems with EPA is that the EC refused to negotiate development cooperation in the context of EPA<sup>79</sup>. There was even

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<sup>76</sup> "The preferred instrument for doing this is the RPTF which despite our earlier agreement in the 2004 Joint Roadmap has not yet been created [...]. We therefore urge you to facilitate the rapid establishment of the RPTF" (Manservisi and Falkenberg, 2006).

<sup>77</sup> Oxfam International (2006) sets out this argument more fully, but, in a nutshell most CSOs believe that 'every avenue that could be used to make the agreement development-friendly is thwarted'.

<sup>78</sup> "Some costs will perhaps arise when the benefits have not yet kicked in. [...] As you know we are prepared to include transition periods as well as bilateral safeguards that will allow us to handle the matter in a controlled way as things evolve." (Manservisi and Falkenberg, 2006).

<sup>79</sup> "A further major issue is the link between EPA and development cooperation. Here we see still a considerable gap in our mutual understanding. In your draft EPA submission, detailed development cooperation provisions form integral part

disagreement on the forum where to discuss EPA-related financial support and some observed long time was spent on ‘semantic differences between the parties’<sup>80</sup>. As a consequence of such disagreement, so far the Pacific region is the only one negotiating EPA where an RPTF was not established. No specific WG on building productive capacity, adjustment costs or development cooperation was ever organized either.

The proposed PACP EPA text includes examples of where EPA-related financial support is needed and what kind of accompanying measures to EPA should be put in place. Development cooperation is presented both as a crosscutting issue of each EPA component (in the proposed chapters on Trade in Goods, Services, Tourism, Agriculture, Fisheries, and private sector development) and as a stand-alone issue (development assistance chapter).

The EDF10 programming process (that according to the EU is the forum where any EPA-related financial assistance should be discussed) is nearly completed, with focal sectors and overall amounts agreed. Both at the regional and national levels, the position of the PACP Group that additional resources beyond EDF10 are needed to implement EPA led to the refusal to include EPA related issues in the RIP and NIPs<sup>81</sup>. PACP stays firm on the demand for additional funding over and above EDF and with a separate binding disbursement mechanism<sup>82</sup> (to match the binding liberalisation commitments PACP will have to make in the EPA). Some stakeholders pointed out that in most PACP even if this were not the case (i.e. governments aimed at including EPA-related costs in the programming of the EDF10), the perception that EPA is not a priority together with endemic institutional weaknesses (namely lack of coordination between trade ministries and those responsible for aid management/NAO) would have made the process of programming the EDF10 to support EPA extremely difficult<sup>83</sup>. Some private sector representatives stressed that the PACP should have been more pragmatic by conducting as a matter of urgency much earlier in the process national needs assessments, breaking down exactly sectoral requirements, to better justify the demands for additional EPA-related financial support. In any case some, though mentioning that private sector financing is relevant (as captured in the reform of CPA investment instruments proposed in the PACP EPA text), observed that development cooperation should not be the ‘make or break’ issue of the negotiations<sup>84</sup>.

The EDF10 programming led to an ‘indicative regional allocation’ of around € 76 million (increase of 130 % compared to 9th EDF<sup>85</sup>), with a possible incentive tranche of 25 %, distributed as follows:

- focal area 1: sustainable management of natural resources €36 million
- focal area 2: human resources development €30 million
- non-focal area (Technical cooperation facility) €10,222 million

Considering that the disagreement on additionality to EDF persists, in early 2007 an internal PACP process will start with the objective of collecting needs analysis at country level on EPA-related needs and designing possible projects, to be submitted soon to the EU institutions under EDF procedures. Hence, though most stakeholders believe that the first best is a regional EPA

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of the text [...]. As you know, this is not acceptable to us.” (Manservisi and Falkenberg, 2006).

<sup>80</sup> See footnote 49.

<sup>81</sup> “We are concerned about this continuing absence of a structured link between EPA and development cooperation. The currently ongoing programming of the 10<sup>th</sup> EDF does not benefit from the input of an RPTF” (Manservisi and Falkenberg, 2006).

<sup>82</sup> However the exact function, governance structure and disbursement mechanisms of the proposed PACP EPA Adjustment Facility have not been identified yet by PACP.

<sup>83</sup> Numerous stakeholders mentioned that in their country the department of aid planning has never taken any interest in the EPA process and vice versa the department responsible for EPA did not participate in the EDF10 process.

<sup>84</sup> For instance it was mentioned that a reform of ROO for tuna products is likely to create many more jobs than any direct assistance to SME by the EIB.

