

COTONOU AGREEMENT ARTICLE 37.4 REVIEW OF PACIFIC - EC NEGOTIATION OF AN ECONOMIC PARTNERSHIP AGREEMENT

5 June 2007

1. INTRODUCTION

This report reviews the Pacific – European Commission (EC) negotiations for an Economic Partnership Agreement (EPA) in accordance with Article 37(4) of the Cotonou Agreement, which states: "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 Parties responsible for this Report are the Pacific Islands Forum Secretariat (PIFS) on behalf of the Pacific ACP States (PACPS) and the EC on behalf of the European Community.

1.1 Structure of Negotiations

At the launch of the negotiations, in September 2004 in Fiji, the Pacific ACP (PACP) region and the EC adopted a Joint Road Map (JRM) for negotiation of an EPA. The JRM points out that co-operation strategies shall be based on development strategies and economic and trade cooperation, which are interlinked and complementary.

The JRM lists the following broad EPA objectives:

- a) sustainable development of the PACPS;
- b) their smooth and gradual integration into the global economy; and
- c) contribution to poverty eradication in the PACP countries

The JRM also contains a number of principles for the EPA which should:

- (a) be an instrument for development and the development dimension reflected in all areas of negotiation, taking into account the specific, special economic, social, environmental and structural constraints of the PACPS, as well as their capacity to adapt their economies to the EPA process;
- (b) build upon the regional integration initiatives;
- (c) preserve and improve the currently existing preferential access for both traditional and non-traditional PACP exports;
- (d) be WTO-compatible and encompass new trading arrangements, a variety of forms of special and differential treatment which are not limited only to longer transitional periods and technical assistance; and
- (e) be flexible within the broadly agreed framework to allow individual countries to adjust the pattern and schedules of implementation consistent with their national circumstances, while pursuing the objective of regional integration.

In line with the JRM, negotiations have been structured as follows:

At Ministerial level the Pacific region had appointed the 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. Due to the political situation in Fiji, the Alternative Spokesperson is now the Acting Lead Spokesperson of the PACP Regional Negotiating Team (RNT). The EC has been represented by the European Commissioner for Trade.

At the senior officials level, the negotiations of the Pacific Region have been led by the Chief Executive Officer of the Fiji Ministry of Foreign Affairs and Trade; the EC has been represented by the European Commission's Deputy Director General for Trade.

At the technical level, a Joint Technical Working Group (JTWG) has conducted discussions comprising Pacific and EC negotiators and experts. A Regional Preparatory Task Force (RPTF) responsible for linking trade and development dimensions of EPA is foreseen in the JRM but has not yet been established due to a divergence of views between the PACPS and the EC over the linkage between development cooperation and EPA.

Negotiations were foreseen in the JRM to be conducted as follows:

The initial phase (October 2004 – December 2006) focusing on reaching substantive agreement on basic principles and elements to be integrated into an EPA. The EPA negotiations were officially launched at Ministerial level on 10th September 2004 in Fiji. Senior negotiators met once during the first phase. On the Pacific side five Technical Working Group (TWG) meetings took place. Six JTWG meetings between the Pacific and the EC were held during this phase. A number of proposals were also exchanged between the parties as non-papers or formal negotiating positions;

The second phase (January 2007 – 31 December 2007) focuses on finalising outstanding issues and translating principles and agreed arrangements, matters of substance and points of detail into a binding legal text. Both parties endeavour to complete negotiations in time for application of the Agreement as of 1 January 2008.

1.2 Support for the negotiation

In order to address the technical and capacity constraints of the ACP countries engaged in the EPA negotiations, different sources of funding were made available by the EC. Firstly the all-ACP Programme "Capacity building in support of the preparation of Economic Partnership Agreements (EPA)" with an initial budget of €20 million provided through the ACP Secretariat. After the mid-term review (MTR) evaluation of the Programme the total amount was increased up to €24 million and the duration extended until July 2007. The Pacific region has obtained substantial assistance under this Programme to cover both regional and national needs. As a whole, Pacific countries and region benefited from a total amount of €1,515,450 (See table 1).

Secondly, from the regional indicative envelope (RIP), under the Pacific Regional Economic Integration Programme (PACREIP) the Pacific earmarked €1.265 million to support EPA-related activities. Since negotiations are aimed to be completed by December 2007, after the MTR evaluation of the RIP an additional €2 million were assigned to support preparation and conduct EPA negotiations. The total €3.2 million have been made available to the Pacific region by way of a Grant Agreement covering the period 1st April 2004 to 30th June 2009 and are managed by the PIFS. (See table 2). The Pacific region has therefore benefited from a total amount of approximately €4.7 million for activities directly related to EPA negotiations.

