

# Key Issues in Pacific Trade Negotiations with the EU:

*Analysis of the Negotiating Draft  
submitted by the Pacific in June 2006*





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Preparations for an Economic Partnership Agreement (EPA) between the European Union (EU) and fourteen Pacific Island Countries are coming to the crucial stage. The proposals have been submitted and real negotiations are about to start. The EU is pushing the Pacific to accept rapid trade liberalisation across a huge range of goods, services and investment rules, while the Pacific is responding with proposals that would make the agreement more developmentally friendly.

These negotiations are part of the Cotonou Agreement, the successor to the Lomé Convention that was established as a partnership between the EU and the African, Caribbean and Pacific countries. The EU is mounting pressure for the negotiations to be concluded by December 2007.

Although time is running out, there are still opportunities for the Pacific to develop real alternatives to an EPA. This is especially important given the need for developing countries to maintain common positions in the wake of the suspension of Doha negotiations in the World Trade Organisation.

These negotiations are important, not only in their own right, but because they will set the tone for the Pacific's subsequent trade agreements with their major trading partners, Australia and New Zealand.

It is already clear that an EPA agreement will have wide ranging impacts on Pacific businesses, natural resources, social well-being and cultures. However, there has been no comprehensive research to analyse what the impacts are likely to be, and a quick assessment commissioned by the Pacific Islands Forum Secretariat, to be undertaken over the next few months, will do little to provide negotiators with the crucial information they need to be able to negotiate in the interests of the Pacific's people.

The information that is currently available has so far been restricted to a few trade negotiators and Trade Ministers. There has been little opportunity for input from other government departments, Parliaments, civil society or small business. Nor has there been a programme of education to facilitate a wider process of public understanding and involvement.

This short summary of issues focuses on the most recent negotiating documents, particularly the draft "legal text" that was prepared by Pacific negotiators after their meeting in June 2006. It aims to provide a "non-technical" overview to inform Pacific civil society of progress in negotiations.

**Preamble:**

The Preamble of the Draft Legal Text submitted by the Pacific talks about the need for Special and Differential Treatment for the small and vulnerable Pacific countries and the need for financing for capacity building. However, these measures are only actionable if they are subsequently included in the EPA in the form of binding commitments.

**Introduction:**

The Introduction sets out the coverage of the Agreement and includes services negotiations (not strictly required to be part of the EPA) and investment (one of the issues opposed by developing countries for inclusion in the WTO negotiations). The EU's persistence in pushing for investment negotiations was one of the reasons that the WTO Ministerial meeting in Cancun collapsed in 2003.

The Pacific has proposed a framework agreement and subsidiary agreements that each Pacific country can choose to opt into. 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). It would also allow for flexibility for smaller island states that may not want to negotiate on other issues. The EU is still pushing for a single unified agreement.

The introduction includes sustainable development as a guiding principle, along with special and differential treatment for Pacific nations, especially the Least Developed Countries (LDCs). It includes a "complementary role" for Non-State Actors and recognises their potential contribution to the development process.

**Scope:**

Chapter 2 establishes the scope of the Partnership Agreement. It acknowledges that the EU has an obligation under the Cotonou Partnership Agreement (signed in 2000) to provide equal or better trade access as that currently provided to Pacific countries, but confusingly suggests this could be achieved by a compensatory payment, instead of a trade agreement. This is an important issue because Pacific nations that do not want to sign up to an agreement requiring them to undertake trade liberalisation are guaranteed under Article 37.6 of the Cotonou Agreement the provision of trading arrangements that are at least as good as their current market access to the EU. It is important that this alternative to an EPA should not be compromised in Pacific negotiations.

**Structures:**

Chapter 3 sets out the institutional implementation arrangements. A Partnership Council of Trade Ministers and senior EU Council and Commission representatives is supported by a Partnership Committee (made up of senior officials) and possibly by Special Committees on specific issues. There is no obligation to seek the input of civil society, involve civil society representatives or make information publicly available. A review will be undertaken no later than 2011 and every 5 years thereafter.

**Trade Facilitation:**

Chapter 4 calls for support to be provided to Pacific countries in developing and implementing programmes that facilitate and promote trade (such as health and safety standards). The Chapter proposes that each Pacific country develops a trade facilitation and promotion programme, and that its implementation is paid for by the EU. This applies to modernising customs systems and biosecurity regulations and strengthening the capacity of the authorities that administer trade and customs.

