

Slamming the Door on Development:

Analysis of the EU's response to
the Pacific's EPA negotiating
proposals

December 2006

The Pacific Economic Partnership Agreement negotiations

In 2000, the African, Caribbean and Pacific (ACP) group of countries signed the Cotonou Partnership Agreement with the European Union (EU) that bound the signatories to renegotiate their trading relationship in a manner that would “*promote and expedite the economic, cultural and social development of the ACP States...[and] centred on the objective of reducing and eventually eradicating poverty*”.¹

The EU has long been actively involved in the Pacific, initially through colonial rule and influence by its member states. As a number of EU states have pulled back from the Pacific, the executive arm of the EU, the European Commission (EC), has played a stronger role in managing development funding through successive European Development Funds (EDFs). This funding has been welcomed by governments and many civil society organisations (termed Non-State Actors by the EU). The EU has pledged to continue its development cooperation activities irrespective of the outcomes of the current EPA negotiations.

The EU had previously granted ACP countries preferential access for their goods to the EU market under a series of five year agreements under the Lomé Convention, based on trade preferences for the ACP. These preferences were challenged by non-ACP developing countries and found to be incompatible with rules for non-reciprocal trade preferences under the World Trade Organisation (WTO). The ACP and EU have therefore agreed to negotiate Economic Partnership Agreements (EPAs) for each region aimed at achieving the goals of the Cotonou Partnership Agreement, as well as being compliant with WTO rules. The EU, recognising the development needs of the ACP, has consistently stated that the EPAs would be development-friendly, a pledge welcomed by the ACP.

The WTO waiver allowing preferences to continue is due to expire on 1 January 2008. With relatively limited research and negotiation resources, the Pacific negotiators were able to formulate a draft EPA text by June 2006 and submit it to the EU. Oxfam’s analysis of this draft concluded that it included a number of innovative proposals to try to integrate development into an EPA, but suggested that the EPA framework was the wrong approach to promoting development.²

A major problem is the reciprocal nature of the trade agreement, particularly since the EU has a national income over one thousand times that of the Pacific.³ A reciprocal agreement between such unequal regions may have the same rules for each party, but the result will favour the EU over the ACP countries. The comparison is that of putting a schoolboy in a boxing ring with a heavyweight pro. Even if the schoolboy is given a few extra points on the scorecard, the basic rules of boxing are the same for each, and the boy will get beaten up every time. As the EC’s own website explains, “*Our experience tells us that FTAs between a*

*large market like the EU and small economies are not easily sustainable and often lead to a deficit for the weaker partners”.*⁴

Over the course of the negotiations, there has been a series of reports on the negotiations, but the negotiations have been held behind closed doors and there have been few negotiating documents that could provide evidence on the positions being adopted. Such secrecy permits an almost complete lack of accountability on the part of the negotiating parties to their societies. Pacific civil society has welcomed commitments by the Pacific governments to engage more with their parliaments and people.

Evidence of the positions that the EU has been taking has recently become available. On 28 November, an article was published in the *Financial Times*, based on a letter leaked from the EC, which handles the negotiations on behalf of the EU member states. The letter, dated 20 October 2006, is signed jointly by the European Commission’s Deputy Director for Trade, Karl Falkenberg and the Director General for Development, Stefano Manservigi. It sets out the EU’s response to the Pacific’s EPA text.

This letter offers tangible evidence of what is happening behind the scenes in negotiations. The letter shows that the EU has rejected almost all of the attempts by Pacific governments to make the EPA a developmentally-sound agreement.

Below is an overview of the EU’s response, supplemented with analysis of the recent (also leaked) draft EU proposal for trade in services.

The EU Response on...

A Flexible Framework for Negotiations: Tentatively Accepted

The only area in which the EC has expressed qualified agreement with the Pacific is on the overall structure of the agreement. In the letter, the EC indicates that it is willing to accept the Pacific’s proposal for a framework agreement with a subsidiary agreement on goods that each Pacific country can choose to ‘opt in’ to, noting however that “*some modifications may still be needed*”.

This would mean that countries which opt out of a goods agreement with the EU would not trigger negotiations with Australia and New Zealand under the Pacific Agreement on Closer Economic Relations (PACER). This a key concern for the Pacific negotiators, who know that the major impact would come not from the liberalisation of the relatively small trade volumes with the EU, but from extending the same terms to the Pacific’s major trading partners, Australia and New Zealand. The concern has been expressed that “*Australia and New Zealand will dominate Pacific trade to the extent that Pacific specific states will face de-industrialisation and loss of jobs.*”⁵

For countries that do ‘opt in’ to the goods agreement, the EC letter makes clear its desire for an EPA that achieves “*full market access for Pacific EPA countries*

to the greatest extent possible, while recognising the need to address the [EU's] import regime for a few sensitive products."