<sup>85</sup> It was noted however that this constitutes a nominal increase to EDF10; per capita, EDF 10 represents a 60% decline in real resources received from the EU since the 1980s (EDF5).

Adjustment Facility, there seems to be still some leeway under the EDF to get EPA-related programmes funded (under both focal sectors and the non-focal area of the RIP)<sup>86</sup>.

Few mentioned that in general too much aid risks to crowd out investment and bias economic allocation and domestic efforts to address structural economic weaknesses; others that additional funds are a trap, as governments are often seduced to make long term commitments in return for short term cash, especially as they may not be the ones who are responsible for implementing obligations in the future. However the great majority of stakeholders noted that aid is going to be crucial to implement EPA. Some emphasized that for Pacific LDCs, the attractiveness of an EPA lied in the development aspect of it and not in trade: if the development dimension of the EPA is not forthcoming, the EBA would be the best option for them. Some consulted stakeholders believe that the areas where funds are needed the most are trade facilitation (support for customs; certificate of origin documentation; metrology laboratory; standards information, training and centre; quarantine's export protocol) as well as trade promotion and information. The actual needs however will depend on the final provisions of the agreement which are not known yet.

## 4 Concluding Remarks

From the perspective of the region the overall assessment of the structure and process of the EPA negotiations comprises both positive and negative elements. Consulted actors tend to concur on the significant improvements that the EPA process triggered in terms of the general profile of trade issues and trade negotiations in the region, as well as the structures for more regular and transparent participation to trade policy making by different stakeholders. This also increased the confidence, especially of the private sector, to engage with government officials and in most PACP countries improved the general attitude of the administration on the demands of non-state actors. Many observed that EPA was a learning tool, and such experience will serve the future needs of the region for similar international trade processes, starting with regional integration.<sup>87</sup>

However the capacity and preparedness of the PACP countries to both conclude negotiations by the end of 2007 and implement any new partnership agreement are extremely weak. More time and capacity at national level are required to both complete preparatory work and to raise awareness and support for the EPA in general. There was a widespread feeling that the EPA process is reasonably transparent, but the way national priorities are reflected in regional-level EPA negotiations should be improved. Participation of national governments to the overall EPA regional process through the official channels established by the regional negotiating structures has been satisfactory (though partly lacking from some of the smaller countries in the region). But, a part from national negotiators (mainly representatives from the ministry responsible for EPA and in few cases from the private sector), participation of stakeholders from individual PACP countries (non-state actors, government officials from other ministries and parliamentarians) has been disappointing.

What emerges from the observations of consulted stakeholders on the substance of the negotiations and the trade and development dimensions of EPA is that, despite the problems in terms of process, the Pacific region stands united on the objective of making the new partnership agreement a real tool for development. All actors agree that the development-friendly provisions included in the PACP proposal for an EPA text adequately represent the interests of the region, and could also be considered as a precedent and benchmark for other important trade and

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<sup>86</sup> Some actors mentioned this fallback position and subsequent preparatory work started too late.

<sup>87</sup> It was noted the Trade Policy Committees at national level triggered by EPA negotiations will become operational and actually provide input mostly for other trade fora such as PICTA and PACER.

development negotiations facing the Pacific in the near future.

However, given the disappointing responses from the EU side on such proposed EPA provisions, most stakeholders feel that if the disagreements persist as currently on nearly all areas covered by the EPA talks, the chances of concluding negotiations successfully by the end of the year are very limited. To achieve that, a number of conditions seem to be required:

- the deadlock appears to be political rather than technical
- given the very serious disagreements over most areas of negotiations, the two parties may have to lower their respective ambitions
- more national-level consultations are undertaken in the PACP countries to improve the legitimacy, credibility, and ownership of EPA.

This seems to indicate that:

- only intervention at the highest political level (beyond the EC and the Forum) could solve the impasse. Full Ministerial-level negotiating sessions between PACP and the EU in 2007 as well as increased commitment to the EPA process by certain PACP national governments were mentioned as key<sup>88</sup> (taking into account also delicate political issues such as the Coup in Fiji)
- the EC will have to get more responsive on some of the technical negotiating proposal by PACP and the PACP negotiators may have to accept some compromises on their ambitious proposal of an EPA text<sup>89</sup>
- realism on the timing of the negotiations will be necessary as one year may not be sufficient to solve the weaknesses of the EPA process and the deadlock in the negotiations.

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<sup>88</sup> "Trade Ministers from Pacific ACP (PACP) countries have agreed on the need to intensify political interventions in the negotiating process of the Economic Partnership Agreement (EPA) with the European Union (EU) as the deadline for the conclusion of negotiations approaches" (PIFS, 2006).