The Chapter also requires the EU to avoid imposing any standards that are not consistent with WTO agreements, such as on food safety, and to pay compensation to Pacific exporting countries if they do so. The EU would be required to consult with Pacific countries before introducing new measures that would adversely affect Pacific exports.

The Chapter proposes to give assistance to the private sector in the Pacific to undertake research, promote their exports overseas, finance exports and upgrade transport facilities. There is, as a priority, support for capacity building in the Pacific to enable products and services to conform to the requirements of importing countries.

A key issue for the negotiations is whether the EU will provide funding for such trade facilitation, trade promotion and supply development, additional to the agreed aid provided through the recently announced European Development Fund EDF 10, and how much. So far, the EU has ruled out the provision of additional funding.

**Agriculture:**

Chapter 5 promotes increases in production and processing of agricultural products. Article 5.1.2(d) says that the EU will assist in the reform of Pacific nations' laws "including laws related to land tenure". This is of concern, given previous attempts by the EU to achieve liberalisation of land laws so that it becomes easier for European companies and individuals to buy land. Article 5.4.2 proposes policies and legislation that provide for equitable and secure access to ownership and control of natural resources, particularly land.

Pacific countries will develop an Agricultural Development Strategy that would be agreed with the EU. The Pacific is proposing that the EU establish a fund to finance implementation of the strategy. While on one hand, funding for agriculture development could be beneficial, it is of concern that the EU would be given influence over agriculture policy in the Pacific. Oxfam and other NGOs have criticised the EU for destroying the livelihoods of small farmers in the developing world as a result of its dumping food surpluses generated through massive subsidies for its farmers, concentrated on large agribusiness.

Chapter 5 also incorporates sugar, calling for measures to enhance industry productivity, seek diversification and promote value added processing. The chapter calls for the establishment of an insurance mechanism, within two years, to absorb price volatility for commodity exports (a scheme with similar aims was included under the former Lomé Convention).

**Services:**

Chapter 6 relates to the liberalisation of services. A huge range of sectors is covered under the WTO General Agreement on Trade in Services (GATS) including health care, education, water supply, business services, financial services, retail and distribution, transport, utilities, communications, and tourism.

The Pacific proposal includes some provisions additional to the GATS that aim to address civil society concerns over the dangers of services liberalisation. For example, there are additional clauses that protect public services, such as health care, education and water supply from privatisation.

Another example is provisions that aim to make it clearer that governments have the right to regulate in the public interest. This is important since there have been WTO cases that elevate the rights of foreign service companies above the responsibility of governments to provide affordable services to all, such as disallowing higher charges for telecommunications services used by the rich in order to subsidise cheaper services for the poor.

The proposed agreement on services contains safeguards, including the right for any Pacific country to delay implementing its commitments until it has an appropriate regulatory regime in place and the capacity to enforce the regulations. The proposed agreement also requires the EU to provide financial and technical assistance for strengthening regulation in the Pacific.

The proposed services provisions also do not cover procurement of services by Pacific governments, and they allow Pacific governments to withdraw commitments where they create difficulty or hinder development (this is not allowed in GATS.) It should be noted that in such a case, the Pacific country would have to offer liberalisation of a different service sector.

The Pacific has made some innovative proposals to try to avoid the worst potential impacts of GATS commitments but they are likely to be resisted by the EU on the grounds that they would set precedents. The EU's recent non-paper on Liberalisation of Trade in Services and Right of Establishment (September 2006) makes it clear that the EU is aiming for an agreement closely modelled on the GATS, without any of the safeguards called for by the Pacific.

Even if the Pacific is successful in getting some of the safeguards they seek, some of them may not stand up to legal challenge. Already, a number of countries have had major problems because they have not fully understood what they are signing up to under GATS. This includes the USA when they did not realise they had opened up internet gambling. If countries like the USA have such problems, it is unlikely that small Pacific countries, with limited capacity for detailed research and little expertise in the complexities of trade law, can really anticipate the likely interpretations that a dispute settlement panel may apply, or other problems that may arise in the future.