The activities funded at the national and regional levels have covered four main areas:

(a) Intra-regional and national consultations, involving the public sector and non-State Actors (NSAs). These activities have been crucial to assist in generating the dialogue on national and regional positions and strategies in the different subjects to be covered by the EPA;

(b) Support to the participation of both Pacific negotiators and trade officials in the technical negotiating sessions and meetings of senior officials and the JTWG;

(c) Provision of technical assistance on specific issues arising from the negotiations to supplement the limited technical capacity of the region, focusing on specific technical areas (such as a series of 12 studies on all priority issues identified by the Pacific region); and

(d) Funding of national impact assessment studies on EPA development needs and adjustment costs to assist the PACPS in their preparations for the EPA negotiations.

PACPS have also received support for EPA-related activities from other sources. In particular, the currently ongoing Demand and Offers Project funded by the Commonwealth Secretariat is considered as very useful in ensuring national ownership of goods and services positions, and as a good starting point for improved involvement in an EPA. Additionally, the Hub and Spokes Project, administered by the Commonwealth Secretariat (Comsec) and funded in large part by the EC under the All-ACP Programme TradeCom has also provided useful assistance to the region in its preparation for and conduct of EPA negotiations.

In general, the PACPS consider the quantity of EPA-related support for regional preparations basically adequate and welcome. However, the PACP and EC are working on issues relating to the speed of delivery.

The shortage of skilled human resources in various trade-related areas, both at the national and regional levels in the PACP region to adequately prepare EPA negotiations was another major barrier in using effectively all the available funds.

2. STATE OF PLAY OF THE NEGOTIATIONS

2.0 Regional Integration

The PACP region is composed of small island states spread across a large portion of the southern and central 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 disasters and have scarce energy resources.

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 both domestic and regional markets and foreign trade. The region suffers from significant competitive disadvantages and stagnant economic growth, particularly due to high transport costs and low and declining investment flows. These features of the region

make the Pacific EPA process peculiar and to some extent different from other ACP regions.

Those and other complex political, social and economic dynamics characterizing the PACPS affect not only the nature of the EPA negotiations but are also likely to shape any new trading arrangements with the EU. The PACPS and the EC agree on the objective of making the new Partnership Agreement a real tool for sustainable development that promotes regional integration, good economic governance, trade facilitation, private sector investment growth and employment.

Pacific Island Countries (PICs) Regional Integration Initiatives

Regional integration can help in fostering the drive towards gradually increased competitiveness, enhanced flows of investment and promotion of sustainable development. Both the Pacific and the EU have agreed that a well-designed EPA could serve development by strengthening the existing Pacific regional integration processes. Concerns have been raised, however, that the pace of the EPA versus regional integration could see the EPA negotiations supplant the process of regional integration.

From the EC's perspective, for an EPA to be an effective tool for regional integration and to avoid a situation whereby the EU enjoys preferences beyond those available among the PACP themselves, any commitments made by PACPS towards the EU within an EPA should be extended to the other PACPS. This raises concerns for the PACPS, however, as not all of them would be equally prepared to undertake similar EPA commitments.

As concerns trade in goods, the PACPS have already entered into regional free trade schemes and commitments as set out below (PICTA, MSG). The region does not envisage at this stage to establish a customs union but rather wishes to pragmatically deepen current regional trade and integration processes where feasible and useful.

With regards to trade in services, preparatory work is currently being undertaken in the region to extending the regional free trade scheme, PICTA, to also cover services. As noted above, however, the region is concerned that the EPA process has the potential to supplant, rather than support the intra-regional process.

With respect to trade-related rules (trade facilitation, investment, competition, intellectual property rights etc.) all countries in the region are covered by the relevant basic provisions of the Cotonou Agreement.

The recent proposal by the PIFS for the establishment of Trade Advisory Committees at the national level and other consultative structures at the regional level provide important mechanisms to engage in formal and ongoing discussion on the content of any partnership agreements.

Pacific Plan

The Pacific Plan for Strengthening Regional Cooperation and Integration was endorsed by Leaders at the Pacific Islands Forum meeting in October 2005.

The Goal of the Pacific Plan is to enhance and stimulate economic growth and achieve sustainable development, good governance and security for Pacific countries through regionalism.

The Pacific Plan covers a broad area of cooperation ranging from institutional arrangements to infrastructure. In principle, the areas for cooperation and of great regional importance are: fisheries, tourism, digital strategy, energy policies, urbanisation, bio-security and safety, climate changes, education, health, management of natural disasters, participatory democracy, financial regulation etc.

The Pacific Plan identifies a wide range of regional initiatives for immediate implementation during the first three years (2006-2008) in the areas of economic growth, sustainable development, good governance and security.