<sup>89</sup> "While no doubt some progress has been achieved over the last two years, we feel that we are now at the crossroads. As we have pointed out, it will not be possible to fulfil all of the Pacific high ambitions such as those relating to the services area or aiming at the creation of a new aid and cooperation framework within EPA. The submitted draft EPA text will hence have to undergo substantial amendment before it can become a mutually agreeable EPA" (Manservisi and Falkenberg, 2006).

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# Annex I

Attachment 4

## Implementation of Article 37(4) of the Cotonou Agreement

### Provision of technical support to assist the Pacific ACP Region in the conduct of a comprehensive review of EPA Negotiations

#### Draft Terms of Reference

#### *Background*

1. Article 37(4) of the Cotonou Agreement (CA) states that "[t]he Parties will regularly review the progress of the preparations and negotiations and, will in 2006 carry out a formal and comprehensive review of the arrangements planned for all countries to ensure that no further time is needed for preparations or negotiations."

#### **Purpose**

2. The purpose of the study is to assist the Pacific ACP (PACP) region to prepare for discussions with the EC on the formal and comprehensive review of the EPA negotiations in accordance with CA Article 37(4) and as agreed between the parties to the negotiations.

#### **Parameters**

3. The study shall be conducted on the basis of the Decision No.2/LXXXII/06 of the 83<sup>rd</sup> Session of the ACP Council of Ministers held in Port Moresby from 28 — 31 May 2006 and the proposal by the ACP Ministerial Trade Committee on the comprehensive review of EPA negotiations as well as the Joint ACP-EC Council Decision on the subject.

4. The study will include, in particular, an assessment from the perspective of the region, of the structure, process and substance of the negotiations, the trade and development dimensions, as well as the capacity and preparedness of the region to conclude EPAs. As appropriate, development benchmarks may be suggested to assist the region in the conduct of the Joint Review exercise and in the negotiations as a whole.

5. Within the time limits available, the review shall be all-inclusive and consultative with all stakeholders including non-state actors and parliamentarians and shall be conducted at both the national and regional levels in the Pacific.

6. Following completion of a draft of the study, it will be reviewed by PACP Officials prior to its being finalised. The results will then be consolidated and discussed at the all-ACP level before the commencement of the joint ACP-EC review.

#### ***Consultant's tasks***

7. With a primary focus on the regional perspective, the assignment will cover the following assessments:

- (i) the state of play of the PACP-EU EPA negotiations, including outstanding issues and

major obstacles (core objectives and principles; regional integration; trade in goods and services; trade-related aspects; institutional and legal issues and other relevant issues);

- (ii) the development aspects of the negotiations, such as the development content of trade and trade-related provisions that may have been advanced to date by either the PACPS or EC (e.g, flexibility, asymmetry, adjustment mechanisms, and the sequencing of trade liberalisation with regional integration processes; particularly taking into consideration the following CA provisions: (a) Articles 35(3), 85 and 89 regarding special treatment for LDCs and small island countries; and (b) Article 37(3) which provides for priority treatment of capacity-building, strengthening of regional organisations, infrastructure upgrading, and other competitiveness-enhancing measures);
- (iii) implementation of the EPA negotiation work plans and 2004 PACP-EC Joint Road Map to date and outlook to the end of 2007;
- (iv) whether more time is needed to prepare for and effectively conduct the negotiations;
- (v) measures necessary to support the timely completion of the negotiations;
- (vi) the capacity and preparedness of PACP region to conclude an EPA;
- (vii) measures necessary to implement a PACP-EU EPA, including: status of trade capacity-building measures, status of regional and national needs assessments, funding of EPA implementation in NIPs/RIPs;
- (viii) possible costs and benefits of establishing a PACP-EC Regional Preparatory Task Force (RPTF), appropriate terms of reference for such a Force, and useful priority activities that such a Force could undertake, if any;
- (ix) the coherence between Pacific regional and sub-regional integration processes and EPA commitments;
- (x) Any other negotiation-related issue that the region may consider relevant to the successful completion of the negotiations; and
- (xi) alternatives to EPAs for PACP States, especially as they relate to CA Article 37(6).

### **Proposed timing**

8. The project will be implemented during the period mid-November 2006 – mid-January 2007 and the overall study will require a total of one month of work. It is envisaged that a validation seminar covering studies conducted separately for all the ACP negotiating regions will take place at the ACP Secretariat in Brussels, probably in early 2007.