In their draft, the Pacific countries are proposing the establishment of tests about whether their natural laws and regulations constitute "unnecessary

barriers to trade in services". Again this is a highly complex area of trade law. The proposed wording is an improvement over the GATS, but is still likely to create problems for Pacific countries. The main beneficiaries of such a restriction on the rights of governments to regulate would be EU multinational companies operating in the Pacific. By contrast there are very few Pacific companies investing in the EU and it is unlikely that Pacific governments would have the resources and legal expertise to challenge any alleged barrier to service trade in an EU member state.

Civil society organisations and international agencies such as the United Nations Conference on Trade and Development (UNCTAD) are advising countries to be very cautious about liberalising their services and are even more sceptical about the benefits of making GATS commitments. The fundamental question for negotiators is why Pacific countries would sign up their service sectors under the restrictive framework of GATS, particularly since studies have shown that it is extremely unlikely that productive foreign investment would result from them doing so.

Labour mobility is included as part of the services negotiations. It covers only the movement of professionals and technicians, but not labourers, agricultural workers, and those without formal qualifications (called "unskilled workers") or most categories of semi-skilled workers. Generally, entry visas will only be granted to someone already employed who is travelling to provide a service in the EU and it is likely there will be a limited quota on the number of such visas.

There might be a potential benefit to the Pacific from a well-designed scheme for workers with skills in agriculture, construction, manufacturing and other occupations. Oxfam and others have been lobbying the Australian and New Zealand governments to offer more opportunities for seasonal workers, for example. However, the EPA negotiations are focusing on the employment of people with tertiary level qualifications. Most people in the categories of professionals covered under a GATS-like agreement already have opportunities to work abroad, a trend that has resulted in "brain drain" as many highly qualified Pacific professionals leave to pursue their careers abroad.

Key issues still to be negotiated are the definitions of which categories of professional and technical workers are included, how many people per year and whether the agreement is binding. The EU is reluctant to negotiate as a regional bloc and may instead try to negotiate non-binding agreements between the Pacific and each of its member states.

### **Tourism:**

Chapter 7 of the proposed EPA calls on the South Pacific Tourism Organisation to consult with others on the development of a detailed Regional Tourism Plan. It would be agreed with the EU, funded by the EU, and contain provisions for liberalising investment by the EU in Pacific countries (although these might not be enforceable through a dispute resolution mechanism). Judging by the experiences of a number of Pacific countries, it is likely that the EU would use its influence to promote large-scale foreign-owned tourism infrastructure and push for more land to be made available for purchase by foreign companies.

**Investment:**

This will form Chapter 8 of the Pacific EPA. The Pacific has developed an innovative “non-paper” that provides a balance of rights and responsibilities for governments and investors. If it were to be adopted in anything like its current form, it would provide a very different model than all existing investment agreements that give rights to foreign investors and restrict the powers of governments to regulate them. Because it may be a precedent for other agreements, it is almost certain that the EU will oppose it strongly.

The Pacific proposal would encourage greater EU investment in the Pacific, including through reorienting investment funds (European Investment Bank, Pro Invest and the Centre for the Development of Enterprise) and undertaking joint work to identify opportunities. These existing funds are not geared to meeting the Pacific’s needs and do little to support small and medium enterprises. While reforms would be welcome, they should be seen as long overdue changes that the EU has failed to make, rather than as a bargaining chip for the EU in negotiations.

The proposal is also likely to include other initiatives for promoting investment, including joint studies to identify opportunities. However, it is unlikely that these initiatives, even if agreed by the EU, would result in significant EU investment, given the small Pacific populations, its remoteness and high transport costs. This point has been made in a leaked consultancy report commissioned by the Forum Secretariat that described private investment flow from Europe as “inherently improbable”.

The main provisions in the Pacific non-paper that are likely to be opposed by the EU are:

- A more limited scope of investment to exclude portfolio investment, rights for investors to establish in a Pacific country and government procurement
- Safeguards that allow Pacific governments to give preferences to local companies on the basis of local benefits or environmental impacts, and to regulate foreign investors in the public interest
- Requirements to undertake environmental and social impact assessments, publicly disclose the terms for foreign investment, enact laws to stop corruption and avoid lowering social and environmental standards to attract investment
- Responsibilities of foreign investors to maintain high environmental standards, abide by internationally-agreed human rights and labour rights, and adopt sound systems of governance, including transparency, fair competition policies and payment of taxes

This investment proposal is a means for Pacific negotiators to call the EU’s bluff. If the EU really wants to promote development, as they profess in their aims for the EPA, this is the type of agreement that would establish a balanced and developmentally-friendly framework. While there are a few provisions that cause concern, the Pacific negotiators have set out an innovative proposal.