The flexibility to opt out of a goods agreement for Pacific nations that do not want to sign up to the EPA is guaranteed under Article 37.6 of the Cotonou Partnership Agreement which stipulates that the EC will provide "a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules". Despite calls for the EC to offer a tangible expression of what such an alternative would look like, the EC has so far refused to do so. Thus the EC is leaving the Pacific countries with uncertainty as to the type of market access arrangement they can expect when they opt out, putting unfair pressure on them to sign the agreement.

Funding to Support Pacific Adjustment: Rejected

Pacific trade negotiators have repeatedly called on the EU to provide funding to support the trade reforms that the EU is demanding in negotiations. This includes administrative costs to meet health and safety standards, modernise customs systems and biosecurity regulations, upgrade transport facilities, and strengthen the capacity of the authorities that promote and regulate trade.

Beyond this narrow definition, adjustment costs also include: lost tariff revenues for Pacific governments due to tariff reductions; adjustment costs as local businesses are forced to close when they are unable to compete with foreign companies; and funding to build the capacity of Pacific producers to be able to export and take advantage of market opportunities. Without such assistance, there is little likelihood that trade reforms would be able to make a contribution to development. This was acknowledged by Peter Mandelson, European Commissioner for Trade, when he noted in a speech given in 2005 that "*Trade will not promote development without parallel investment in the supply side*".⁶

The draft Pacific text therefore links specific commitments under the EPA to additional EU funding to enable the Pacific to make the most of any new opportunities afforded by those commitments. However, this is rejected in the EC's letter: "*In your draft EPA submission, detailed development cooperation provisions form [an] integral part of the text... As you know, this is not acceptable to us.*"

It notes that there is "*still a considerable gap in our mutual understanding*" on development cooperation and states that "*what we have to do is to link development assistance and EPA, acknowledging that both should be mutually reinforcing.*" Although this is exactly what the Pacific's draft text does, the EC restates its long-held view that funding will not be provided through the EPA, but instead through its assistance package, the European Development Fund (EDF).

A total of €22.7 billion has been pledged for the 10th EDF funding cycle (covering 2008-13 for all 79 ACP countries). This represents a continuation of the EU's ongoing development programmes: it has been estimated that €21.3 billion is needed for the 10th EDF funding cycle just to fund the costs of the EU's existing aid portfolio.⁷

If, as the letter states, the EC continues to provide no new funds for EPAs, the adjustment costs will have to come from its existing aid budget, diverting money away from other urgent development priorities, including support for primary health care and HIV/AIDS, primary education, and rural development. At a time when investment is desperately needed in order to meet the Millennium Development Goals, it is unfair to expect that substantial funding would be diverted to meet trade adjustment costs in ACP countries.

Without funding for adjustment, an EPA cannot hope to provide a developmentally supportive framework in countries with limited capacities and resources. It is also disappointing that the EC is dismissive and patronising in their response to the Pacific's request for additional funding: "... *this is not acceptable to us. We have jointly spent considerable time during our meetings in the past clarifying this point.*"

Regional Fisheries Agreement: Rejected

Currently, the EU negotiates fisheries access deals bilaterally and it already has three bilateral deals in the Pacific (with Federated States of Micronesia, Kiribati, and the Solomon Islands). 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.

On the renewal of the Kiribati agreement, the EC said it was part of a "*future network of [bilateral] tuna agreements*", including renewals of the Solomon Islands and Micronesian deals. The EU's pursuit of bilateral fisheries agreements is inconsistent with their stated aim of promoting regional cooperation in the Pacific and tends to divide the Pacific over the benefits from one of the region's key resources.

It is also inconsistent with the EU's own rules that require it to behave in a "coherent" manner when dealing with developing countries, taking into account developmental, environmental and trade concerns when negotiating fisheries agreements. Bilateral fisheries deals only include vessel access and some resource management funding, ignoring issues such as access for Pacific fish products to the EU market and development of the local fisheries industry.