### **Reporting**

9. The Consultant will submit the following reports:

- (i) Inception report (within 1 week of the signing of the contract); the inception report will contain a description of the overall methodology and the annotated plan of the final report;
- (ii) Draft final report by 22 December 2006 which will be circulated to all PACP States for comment; and
- (iii) Final report within 1 week of receipt of comments from the validation seminar on the draft final report.

10. The final report should be no more than 10-15 pages long, not including such annexes as the Consultant may consider appropriate.

#### Validation seminar

11. The ACP Secretariat will conduct a two-day 'validation seminar' for each of the sub-regional review studies to examine and approve the recommendations in the draft final all-ACP report. The Consultant will be expected to participate in the Seminar. The latter will be convened at the ACP Secretariat in Brussels with the involvement and participation of all the ACP negotiating regions

## Annex II

### Consulted stakeholders

#### Government

Ms. Tapaeru Herrmann  
Director, International Affairs  
Ministry of Foreign Affairs & Immigration  
Cook Islands

HE Mr Ratu Tuinausori Cavuilati  
Ambassador  
Embassy of the Republic of Fiji  
Belgium

Ms Anju D. Keetharuth  
former Trade Policy Analyst  
Ministry of Foreign Affairs and External Trade  
Fiji

Mr Tiare Erekena  
Acting Director for Business Development  
Centre  
Ministry of Commerce, Industry & Cooperatives  
Kiribati

Mrs. Iva Reimers-Roberto  
Trade Policy Officer  
Ministry of Resources and Development  
Republic of the Marshall Islands

Mr Masau Detudamo  
Director of Trade  
Department of Foreign Affairs and Trade  
Nauru

Mr Young Tony Kalauni  
Trade and Investment Adviser  
Trade Office  
Niue

Mr Ramon Rechebei  
Director, Bureau of International Trade &  
Technical Assistance  
Ministry of State  
Palau

HE Mr Isaac Lupari  
Ambassador  
Embassy of Papua New Guinea  
Belgium

Ms Elise Mc Auley  
former Senior Trade Officer  
Department of Trade and Industry  
Papua New Guinea

Mr Douveri Henao  
Legal officer - International Law  
Department of Justice  
Papua New Guinea

Mr. Auelua Samuelu Enari  
Assistant Chief Executive Officer  
Ministry of Foreign Affairs and Trade  
Samoa

HE Mr Tuala Falani Chan Tung  
Ambassador  
Embassy of Samoa  
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Mr Hence Vaekesa  
Director of Trade  
Ministry of Foreign Affairs & External Trade  
Solomon Islands

HE Mr Joseph Mahanua  
Ambassador  
Embassy of Solomon Islands  
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Ms Julia Tijaja  
Trade Policy Analyst  
Ministry of Foreign Affairs & External Trade  
Solomon Islands

Mr Paulo Kautoke  
Secretary  
Ministry of Labour, Commerce and Industries  
Tonga

Ms JayaChoraria  
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Ministry of Labour, Commerce and Industries  
Tonga

Mr Pugameau Taufilo  
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Mr Timothy Sisi  
Acting Director  
Department of Trade, Commerce&Industry  
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Mr Danny Lui  
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Department of Trade, Commerce&Industry  
Vanuatu

### **Civil society**

Ms Cema Bolabola  
Pacific Islands Association of NGOs  
Fiji

Mr. Feiloakitau Kaho Tevi  
Programme Executive of the Pacific  
Office of the World Council of Churches  
Fiji

Ms Tupou Vere  
Assistant Director  
Pacific Concerns Resource Centre  
Fiji

Mr Barry Coates and Nick Braxton  
Oxfam New Zealand

Ms Jane Kelsey  
University of Auckland  
New Zealand

Ms Ruth Pune  
Celcor  
Papua New Guinea

Mr. Christopher Maingu  
Executive Director  
HELP Resources  
Papua New Guinea

Mr Grant Percival  
Natural Foods  
Samoa

### **Private sector**

Ms Teresa Manarangi-Trott  
Chamber of Commerce and Industry  
Cook Islands

Mr James Movick  
Chairman  
Pacific Islands Private Sector Organisation  
and Pacific Islands Tuna Industry Association  
Federated States of Micronesia

Wayne Golding  
PNG Manufacturers Association  
Papua New Guinea

Mr Eddie Wilson  
International Kava Executive Committee  
Samoa

Mr Dave Uata  
Tongan Small Business Association  
Tonga

### **Experts assisting the Regional Negotiating Team**

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Mr David Primack  
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Mr Len Rodwell  
Director, Fisheries Development  
Forum Fisheries Agency (FFA)  
Solomon Islands