Some of the concrete examples in the area of economic growth are:

- Expansion of market for trade in goods under the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA), the Pacific Island Countries Trade Agreement (PICTA) and the Pacific Agreement on Closer Economic Relations (PACER), and with non-Forum trading partners;
- Integration of trade in services, including temporary movement of persons, into the PICTA and the EPA;
- Timely and effective implementation of the Regional Trade Facilitation Programme (RTFP); and
- Support of private sector mechanisms, including, through the Pacific Islands Private Sector Organisation (PIPSO).

Pacific Island Countries Trade Agreement (PICTA)

The overall objective of PICTA is to provide the requisite trading environment conducive to the free flow of goods amongst the Forum Island Countries (FICs). It is anticipated that PICTA will lead to increase in trade between FICs, serve as a stepping stone towards the development of other trading relations, including the EPA, and enhance the gradual integration with the world economy.

The PICTA entered into force in 2003 and to date, three FICs have commenced trading under PICTA - namely the Cook Islands, Fiji and Samoa. Six FICs, i.e., Kiribati, Nauru, PNG, Solomon Islands, Tonga and Vanuatu, have ratified the Agreement and are currently working on legislative changes before they can commence trading under PICTA. Niue has signed and is yet to complete its ratification while Tuvalu and the Federated States of Micronesia have signed but have not ratified the Agreement. Palau and the Republic of the Marshall Islands are the only FICs that are yet to sign the Agreement. Forum Trade Ministers have endorsed in principle the introduction of trade in services to PICTA. There is also a possibility of expanding the participation in PICTA to include the French and US Pacific overseas territories. New Caledonia is currently studying its options in this regard.

Pacific Agreement on Closer Economic Relations (PACER)

The PACER is an economic and trade cooperation agreement between the FICs, Australia and New Zealand (ANZ). It is a framework agreement setting out the basis for the future development of trade relations among all 16 Forum members. The PACER entered into force in 2003 and a total of eleven Forum Members, including ANZ, have ratified the Agreement. The PACER will promote economic integration between the 16 Forum members and support the progressive integration of the FICs into the international economy.

A key feature of PACER is the establishment of a programme of trade facilitation measures that has been encapsulated in a "Regional Trade Facilitation Programme". In order to advance the regional trade initiatives and trade agreements for the benefit of FICs, more emphasis and resources are required for the trade facilitation programme. In this regard, both Australia and New Zealand are committed to supplying adequate financial and technical resources for trade facilitation.

Forum Trade Ministers have agreed to look into a more comprehensive framework for trade and economic cooperation between FICs including ANZ. One of the most distinguishing features of regional dynamics within the PACP region, therefore, is that the PACPS have agreed to move towards a more comprehensive framework for trade and economic cooperation with ANZ, the two most proximate developed economies, which are also major donors and trade partners. As a result of their commitments under the PACER, the PACPS are required to offer to undertake consultations as soon as practicable with ANZ with a view to the commencement of negotiation of free trade arrangements (FTAs) as soon as they commence formal FTA negotiations with another developed country (including the EU). Independently of any negotiations with other developed countries under the PACER, the PACPS are required to open free trade negotiations with ANZ at the latest, eight years after PACER's entry into force, i.e. in 2011.

Melanesian Spearhead Group (MSG)

The objectives of the MSG Trade Agreement are to promote regional economic integration and to facilitate the free flow of goods and services by means of the gradual and progressive removal of tariff and non-tariff barriers between trading parties. In a review of the Agreement in 2005, the MSG member countries (Fiji, PNG, Solomon Islands and Vanuatu) agreed to an eight-year liberalisation schedule for all items on its negative lists from 2005. In 2005, the MSG members took the decision to establish its Secretariat in Port Vila, Vanuatu and construction of the Secretariat building is now underway.

An Agreement on Establishing the Melanesian Spearhead Group was signed in March 2007. This Agreement recognises the MSG as a sub-regional organisation.

Council of Regional Organisations in the Pacific (CROP)

This is an ad-hoc committee composed of the heads of the Pacific Island intergovernmental organisations/agencies, and permanently chaired by the PIFS. Its purpose is to discuss and coordinate the work-programmes and policies of the different regional agencies to avoid either duplication or gaps in the provision of services to

member countries. The areas of action and the activities undertaken by CROP agencies are EPA-related. The CROP agencies' expertise and know-how offer valuable input into the EPA negotiating process.

CROP agency activities covers areas such as fisheries, professional services and research information to FIC governments, development and economic policy, political and international affairs, trade and investment, development of natural resources, in particular non-living resources, development of technical, professional, scientific, research, planning and management capacities of FICs and environment and tourism.