In the letter, the EC has pre-emptively rejected the Pacific's desire for a regional agreement on fisheries, noting that it cannot negotiate "*separate sectoral stand alone agreements*" outside the EPA. This is despite not having even seen the Pacific proposal. The letter instead suggests that "*most of the elements you have on your mind*" (presumably such as access for Pacific fish to the EU market, assistance with development of the Pacific fishing industries, and cooperation on sustainable management) could be tackled within the EPA. However, it is not clear that this is the case, particularly as vessel access agreements (that the EU appears to want to keep out of the EPA) include important stipulations such as local landing provisions, regulations on by-catch levels, local crewing requirements and financial compensation according to catch levels.

Pacific negotiators are determined to maintain solidarity despite this rebuff and met on 13 November 2006 to approve a draft a legal text for a Fisheries Partnership Agreement with the EU.

Changes to the Rules of Origin: Pending

The EU touched on the Pacific proposals for more flexible Rules of Origin by noting it will return to the issue after concluding an “internal reflection” on the matter. As the United Kingdom noted in an open letter to the European Commission in November, “*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.*”⁸

Development Safeguards for Services: Rejected

The Pacific has recognised that agreements on trade in services are complex and they have proposed a number of safeguards that ensure governments are allowed to give priority to development ahead of rights to foreign companies. The draft EPA agreement submitted by the Pacific includes:

- A clearer definition of public services, to ensure that commitments under the agreement will not require privatisation or undermine public sector delivery of essential services such as healthcare, education, water supply and sanitation
- Specific provisions that ensure Pacific governments have the right to regulate services companies in order to meet national policy objectives
- A provision that would help ensure that Pacific governments do not unintentionally enter into commitments they did not intend to make (this recently happened when the USA did not realise it had accidentally opened up internet gambling)
- Deletion of a provision that would have opened up laws affecting service sectors to legal challenge on the basis that they were “more burdensome than necessary” (an imprecise phrase that could be used to challenge many legitimate laws)
- A delay in making commitments until the Pacific country has a sound regulatory structure in place and the capacity to enforce its regulations
- A safeguard that would make it possible for Pacific governments to withdraw commitments that were causing unexpected difficulties when the EPA agreement is reviewed

All of these proposals were rejected in the EC’s new draft proposal on services which was submitted to the EC’s Committee that coordinates trade negotiations (the 133 Committee) in November 2006. The EC has previously stated that it would tailor its EPA agreements to the needs and circumstances of each region,

but its services proposal is almost an exact copy of the proposed agreement for other regions.

In addition to these safeguards, the Pacific's proposal focused on the one major area where they could expect development benefits – increased access for Pacific workers into the EU. This too was rejected.

In rejecting the proposal, the EC's letter said: "*Let us be clear that your ambitions in this area go far beyond the possible offers that we will be able to make in the end.*"

The EC letter continues with an offer to "...*facilitate your contacts with our Member States*". Therefore, with one hand the EU is calling on the Pacific to make enforceable commitments on services in areas where EU companies would benefit, while with the other hand it is offering nothing more than to help arrange some meetings.

In Oxfam's view, the safeguards proposed by the Pacific fall well short of building development into a services agreement. But even these modest proposals have been totally rejected by the EC.

The new services proposal from the EC creates a major problem for the Pacific. This agreement is not in a separate annex that would allow Pacific countries to opt in – it is in the core EPA agreement that would be signed by all Pacific countries. If the Pacific is to sign an EPA with the EU, the WTO's rules require that this have 'substantial sectoral coverage' with implementation to be achieved within a reasonable time. The level of commitments required to meet these criteria have yet to be defined, but it is clear that the EU is trying to push the Pacific and other ACP regions to open up substantial new services sectors.

The WTO agreement on services specifically requires that there be flexibility accorded to developing countries,⁹ and the Cotonou Agreement confirms that the ACP countries must receive favourable ('special and differential') treatment.¹⁰ But there is no sign that the EU is abiding by either of these agreements. The EU proposal calls for the "reciprocal liberalisation of trade in services" without any reference to special and differential treatment.

In other areas, the EU's proposals go well beyond WTO requirements and threaten the rights of Pacific countries to prioritise development interests. For example, the EU proposals make general statements about countries having the right to regulate service sectors, but this is overridden by specific provisions that put severe restrictions on the ways in which countries can do so.¹¹

Similarly, the ability of Pacific countries to use licensing fees to fulfill important policy objectives like universal service obligations would also be curtailed. This is deeply unfair to Pacific countries, given that license fees are commonly used to fulfill policy objectives like universal service obligations in France, Switzerland, USA and Australia.