Professor Robert Scollay  
APEC Study Centre and Economics Department  
University of Auckland  
New Zealand

Mr Robert Sisilo  
Permanent Representative of the Pacific Islands Forum to the WTO  
Switzerland

# **Annex III**

## **Communiqué of the PACIFIC CIVIL SOCIETY MEETING ON TRADE NEGOTIATIONS**

**Nadi, Fiji, 13-16 June 2006**

Pacific island governments, as members of the African, Caribbean and Pacific group (ACP) are meeting this week to prepare negotiating positions for an Economic Partnership Agreement (EPA) with the European Union (EU). The negotiations are currently scheduled to be completed by December 2007, and aim to redefine the relationship between the EU and Pacific island states. The EPA is expected to replace current arrangements covered under the non-reciprocal Cotonou Partnership Agreement from the beginning of 2008.

As civil society groups meeting in Nadi, Fiji, we believe that trade agreements must have just and equitable development at their heart. Genuine sustainable development – including economic, social, cultural, gender and environmental dimensions - must be the central pillar of these agreements.

We are concerned that the proposed EPA in its current form will not fulfil these development objectives.

To address this, there must be a stronger partnership between government and civil society in the Pacific, to ensure that all aspects of the EPA and possible alternatives are explored, to achieve the best outcomes for the peoples of the Pacific, both at national and regional levels.

We were honoured that our conference heard addresses from Senator Kaliopate Tavola (Fiji's Minister of Foreign Affairs and External Trade and Chair of the Regional Negotiating Team); Hon. Misa Telefoni (Deputy Prime Minister of Samoa); Mr. Greg Urwin, Secretary General of the Pacific Islands Forum Secretariat; and Roy Mickey Joy (Vanuatu's Director of External Trade).

We also had valuable discussions with officials from the Pacific Islands Forum Secretariat and trade negotiators from Pacific ACP governments, who shared their perspectives on the current preparations for an EPA.

However, following our discussion and our meetings with key government leaders, trade negotiators and officials, we believe there are many areas of concern that need to be addressed prior to any formal negotiating position being adopted:

### **1) IMPACT STUDIES:**

There must be independent and extensive studies on the impacts - social, cultural, gender, economic, developmental and environmental - of the EPA, PACER and other regional trade agreements. There must be a deeper analysis of potential costs as well as benefits, to allow public discussion and decision on any trade-offs needed to reach an agreement.

From our dialogue with Forum Secretariat officials and Pacific government trade negotiators, we welcome their pledge that comprehensive impact studies will be carried out before commitments are finalised in the EPA negotiations.

### **2) PUBLIC CONSULTATION:**

We seek a formal process of consultation with government as work on developing negotiating positions proceeds, including the EPA Formal Review in 2006.

### **3) TRANSPARENCY AND INFORMATION SHARING:**

Meaningful consultation requires greater transparency and information sharing on the EPA between governments and community organisations, regarding the process, substance and implications of the negotiations.

### **4) NON-NEGOTIABLE ISSUES:**

There are areas which should not be liberalised as part of trade deals, including our land, ownership and use of customary land, cultural heritage, key public services, food security and farmers' livelihoods.

### **5) REGIONAL AND INTERNATIONAL SOLIDARITY:**

There is a need for Pacific countries to unite with common purpose, to avoid the danger that developed-country trading partners will attempt to divide island governments, and make demands in areas outside our common interests as island peoples.

These concerns have all been raised on a number of occasions in the past. As we move towards the

deadline for the finalisation of the EPA, these issues are critical and need an urgent response.

#### IMPACT STUDIES

Regional trade agreements are not simply about economic benefits. They must address all aspects of human development, security and sustainability.

The process, terms of reference and outcomes of past impact assessments and current proposals for the PACER study fail to provide adequate guidance to governments and protect the interests of Pacific peoples.

For this reason, our conference drafted recommendations for the Terms of Reference for these studies, for the consideration of the Forum Secretariat and member governments.

It is essential that genuine impact assessments reflect the fundamental rights of Pacific peoples to poverty eradication, human development, vulnerability, environment, security and sustainability. People and governments must also have the capacity to participate effectively in such assessments.

We believe that these studies must be undertaken by qualified and independent people from the Pacific, through consultation at national and regional level. These studies must address the particular needs of rural communities, people with disabilities and the most marginalised sectors of our societies.

As civil society representatives, we commit ourselves to actively participate in this process, to help bring the voices of Pacific communities to the highest levels of government deliberations.