2.1 Major Issues in the Negotiations

(a) Process and General Issues

Since the commencement of negotiations on 10th September 2004, two ministerial meetings (2004, 2007), one senior negotiators meeting (2005) and seven JTWG meetings (twice in 2005, four times in 2006 and once in 2007) have been held.

The JTWG discussions have centred on overarching issues such as the architecture of an EPA Agreement, the link between trade and development and selected priority issues such as services, investment, fisheries and trade in goods, including rules of origin (RoOs). Based on regional consultations, the PACP region in July 2006 tabled informally an EPA legal draft text for further discussion with the EC. There is general consensus among the PACPS that such a proposed text captures very well the interests of the region, reflects what the PACPS want and is acceptable to most of them. A number of PACP proposals have also been submitted to the EC either as non-papers or formal negotiating positions:

- Fisheries (March 2005);
- Tourism (October 2005);
- Investment (October 2005);
- RoOs (March 2005);
- Services – Mode 4 (March 2006, revised version July 2006, formal negotiating text in January 2007);
- A draft EPA legal text (July 2006); and
- A draft FPA legal text (January 2007).

The EC has submitted comments and counter-proposals as follows:

- Services (May 2006 – concept, July 2006 – non-paper, January 2007 – EC proposal);
- Fisheries (May 2006);
- Establishment (January 2007);

- Comments to the draft EPA legal text (November 2006);
- Trade facilitation provisions (November 2006);
- Documents on various issues (January 2007) presented at the JTWG meeting in Brussels (e.g. Competition, Antidumping and Anti-subsidy, IPR, Social and Environmental issues, Sustainable development);
- Market access offer (March 2007);
- Rules of origin (April 2007).

The PACPS and the EC feel that the speed to respond to proposals and non-papers has to improve and progress towards finding substantive common ground on the key negotiation issues and in particular fisheries, market access including RoOs, services, investment and provisions relating to development cooperation has to accelerate.

Due to the unique features of the 14 PACPS (while formally part of the PACP Group, Timor Leste is not included in this review), the two sides have agreed that only those countries actually having an interest and capacity for trading in goods with the EU will sign a Trade in Goods Agreement as part of an overall EPA, while an accession clause would allow the remaining PACPS to join at a later stage. Pending a confirmation of PACP interests, trade in services and all other components of an EPA could conceivably fall under the overall EPA.

While the PACPS consider the EPA process reasonably transparent, they are of the view that the reflection of national priorities in regional-level EPA negotiations should be improved. Different dynamics in the PACPS might be noted – those countries with specific objectives in particular negotiating areas have taken a more proactive stance in the negotiations.

The pervasive lack of a trade policy framework in many of the PACPS has prevented them from driving the EPA process as an extension of national policies and interests. Some progress has been made, however, with the presence of better and more informed country trade officials who benefited from the technical assistance being delivered. The EC has also initiated and co-funded the Hub and Spokes Project that has put trade advisers at the disposal of several governments across the region and the PIFS.

A major concern is that the overall work programme for EPA negotiations established by the PACPS and the EU through the JRM is behind schedule with the deadline of December 2007 presenting a range of challenges. On the one hand, the time limitations imply a need to increase the pace of work, in particular in ensuring timely responses to negotiating documents already presented or still to be presented. On the other hand, an excessive acceleration risks exacerbating the ownership issues and capacity constraints noted above. In their ministerial meeting of 1 March 2007, both sides agreed nevertheless that negotiations must be accelerated in order to meet the deadline of the end of 2007.

An effective mechanism for advancing the work is required. One specific problem in this context relates to the distance and time difference between the Pacific and the EU. While electronic means to communicate (e-mail working groups and videoconferencing) have been used their effectiveness has turned out to be limited and the need to focus on an increased number of meetings has become obvious.

On the PACP side, five TWGs were established to prepare for EPA negotiations covering trade in goods (including agriculture, forestry, mining, bio-diversity), services (including tourism), fisheries, legal issues and investment. Nevertheless, the logistical difficulty of bringing together national representatives from countries so distant from each other has limited the capacity of the PACP side to prepare its negotiations effectively.

The PACPS in the course of negotiations have identified six key issues which are crucial for a successful conclusion of EPA: trade in goods (including RoOs and duty-free/quota-free market access), services (including Mode 4), fisheries, investment (including financial and related instruments) and adjustment assistance. A satisfactory agreement on these issues is essential for further work and negotiations as such and indeed to ensure the EPA meets its stated objectives.