This services agreement would adversely impact the countries that are already WTO members (Fiji, PNG and the Solomons), since they made few commitments when they joined the WTO and have resisted taking on extensive commitments

subsequently. It would be a major problem for those countries that are not WTO members, because they have not yet made any commitments to trade agreements for services liberalisation, and have little experience in the complexities of trade agreements on services. And, unless there was an exemption for LDCs, it would mean that they were required to make commitments in the EPA, whereas LDCs are not required to make commitments in the WTO Doha negotiations.

The problem is not only that Pacific countries would lose important powers to effectively regulate service companies: they would also have to bear the costs of heavy regulatory requirements in order to meet the provisions of this far-reaching agreement. This is costly and inappropriate for small Pacific states that currently have limited regulatory capacity.

As with other proposals in the EPA negotiations, there has been little or no assessment of the likely impacts of such commitments on the people, environments and cultures of the Pacific. This is a particular problem in the case of far-reaching agreements on issues like services that affect the rights of people to essential services and the rights of their governments to prioritise development.

A Developmentally-Sound Approach to Investment: Rejected

The Pacific developed an innovative proposal that included the responsibilities of foreign investors towards the communities and societies in which they invest. The proposal is built on the agreements that EU member states have already signed up to, such as the OECD Guidelines for Multinational Enterprises. This proposal is a significant improvement on other investment agreements that typically provide a broad range of new rights for foreign investors, but include no enforceable responsibilities.

The Pacific proposal also seeks to reorient the existing investment funds (European Investment Bank, ProInvest and the Centre for the Development of Enterprise) to better suit the Pacific's needs. These funds are mainly invested in large infrastructure projects, involving multinational companies based in the EU. The Pacific proposal would have ensured that the management of funds had representation in the region, would have required them to promote sustainable development, and would have reoriented them to better suit the smaller-scale enterprises owned by Pacific people.

The EU has not yet responded in detail, but it is already clear that much of the Pacific's proposal has been rejected by the EC. The EC letter states that "*we will not be able to redefine what we already agreed in Cotonou on investment related cooperation and the functioning of related institutions.*"

The Cotonou Agreement calls for the EU and ACP to introduce general principles on the protection and promotion of investment. It is difficult to understand how the Pacific proposal is inconsistent with this wording. It appears from the EU's proposal on services that the core issue is that the EU will not accept the

integration of development issues into agreements that might include responsibilities for foreign investors.

Exclusion of Issues that are not in the Pacific's Interest: Rejected

The Pacific proposal specifically excluded several issues that have previously been rejected by developing countries in the World Trade Organisation such as competition policy and government procurement. These agreements are complex, burdensome and offer little, if any, benefits for Pacific countries.

The October EC letter rejects the Pacific's position and insists that these issues should be in the negotiations.

The Pacific proposal also excludes negotiations on intellectual property rights. Previous bilateral and regional negotiations on intellectual property rights involving the EU and USA have typically included 'WTO plus' provisions that extend the rights of patent holders beyond the WTO agreement (TRIPS).

Again, the EC has rejected the Pacific's position and is insisting that there be negotiations on intellectual property rights.

Deadline Pressures and the Next Steps

The EC emphasises that the 31 December 2007 deadline to conclude the EPA has to be respected. It notes "...we are now at a crossroads" and suggests negotiators on both sides "...redouble their efforts to accelerate the process of convergence towards a common 'landing zone.'" This prodding from the EU will be particularly galling for the Pacific negotiators who, with relatively limited resources, have made every effort to move quickly, only to be forced to wait over three months for a three page response to their detailed proposals.

There is growing frustration over the EC's refusal to orient the EPA to meet the Pacific's development needs. On 15 November 2006, the Deputy Secretary General of the Pacific Islands Forum Secretariat urged Pacific negotiators to "*remain optimistic and maintain solidarity*" as they enter the final year of EPA negotiations. Yet he recognised that the EC had "... clearly not responded well or favourably to the Pacific's proposed text" noting that "...again the EC's negative responses on some of the specific proposals by the Pacific does undermine the integrity [of the] whole thing."¹²

Vanuatu's Minister of Trade 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."¹³ The Pacific's lead negotiator, Kaliopate Tavola of Fiji, noted on 12 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.*"¹⁴

The refusal of the EU to negotiate a developmentally-sound EPA means that the focus should now shift to seriously investigating alternatives. Article 37.6 of the Cotonou Agreement clearly spells out that the EU is required to offer the ACP

countries an alternative to an EPA. For example, an enhanced GSP (General System of Preferences) for small and vulnerable economies, including the Pacific countries, could be more development-friendly as well as being WTO compatible.