**Financing:**

In Chapter 9 the Pacific countries set out their position on additional funding, above the level of funding agreed under EDF 10, and in addition to funding provided to the Pacific by EU member states. The rationale is that funds for adjustment and trade development assistance are required to enable the Pacific to adjust to trade liberalisation and help make the EPA a development agreement. The EU and Pacific countries would agree the allocation of an overall amount of total funding into the different categories for trade facilitation, agriculture, technical assistance, tourism, etc. The EU is currently arguing that there is no new money available.

**Dispute Settlement:**

Under Chapter 10, the Pacific proposes that disputes either be settled in the WTO or through a mechanism agreed under the EPA. This would be a three person arbitration panel, with membership agreed by the EU and Pacific countries. The documents and hearings would be made public. A major problem is that, while the Pacific will be forced to comply with arbitration rulings, it is harder to apply trade measures that would require the EU to comply. The Pacific therefore proposes that there be financial compensation as an alternative. The Pacific also proposes that all legal costs for arbitration by a Pacific country be paid for out of a fund that is financed by the EU.

**Ratification:**

The proposed Chapter 11 notes that the Agreement, once signed, should be ratified within a year. Countries can withdraw but need to withdraw from all agreements that are part of the EPA and give six months notice. The Pacific proposes that it be an indefinite agreement, even though the Cotonou Agreement has a limited life, until 2020.

**Trade in Goods Agreement:**

Trade in goods is covered by a separate agreement, allowing an opt-in for those countries that want to negotiate. It does not yet specify how much of the Pacific's trade would be subject to tariff reduction (the EU has previously called for 90% coverage), whether all those tariffs would be reduced to zero, nor the timetable for implementation.

On rules, the Pacific proposes a more flexible Rules of Origin than at present, whereby products can be partially produced in a third country (even outside the Pacific or EU), provided that there has been a transformation of the product in the Pacific (the test used is a change in the tariff heading at the 6 digit level). This would also mean that fish do not need to be caught by an EU or Pacific vessel so long as they are caught in a Pacific country's 200 mile Exclusive Economic Zone or landed in a Pacific country. Achieving this would be an important step forward in enabling the Pacific to export with greater flexibility to the EU.

In terms of tariffs, the EU is being requested to liberalise all imports immediately while the Pacific countries have longer periods and not all tariffs are reduced to zero. There are likely to be different rules applying to LDCs, small island states and other Pacific countries.

The Pacific proposes that the EU is prohibited from using anti-dumping measures against Pacific exports. This is unlikely to be accepted by the EU, but some conditions on the use of anti-dumping may be possible. The Pacific also proposes that they can challenge subsidies that cause damage to the Pacific but not vice versa. This could potentially be used to restrict the 'dumping' of subsidised EU agriculture exports, but would be strongly resisted by the EU.

The Pacific also proposes that they could increase tariffs in cases where a new industry is being established. These provisions would help maintain flexibility for Pacific countries to support the development of 'infant' industries. It is also proposed that a safeguards mechanism be established for Pacific countries to increase tariffs for a limited period in case of damage or threat of damage to a domestic industry. However, this mechanism is narrowly defined and does not include the cases where imports cause social or cultural costs, or cause particular hardship to vulnerable groups in society.

It is not yet clear which Pacific countries may want to negotiate a goods agreement with the EU and in doing so trigger PACER negotiations with Australia and New Zealand. While the direct impacts of a loss of tariffs and competition with the EU are likely to be limited (since the EU comprises only a small share of Pacific imports), the impacts of PACER would be significant. Amongst other impacts, the tariff reductions would mean significant losses of government revenue in most Pacific countries and it is likely that domestic producers would be forced out of business due to lower-priced imports.

At this stage, the Pacific countries that have signalled some willingness to negotiate a goods agreement include PNG, Vanuatu, Solomons and Fiji (as members of the Melanesian Spearhead Group), and possibly Samoa, Tonga and Cook Islands. Of these, only Vanuatu is not a signatory to PACER.