#### ANALYSING COSTS AS WELL AS BENEFITS

Governments have a moral and political obligation to safeguard the interests and well-being of the community. They should develop frameworks and legislation to ensure the monitoring and regulation of trade and corporate investment, for the benefit of our peoples.

Particular provisions in the EPA negotiations which could cause dangers to Pacific societies include the local impacts of foreign fishing operations, unregulated tourism, lack of control and regulation of foreign companies, lack of government capacity to regulate in the public interest, threats to essential public services such as water and energy, and pressures for alienation and foreign control of our land, especially customary land.

Strong regulatory frameworks should be in place before any liberalisation of investment and services. We are concerned that without such frameworks, there is potential for foreign investment in areas such as logging, mining and fisheries to create tensions and disputes within the community, which can lead to conflict and violence.

Governments must avoid Investment Protection Agreements which give corporations undue rights and limit government policy options.

An EPA may provide important benefits such as greater access to the European labour market for skilled workers from the Pacific. But we are concerned that greater labour mobility under EPA and PACER will be used to demand unacceptable trade-offs from Pacific island countries, including the reciprocal demand for unrestricted entry for overseas professionals and executives which will affect employment in our region.

We are also concerned that the EU has refused to respond to Pacific calls for:

- a regional agreement on fisheries, having already developed bilateral fisheries agreements with three island nations;
- reform of investment facilities;
- reform of rules of origin, Sanitary and Phyto-Sanitary (SPS) and other unfair trade barriers;
- additional funding for the costs of adjustment and capacity building for Pacific ACP countries to benefit from new market access.

#### PUBLIC CONSULTATION

We welcome the proposals from our leaders and officials to forge a stronger partnership between government and community organisations, to promote the welfare and development of our Pacific peoples. The proposal for the establishment of Trade Advisory Committees at national level and other consultative structures at regional level provide important mechanisms to engage in formal and ongoing discussion on the content of any partnership agreements.

We urge Pacific Island Governments to utilise the resources of civil society organisations, to raise awareness about regional trade negotiations and the ways they will affect the peoples of the region.

#### TRANSPARENCY AND INFORMATION SHARING

The lack of meaningful consultation and transparency on the EPA is a concern for civil society. It seems that it is only government trade officials and their counterparts in the Forum Secretariat who have a detailed knowledge of the EPA and what it offers. The region's civil society organisations are fearful that the EPA trade negotiations are being carried out purely on the basis of theoretical economic analysis.

We call for a campaign of education and mobilisation to inform the public about important issues that are being decided in the coming weeks and months. This should involve a range of government departments

(other than trade ministries), churches, trade unions, NGOs, private sector organisations, environment groups, landowners associations, councils of chiefs etc, as well as local communities. We commit to undertake public education campaigns and call on government and Forum officials to provide more information and engage in open and meaningful dialogue.

#### NON-NEGOTIABLE DEMANDS

There are areas which should not be liberalised as part of trade deals, including our land, ownership and use of customary land, cultural heritage, key public services, food security and farmers' livelihoods.

The EPA negotiations and trading agreements between EU and ACP countries raise issues that have been rejected by developing countries in the World Trade Organisation (WTO), such as competition policy and government procurement.

We believe these issues should not be part of the current negotiations.

#### REGIONAL AND INTERNATIONAL SOLIDARITY

Pacific governments need to maintain solidarity when they negotiate for the EPA. This unity needs to extend to other developing countries who are struggling to obtain just trade rules internationally through the WTO.

We are especially concerned about OECD countries, including regional partners like Australia and New Zealand, who are demanding unfair, excessive concessions as Pacific countries like Tonga accede to WTO membership.

We call for regional solidarity, information sharing and support to ensure that small island states are not played off against each other. The EPA negotiations should not be used to undercut developing country policies being protected in other multilateral forums.

Civil society groups have expertise and influential networks that our governments can use to carry Pacific island concerns to the international stage.

We will work with our colleagues in Australia and New Zealand to resist pressure on our governments to begin negotiations under PACER through linkage to the EPA.

We call on EU member states to be accountable for the negotiations being undertaken in their name. We will lobby our counterparts in Europe for support against the intransigence of EU negotiators on key areas of concern. We call on our partners in Europe and in African and Caribbean countries to carry our voices into other forums in the weeks and months to come.