The EU has failed to honour its commitments to promote development cooperation, sustainable development and human rights in EPA negotiations. Almost all of the Pacific's attempts to convert the rhetoric into reality through the negotiations have been rejected. The EPA is clearly not going to deliver on these commitments. It is therefore time for the Pacific to make a strong call for alternatives.

Further Reading: See Oxfam New Zealand's website www.oxfam.org.nz for documents analysing the Pacific EPA negotiations:

Oxfam New Zealand (Barry Coates) "Key Issues in Pacific Trade Negotiations with the EU: Analysis of the Negotiating Draft submitted by the Pacific June 2006", October 2006.

Oxfam New Zealand (Nick Braxton), "Offering a Realistic Alternative: The EU's obligation to provide alternatives to the Economic Partnership Agreements", October 2006.

Oxfam International (Claire Godfrey), "Unequal Partners: How EU-ACP Economic Partnership Agreements (EPAs) could harm the development prospects of many of the world's poorest countries", September 2006.

Oxfam New Zealand (Nick Braxton), "Fishing for a Future: The Advantages and Drawbacks of a Comprehensive Fisheries Agreement between the Pacific and European Union" October 2006.

Oxfam New Zealand (Barry Coates and Mary Wareham), "Report of the Pacific Civil Society Conference on Trade Capacity Building, Nadi, Fiji, 13-16 June 2006".

A range of useful EPA documents can be found at www.bilaterals.org, as well as www.acp-eu-trade.org

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- ¹ Cotonou Partnership Agreement, Article 1.
- ² Coates, Barry, "Key Issues in Pacific Trade Negotiations with the EU: Analysis of the Negotiating Draft submitted by the Pacific, June 2006", Oxfam New Zealand, 2006, available at <http://www.oxfam.org.nz/imgs/pdf/state%20of%20play%20in%20pacp%20negotiations%20oct%202006.pdf>
- ³ Godfrey, Claire, "Unequal Partners: How EU-ACP Economic Partnership Agreements (EPAs) could harm the development prospects of many of the world's poorest countries", Oxfam International, September 2006, p.10, available at <http://www.oxfam.org.nz/imgs/whatwedo/mtf/unequal%20partners.pdf>
- ⁴ http://europa.eu.int/comm/trade/issues/bilateral/regions/central_america/index_en.htm
- ⁵ Tavola, Kaliopate, Fiji Trade Minister and head Pacific negotiator, speech at South Centre conference, October 2006.
- ⁶ Mandelson, Peter, "Trade at the Service of Development", speech at the London School of Economics, February 2005, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/05/77&format=HTML&aged=0&language=EN&guiLanguage=en>
- ⁷ For further discussion on this subject, see Godfrey "Unequal Partners", and for Pacific adjustment costs see Milner, C. 'An Assessment of the Overall Implementation and Adjustment Costs for the ACP Countries of EPAs with the EU', Commonwealth Secretariat, London, 2005, or Smith, D, "Potential Costs of Adjusting to a Pacific Economic Partnership Agreement", ESCAP Pacific Operation Centre, Suva, 2006.
- Countries of EPAs with the EU'. London: Commonwealth Secretariat.
- ⁸ McCartney, Ian UK Trade Minister and Gareth Thomas, Parliamentary Minister for Development, open letter to Trade Commissioner Peter Mandelson and Development Commissioner Louis Michel, November 2006.
- ⁹ Article V of the General Agreement of Trade in Services, WTO, Geneva.
- ¹⁰ Cotonou Partnership Agreement, Article 34.
- ¹¹ The EU's proposal introduces necessity tests in the chapters on financial, postal and courier and telecommunications. Requirements for service providers to undertake universal service obligations are subject to a test that they be "*no more burdensome than necessary*" a provision that is being opposed by Pacific countries and many other developing countries in WTO GATS negotiations.
- ¹² Pacific Islands Forum Secretariat press release, "PICs reminded to maintain solidarity in EPA negotiation with EU", 16 November 2006, available at <http://www.pacreip.org/index.php?id=336>
- ¹³ Pacific Islands Forum Secretariat press release, "PICs call for political intervention in EPA negotiations", 17 November 2006, available at http://www.pacreip.org/index.php?id=338&first_item=0
- ¹⁴ Peter Dhondt "Trade : Small Nations' Doubts about EU get Bigger", TerraVIVA Europe, 3 October 2006.

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