The state of play in various areas of negotiations is as follows:

(b) Trade in Goods

With regards to the architecture of the EPA, it has been agreed that the Trade in Goods Agreement will only be signed by countries actually having an interest in and capacity for trading in goods with the EU. Preliminary indications suggest that perhaps six and even up to 11 PACPS might sign up initially, depending on whether the RoOs finally decided bring real opportunities for PACP exports to the EU market. The PACPS have tabled detailed modalities as well as a proposed legal text for the trade in goods agreement. In this context the PACPS have tabled their views on market access for EU exports into PACP markets, emphasising the need for sufficiently long transition periods, appropriate exemptions and safeguard clauses as well as individual schedules of commitments. The EC has commented on these modalities and tabled its market access offer.

Liberalisation

With regards to the liberalisation of access to the EU market, the EC has offered full duty-free quota-free access subject to certain transitional arrangements in recognition of the need to address the import regime for a few sensitive products.

The PACPS are in the process of designing national market access (MA) offers which will form the basis for EPA market access negotiations in goods. More technical work is needed on defining offers in 2007.

Trade Facilitation (Customs, Sanitary & Phytosanitary measures, Technical Barriers to Trade)

The EC has stressed the importance of including in the EPA, customs reform and trade facilitation provisions in order to support development of trade and growth in the PACPS and provided proposals in this regard. The EC has also proposed to deal specifically with the important issues of technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS) in separate sections.

The PACPS have pointed out that trade facilitation should encompass customs, SPS and TBT issues and for trade facilitation to be treated as a package rather than singling out any one issue. The PACPS aspire to have efficient customs administrations and have

expressed deep interest in strengthening their national and regional capacities to meet internationally recognized food and agricultural standards and to ensure the safety and health of their consumers and agricultural sectors. In this regard, they have proposed a chapter on trade facilitation covering SPS & TBT issues as well as customs in the draft EPA legal text.

The specific structure and language of the proposals in this regard still needs to be discussed with the EC.

Rules of Origin (RoOs)

The PACPS argue strongly that they have not benefited from the existing RoOs as the latter have been based on cumulation with other ACP regions which is of no commercial value to the PACP region which is far removed from other ACP regions and the EU. The PACPS have, thus, emphasised that an enhanced RoOs regime is one of the key issues required for concluding a successful EPA. In this regard, PACPS recall that Article 37(7) of the Cotonou Agreement commits the European Community to improve current market access through, *inter alia*, a review of the RoOs in the negotiation of EPAs.

The PACPS also argue that without vastly simplified RoOs based on a Change of Tariff Sub-Heading (CTSH) approach at the six-digit level, the current situation will continue to exist with there being relatively insignificant exports of PACP manufactured goods to the EU and PACPS will benefit little from a Trade in Goods Agreement as part of an EPA. On March 2005, the PACPS submitted a proposal on RoOs based on a CTSH at the six-digit level which greatly simplifies the current Cotonou system and offers real export opportunities for the PACP private sector as it addresses the peculiar characteristics of the PACPS and is in line with the objectives of an EPA.

The EC has outlined the general principles that need to be taken into account when considering RoOs. It has, in particular, highlighted the problems relating to a system based on a simple change of tariff heading. In the view of the EC, RoOs within the EPA have to be simple and development friendly. On 28 March 2007, the EC presented a draft Convention on the rules of origin to the PACPS as a non-paper which is based on the value-added criterion approach.

The PACPS oppose a value-added approach as the latter would require PACPS to purchase materials and intermediate products from the EU or other far-off ACP regions at a very high cost and would be administratively costly and complex to administer. A CTSH approach, on the other hand, would enable PACPS to source intermediate materials from other, usually closer countries at a relatively lower cost and then export products to the EU made from those materials so long as the criterion of 'substantial transformation' is satisfied. It would also be easier and less costly to administer, a very important factor given the small size of PACP manufacturers.

Trade Defence

Exchanges on trade defence instruments have concentrated on general features pertaining to safeguards, anti-dumping, anti-subsidy measures and on a possible infant industry clause. Both sides have underlined that they see the subject of trade defence instruments as an important element in the overall structure of a Trade in Goods

Agreement. At the same time, however, the PACPS consider it highly unlikely that, in the foreseeable future, the very small volumes of PACP exports could cause injury to EU domestic industries and question the need for detailed provisions on trade defence instruments to protect the EU against PACP exports.

(c) Services

Article 41 of the Cotonou Agreement reflects the agreement of the PACPS and the EC to extend their partnership under the EPA to encompass the liberalisation of services in accordance with the provisions of the General Agreement on Trade in Services (GATS). The PACPS and the EC, in this regard, have exchanged papers setting out the general framework how services should be addressed within an EPA. Both the PACPS and the EC are currently working on defining their offers and requests in the services sector.