The consultation in Nadi Fiji brought together over 60 representatives of churches, non-governmental organisations, trade unions, national business and farmer groups, women's and environment organisations, people's movements and academics from 12 Pacific countries. Participants included key regional bodies such as the Pacific Conference of Churches (PCC), the World Council of Churches – Office of the Pacific, Pacific Foundation for the Advancement of Women (PACFAW), the South Pacific and Oceanic Council of Trade Unions (SPOCTU), Council of Pacific Education (COPE), Pacific Concerns Resource Centre (PCRC), Pacific Island Association of NGOs (PIANGO), Disabled Peoples' International, Greenpeace Australia Pacific, and the Pacific Network on Globalisation (PANG). Participants thanked Oxfam for their support in hosting the conference.

# **Annex IV**

## **Summary of Resolutions and Discussion Points Made by the PACP Private Sector**

### **Pacific – EU EPA Workshop: Opportunities and Challenges for the private sector of new trading arrangements.**

Sponsored by the Trinnex Program of CDE – Pro Invest

Held on 27<sup>th</sup> and 28<sup>th</sup> November, Port Vila

#### **Objective:**

The workshop was conceived to assist the private sector in assessing progress to date in Economic Partnership Agreement (EPA) negotiations. Emerging opportunities and challenges for business in the region – and resulting technical assistance needs – will be identified. How can the private sector maximise the benefits and minimise the costs of the EPA process?

#### **Background:**

In 2000, the European Union and the countries of the Africa, Caribbean and Pacific (ACP) Group agreed to overhaul their trade arrangements with the negotiation of Economic Partnership Agreements (EPA). Economic Partnership Agreements will introduce reciprocity in trade in goods with the establishment of Free Trade Agreements between the EC and the ACP regions, including the ACP Pacific. However, the aim of the EPA is to go beyond a Free Trade Agreement in goods and to act as a tool for development - encouraging regional integration and integration in the world economy. The EPA process is to be supported by Trade Related Technical Assistance.

Formal negotiations for EPAs at the level of all ACP countries started in September 2002. Negotiations between the EU and the ACP Pacific were launched in Nadi, Fiji on 10 September 2004. In terms of substance, discussions have focused on: status of regional integration; fisheries; trade in services; investment; and the possible architecture of an EPA with the Pacific.

EPAs are scheduled to enter into force by 1 January 2008 at the latest.

#### **Approach:**

The workshop brought together private sector representatives and officials from regional organisations and the EC, drawing on trade experts and the experience of businesses in the region. While the Pacific Private Sector has been involved in establishing Pacific negotiations on some key issues, the workshop enabled private sector representatives to take stock of the EPA process to date. The workshop will also address what still needs to be achieved both in terms of trade negotiations and in trade related technical assistance.

Discussion was clustered around the following themes:

- Trade in goods: Tariffs
- Services and the cost of doing business
  - Tourism
  - Transport
- Trade in goods: Non Tariff Barriers
  - Fisheries
  - Agricultural products
  - Regulatory barriers
- Support to the Private Sector

## SUMMARY OF RESOLUTIONS AND DISCUSSION POINTS BY THE PACP PRIVATE SECTOR

### A. CDE-PROINVEST

1. Several presentations were made by EU representatives elaborating on the avenues for assistance in respect to EPA negotiations, trade facilitation, capacity building and standards.
2. Private sector participants resolved that the procedures and the technical aspects in applying for assistance are cumbersome and unduly bureaucratic.
3. The CDE/PROINVEST representatives noted that they were willing to receive draft proposals to be treated as draft project proposals in the preparation for finalisation of a submission.
4. Representatives of CDE/PROINVEST advised that currently their procedures were in the process of being reviewed, with the possibility of setting up a system of contact points in the Pacific to assist with the lodgement and processing of applications from the Pacific. There are currently in existence two Technical Intervention Offices already established in the region. There is a plan for an additional TIO for the Micronesian region.

### B. TRADE IN GOODS

5. The general consensus of the private sector participants noted that there was a need for greater awareness and understanding of the process in regard to Trade in Goods.
6. There was a recommendation that there be a regional harmonisation of tariff offers by the PACP. This would facilitate the process of negotiations and help to avoid the marginalisation of certain PACP sectors.
7. The issue of triggering PACER (i.e. Article 6) was highlighted. However, it was noted that the PACER Article agreed that an FTA between Pacific Forum Island countries and Australia and New Zealand would be investigated by signatory parties, and the formation of an FTA was not a binding obligation.

### Trade in Goods – Specific Sectors

#### Fisheries

8. The following commercial challenges were noted:
  - The erosion of preferences
  - The potential of an EU-ASEAN FTA
  - The dominance of economies of scale as a core aspect of international competitiveness
  - The management of our resources collectively for PACP private and public benefit
  - EU fisheries rules of origin were noted as being a key barrier for PACP market access to the EU
9. It was resolved to seek assistance for a private sector led study to assess the following:
  - Improved product-specific value addition (i.e. multi-species cuts of fish)
  - Linking access to fisheries development
  - Development of non tuna marine resources
10. It was resolved to seek EC assistance for the retooling and upgrading of PACP vessels, as required by EC regulations and sustainability principles.