### **Fisheries:**

The Pacific has been calling for a regional fisheries agreement. However the EU already has three bilateral agreements and the agreement with the country with the richest fisheries resource, Kiribati, has just been renewed. The EU's pursuit of bilateral fisheries agreements is inconsistent with their stated aim of promoting regional cooperation in the Pacific.

### **Conclusion:**

The Pacific is 'calling the EU's bluff' in proposing an EPA that includes a number of developmentally-friendly provisions, particularly on investment. In essence they are proposing a trade-off of access to Pacific markets and natural resources (land, fish, tourism) in return for grant funding, continued access to EU markets (with improved rules of origin) and possibly visas for more professionals and technicians.

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.

The next stage is for the EU to respond with its own proposals. It is likely that the EU will respond with demands for far more extensive liberalisation of goods and services trade, full protection for their investors in the Pacific and enhanced access to the Pacific's natural resources.

And it is likely that they will reject many of the Pacific's more developmentally-friendly proposals, such as:

- more funding for adjustment to trade liberalisation and strengthening the Pacific's capacity to export
- significant changes to rules of origin that currently restrict Pacific exports
- safeguards to prevent adverse impacts of liberalising services sectors
- any significant numbers of visas for Pacific workers to seek employment in the EU
- responsibilities for EU investors to generate benefits for the Pacific
- specific measures that would promote more investment into the Pacific
- rights for Pacific governments to regulate in the interests of their people and to support the development of new and fledgling industries
- a regional fisheries agreement

Perhaps most importantly, the EU is resisting calls for it to offer Pacific countries real alternatives. According to Article 37.6 of the Cotonou Agreement, the EU must offer ACP countries market access that is at least as good as at present. But so far, the EU has failed to make a specific commitment to develop an alternative trading arrangement to a reciprocal free trade agreement.

The analysis in this paper analysis has shown that the Pacific trade negotiators have done much to try to insert developmentally-friendly provisions into the EPA. Even so, their proposals still raise serious concerns over the likely impacts, especially for those who are vulnerable and disadvantaged in Pacific societies. The prospects for a developmentally-friendly outcome are only going to worsen as the EU responds and the real negotiations commence. Oxfam's position remains that the EPA's starting point of a reciprocal free trade agreement amongst such unequal partners is not the right framework to support development for the peoples of the Pacific.

The outcome of these negotiations will also become the model for future negotiations with the Pacific's major trading partners, and will set the policy direction on important economic and social issues for decades to come. The negotiations are likely to significantly affect the livelihoods and lives of Pacific people, their cultures and their environment.

Pacific governments need time and resources to undertake comprehensive impact assessment to analyse the likely impact of different scenarios. It is vital that civil society organisations and the broader public are informed about the issues, educated about the options and potential impacts, and fully involved in preparations for the next stage of negotiations.

**Further Reading:**

The draft documents are available at [www.bilaterals.org](http://www.bilaterals.org)

A more detailed analysis of the documents, prepared by Professor Jane Kelsey is posted at [http://www.bilaterals.org/article.php3?id\\_article=6218](http://www.bilaterals.org/article.php3?id_article=6218)

There is a CD of papers on trade negotiations with the Pacific, focusing on EPA negotiations, available from [nick@oxfam.org.nz](mailto:nick@oxfam.org.nz)

Further studies on trade issues in the Pacific are available from the Oxfam NZ website [www.oxfam.org.nz](http://www.oxfam.org.nz) under What We Do: Resources and Publications, including:

- European Centre for Development Policy Management, ECDPM (Sanoussi Bilal and Francesco Rampa), "Policy Management Report 11: Alternative (to) EPAs: Possible scenarios for the future ACP trade relations with the EU," February 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 (Claire Slatter), "The Con/Dominion of Vanuatu? Paying the Price of Investment and Land Liberalisation - a case study of Vanuatu's Tourism Industry" 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 (Nick Braxton), "Offering a Realistic Alternative: The EU's obligation to provide alternatives to the Economic Partnership Agreements", October 2006.
- Oxfam New Zealand (Barry Coates and Shuna Lennon), "Briefing Note: Revisioning Trade and Development in the Pacific," March 2005.
- 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".

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