In their approach, the PACPS have indicated a strong preference for retaining the use of GATS methodology for scheduling commitments in all modes of supply for services as being more in keeping with regional capacities to deal with services. They have also stressed that technical and financial assistance for regulatory reform would be essential to ensure a properly sequenced and thus beneficial process of services liberalisation occurring.

Within the area of services negotiations, the PACPS have emphasised to the EU mode 4 concessions (“temporary movement of persons”) as a crucial element to foster their development and a key issue within the EPA context.

The EC has explained the division of labour and competences between Commission and EU Member States (MS). It has encouraged and supported the PACPS to enter into direct contact with relevant MS on those issues that are under the competence of MS. The EC has tabled a proposal and text on a legal framework on services and establishment as an integral part of an EPA. The EC has also informed about the possibilities to establish a link between the EPA services provisions and the EU development cooperation.

In January 2007, the PACPS submitted a formal negotiating proposal on a quota regulation for the temporary movement of skilled and semi-skilled persons from the Pacific in crucial sectors, e.g. construction, health care and maritime sectors. The proposal also seeks development assistance from the EC to strengthen training in PACPS to meet EU requirements. This was followed by a PACP ministerial mission on 25 February – 13 March to relevant EU capitals which helped in informing EU MS about the PACP expectations and priorities and will hopefully assist in finding pragmatic solutions that will contribute to their development objectives.

In the Joint Declaration adopted by the two sides on 1 March 2007, the EC expressed its readiness to offer the PACPS access for services including Mode 4 in respect of cross-border movement of persons with a view to enabling PACPS to be genuine service providers in the EC market consistent with their own particular circumstances and levels of development.

In view of the importance and complexity of the topics involved, it has been agreed to continue work on services in a dedicated subgroup in 2007.

(d) Investment

What exchanges have taken place have focussed on the contents and scope of an agreement. The PACPS have proposed the inclusion of an enhanced Investment (Investment Promotion and Protection Agreement, Plus - IPPA+) chapter in the EPA Agreement. The Investment chapter would have standard IPPA/IPPA+ provisions, market access under Mode 3 of services, strong provisions on transparency and good governance and financial and technical assistance.

The investment proposal also highlighted the crucial importance of improving significantly the provision of financial and technical support by the European Investment Bank (EIB), the Centre for the Development of Enterprise (CDE), Proinvest and the Centre for the Development of Agriculture (CTA) to small and medium enterprises (SMEs) in the PACP region.

The EC has commented on the proposed investment provisions which will form part of an EPA. As regards the issues relating to the functioning of EIB, CDE or CTA, it has pointed out that these are set by ACP and the EU within Cotonou. It sees the potential support of EIB and CDE within the EPA context as an important topic to be discussed further within the Regional Preparatory Task Force (RPTF).

Taking into account the divergent views in this crucial area, discussions will need to intensify to enable a successful conclusion of the negotiations.

(e) Fisheries

The PACPS regard fisheries as one of the key sectors within an EPA, as it is the key resource shared amongst the countries in the region. Within an agreement on goods, the PACPS have asked for the continuation of the current tariff free access and importantly, improved and simplified RoOs for fishery exports to the EU.

In addition, the PACPS find 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. The initial PACP fisheries proposal was presented in 2005 and a detailed legal text reflecting that proposal was presented in January 2007. It seeks a long-term and stable relationship with the EU tuna industry and provides a guaranteed, long-term level of access to EU flagged vessels to PACP exclusive economic zones and the world's largest tuna fishery. This would be beneficial to the EC as access to tuna stocks around the world is increasing being restricted. The proposal also covered issues relating to conservation, management of stocks and clauses on the development of the fishing industry.

The EC agrees on the importance of fisheries for the Pacific and has tabled its views on key principles and areas of cooperation for discussion. The EC also expressed its support to provisions that would reinforce the regional integration and the coordination of the fisheries policies in the region. It is currently preparing a reply to the latest Pacific proposal taking into account the link with the relevant regional organisations such as Western and Central Pacific Fisheries Commission (WCPFC).

In the Joint Declaration adopted by the two sides on 1 March 2007, they agreed to explore possible areas of convergence as a matter of priority, including in particular, a regional fisheries component as an integral part of an EPA. Both sides agreed that the

development of the industry and improved access for PACP fishery products to the EU market would be important components of an EPA.

Towards the above end, it has been agreed to hold detailed technical meetings within a subgroup of experts. Fishery-related provisions could be linked up with aid allocated for the focal sector of sustainable natural resources management as foreseen in the draft regional strategy.

(e) Other Trade-Related Areas

The EC side believes that a range of trade-related areas needs to be integrated into the EPA in line with the relevant provisions of Cotonou and with the objective of maximising the development potential of the EPA. Some PACPS agree on the importance of certain of these areas for development; however, they have equally emphasized the need for technical and financial support to accompany them.