#### Regulatory Barriers

11. On kava there was a discussion about the possibility of using the WTO consultation and dispute settlement process to address the kava and noni juice issues.

12. It was recommended to explore the possibility of using WTO mechanisms to address the issues in 11, in addition to the efforts currently being undertaken to resolve the matter.

### **Sanitary and Phyto-Sanitary Issues**

13. The issue and complexity of SPS was noted. We the private sector need to address the problem at its source (i.e. often the standards are “voluntary” and imposed by the importer, such as full traceability and social accounting).

14. Some of the mechanisms to address this are recognised as being:

- Developing the institutional structure for cooperation both domestically, intra-regionally and internationally.
- The opportunity for identifying priority products/product processes and/or sectors for reaching equivalence agreements with the EU and related capacity building commitments. The first step is the identification of national or regional priorities – these would be included in the text of an EPA (an example of how this could be treated is in the EU-Chile FTA Annex IV, Article 24, 2(g)).
- A specific role for the private sector originates from the introduction of EU regulation 882-04 (on Feed and Food). This calls for closer public-private cooperation and allows for the delegation of this function to a private sector body.

### **C. TRADE IN SERVICES**

15. It was acknowledged that the PACP business regime has a high cost structure and the need to provide efficient and cost effective services to the private sector was essential to enable them to compete globally. The private sector urgently seeks the assistance of regional States to address inefficiencies in services infrastructure, otherwise PACPs will be increasingly economically marginalised.

16. Brief discussions were held in regard to Mode 4 and there appears to be a need for clarification between PACP demands and the EC, particularly on the temporary movement of people.

#### **Transport**

17. It was noted that sea transport is critical in facilitating trade both within the region and with international markets. It was acknowledged that shipping companies will not reduce their commercial interest to benefit the Pacific Island countries and that the public and private sectors would need to work together, to address trade facilitation as a means of making shipping more competitive. It was agreed that a draft paper be prepared by the PNG representatives seeking assistance to address the concerns of cabotage, cross-subsidisation and competition within the shipping industry.

18. It was therefore recommended that the private sector should seek funding for a study on trade facilitation opportunities in maritime and transport services. This would present an opportunity for improved commercial development in the region.

19. An evaluation proposal for a ‘hub and spoke’ type network on shipping was recommended.

#### **Tourism**

20. There is a need to further promote and market the region. It is already seen as a strong product, but currently does not have the resources (e.g. compared to competitors) to be effectively marketed. It was acknowledged that all Pacific Island countries have interests in tourism even though there is no separate agreement for this sector in the EPA.

21. It was therefore resolved to seek assistance to promote the Pacific brand internationally.

#### D. PRIVATE SECTOR PARTICIPATION IN POLICY FORMULATION

22. Strongly recommend to strengthen the capacity of national private sector organisations to better service the needs of their members.

23. It is recommended that national private and public sector dialogue needs to be strengthened and formalized.

24. It is recommended that at the *regional* level the private and public sector dialogue needs to be strengthened and formalized.

25. At the national and regional level, it was recognised that PIPSO would play the leading role in support of private sector advocacy. It was recommended that assistance be sourced to support PIPSO to achieve institutional sustainability.

26. It was recognised that PIPSO's representation at recent regional meetings has proved valuable. It is therefore recommended that private sector participation and representation at all relevant high-level meetings is essential.

27. It was recommended that the national private sector organisations needs to more pro-active in engaging in dialogue and making submissions on trade policy to governments.

28. We recognise the challenge of emerging sectors (e.g. e-commerce) and raise the issue of how to better identify competitive advantage and support these sectors.

29. We commit as representatives of the private sector to work with the EC Delegations and Representatives to fully explore and fully understand the assistance currently available both for our own capacity building and for the assistance of our members. As such, we note the following programs:

- PROINVEST
- CDE
- SFP
- PIP
- TradeCom
- Bizclim
- Trinnex
- EU Export Help Desk

30. We commit to draw on each other and the State as resources, and coordinate and cooperate to assist each other to further the opportunities to benefit from international assistance. We also seek a cooperative approach with other donors to achieve the necessary results for private sector growth.

31. We request the support of our Leaders to put into place enabling policies to address the needs of the private sector.

Ends.

29 November 2006.

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