From the EC's perspective, the trade-related areas would include, in particular, competition policies, transparency in government procurement, intellectual property rights, clauses relating to the environment, sustainable development and on trade and labour rights. Several of these issues have been presented by the EC and have been discussed. The PACPS have responded that the EC proposals are burdensome for them to comply with and that they would not seek a mandate to negotiate these issues in isolation from development assistance.

With respect to cooperation in the tax area, the EC has pointed out that promoting good governance in the tax area is essential in order to avoid a distorted framework for economic transactions and to lay a sound foundation for sustainable development. On this, the PACPS have indicated that capacity-building and resources were needed to implement any obligations in this area and that, in any case, PACP negotiators had no mandate to negotiate on tax issues.

2.2 The Link between Development Cooperation and needs arising from EPA

Finding an adequate solution to the issue of development support to EPA is key for the progress in all other areas of the EPA negotiations. The EC has expressed its view that the needs arising from the EPA would be addressed through the existing Cotonou instruments, i.e., the European Development Fund (EDF), as well as from other sources.

The PACPS have argued that in order for them to be able to implement new obligations under an EPA as well as to capture the benefits an EPA offered, additional resources would be required to fund adjustment and trade development programmes. The PACPS have notably maintained that EDF resources should be earmarked for other, also very important regional priorities. The PACP side specifically argues that since the EPA will outlast the Cotonou Agreement (and the funding commitments it contains), it is essential that commitments from the EU on this additional adjustment and trade development assistance be bound in the EPA.

The EC has pointed out that under the current EDF there is already substantial support for trade and the EPA process, and that this is an integral part of 10th EDF regional programming. This linkage could be further strengthened by the Pacific by establishing an

RPTF as is the case in other ACP regions, thus making best use of the significantly increased allocation of the 10th EDF (see below) and other facilities.

The PACPS observed that on an annualised basis the amount of support proposed by the EC for the 10th EDF RIP has been less than in previous EDFs. They requested additional and legally-based resources to implement the EPA without resorting to EDF resources. A study conducted by a UNESCAP expert for the region at the request of the PIFS concluded that €170 million would be needed to fund PACP adjustment costs over the first five years of an EPA. This study was noted in the course of the videoconference on 5 October 2006.

A related issue is the appropriate mechanism for the identification of EPA-related needs. The RPTF was envisaged to reinforce the close link between EPA negotiations and development cooperation as mandated by the Cotonou Agreement. Given the differences of views and expectations on the relationship between the EPA and the EDF, the PACPS have had serious reservations on the establishment of the RPTF and no RPTF has been established to date.

At their meeting on 1 March 2007, the two sides agreed that, as a result of obligations and commitments entered into under the EPA, support from the EC would be necessary. They committed to cooperate in mobilizing the additional resources from EU Member States and other donors which might be needed for the preparation, implementation and success of the EPA.

EDF trade-related assistance to the Pacific region so far commenced with the 8th EDF RIP Economic Partnership Programme (€0.75 million) and has been built up with substantial support from the all-ACP and regional facilities:

- Facility to support EPA negotiations where the PACPS have obtained substantial assistance under this programme, both at the regional or national level amounting to some € 1.515 million;
- Facility to support ACP countries in the WTO negotiations, contributing to the establishment and operation of the Pacific Islands Forum Office to the WTO in Geneva to defend its members' interests, coordinate WTO activities for its members and ensure the flow of information and providing institutional capacity-building at the national level;
- The Hub and Spokes Project under the TradeCom Facility, where PACPS are at present benefiting from 7 national trade policy analysts and a regional trade policy adviser and trade policy analyst based at the PIFS for a period of four years;
- Under the 9th EDF RIP, €9.2 million were initially allocated under the Pacific Regional Economic Integration Programme (PACREIP). After the MTR, a top up of €2 million to strengthen component 2 (Support to EPA negotiations) was approved, raising the amount of PACREIP funding to €11.2 million. This Programme provides support to all PACPS for EPA preparation efforts, including in-country stakeholder meetings and participation in EPA-related meetings at all levels as well as supporting participation in WTO activities and providing capacity for the support of PICTA implementation; and

- A new PACP programme, amounting to €4 million, "Facilitating Agricultural Commodity Trade" – FACT is under appraisal and will hopefully *be* approved before the 9th EDF sunset clause.

In conclusion, the PACPS have been allocated around €16.7 million (of which €11.2 million is through PACREIP) in activities to support trade which are directly or indirectly linked to EPA.

At their meeting in November 2006, PACP Trade Ministers reaffirmed the region's mandate to seek additional resources to meet the costs of EPA adjustment as well as the need to press the EC for the establishment of an adjustment facility. During their ministerial meeting of March 2007, the two sides recognised the importance of a regionally owned mechanism such as an adjustment facility to channel resources for financing EPA related costs in an efficient and timely manner.

Programming of the NIP-RIP 10th EDF

The indicative regional allocation amounts to roughly €76 million (an increase of 130% compared to the 9th EDF). With a possible incentive tranche of 25%, this could even increase to €95 million. While the PACP Ministers in Port Moresby in May/June 2006 recognized that there had been a nominal increase of the RIP under the 10th EDF, they noted that actual resources committed to the 10th EDF RIP constituted a decline in real resources relative to the 5th EDF (1980-85) when there were only eight PACPS as opposed to 15 at the present time (including Timor Leste which can access the RIP).

The draft 10th EDF Programming Document prepared by the PACP currently proposes to use EDF funds (noting the EC's position that the Pacific 10th EDF RIP (€76.2 m) be the main instrument for regional integration, including any support for foreseeable Pacific EPA implementation) as follows:

- | | |
|-------------------------------------------------------------------------------------------------------------------|----------------|
| • focal area 1: sustainable management of natural resources
(EPA agriculture, forestry and fisheries relevant) | €30 million |
| • focal area 2: human resources development
(EPA services relevant) | €40 million |
| • non-focal area
(including EPA institutional support) | €6.222 million |

The PACP have also been informed of the possibility of an incentive tranche of up to 25% of the above amount based on an action plan drawn up within the framework of the EPA negotiations and reflecting specific trade related support needs which must facilitate the implementation of the adjustments resulting from the regional integration and EPA process.

To date, the PACPS have avoided making any commitments in the programming of the 10th EDF to support EPA implementation that would prejudice further discussions on the above matters and, in particular, with regards to resource allocation and delivery of adjustment and trade development assistance. However, they have recognized the importance of identifying and quantifying the costs for implementing specific national projects and this is accorded high priority by the PACPS.

To that end, the PIFS has been requested by PACP Trade Ministers at their meeting in November 2006 to commission a study on "National Assessments of EPA Development Needs and Adjustment Costs for the PACPS". The study, currently being undertaken, will consider what national adjustments need to be addressed and the types of programmes and scope of an EPA Adjustment Facility. Within the context of the two focal sectors (sustainable management of natural resources and human resources development), the prior-needs assessment will be based on four principle areas (institutional strengthening projects, private sector development, human resource development and green/blue) identified by the above UNESCAP study. The study will also examine the levels of financing needed to fund EPA-sensitive interventions.

Regional Preparatory Task Force (RPTF)

The establishment of a RPTF was agreed in the JRM of September 2004. Terms of reference for the operation of the RPTF were elaborated in early 2005 specifying its role and functions in ensuring the close link between EPA negotiations and EDF programming. The PACPS understanding when it had agreed to establish the RPTF in 2004 was that EDF resources would not be used to fund EPA-related needs. As noted above, the PACP region has not yet established an RPTF. The PACPS maintain the position that any RPTF must reflect their interests and additional resources will be required to implement the EPA without resorting to EDF resources.

Both sides have agreed on the necessity of linking trade and aid. They have also agreed that, wherever possible and taking fully into account other PACP non-trade-related developmental priorities, foreseeable interventions within the two focal sectors as provisionally foreseen in the regional programme, i.e. sustainable management of natural resources and human resource development, should be selected and designed in an EPA-responsive way so as to reap synergies in accordance with the principles of effective aid delivery and the Cotonou provisions. The Commission also offered its assistance with drafting relevant EPA and development aid arrangements. In the EC's view, the PACPS and the EC should jointly set a list of prioritised projects for EPA implementation in order to support further development.

In the EC's view, additional demonstrable needs (such as the costs for institutional implementation of an EPA) could be fitted into the non-focal sector, submitted for consideration under the regional incentive tranche or under Intra-ACP facilities.

Discussions between the two sides on how best to address trade and development cooperation aspects of the EPA will need to continue in the coming months.

3. MEASURES TO SUPPORT THE TIMELY COMPLETION OF THE NEGOTIATIONS

Time plan for negotiations in 2007 to conclude in time

At the ministerial meeting that took place last March in Brussels, both sides agreed that negotiations were to be accelerated in order to meet the December 2007 deadline.

To achieve this target, the establishment of an ambitious schedule of meetings and work plan is foreseen for the rest of the year. Numerous meetings at technical level and two meetings at senior level would be required. As indicated above, the funding arrangements

need to be reviewed to ensure that the required number of meetings between the parties and to prepare negotiations at the regional level can indeed be held.

The EC has emphasised that the establishment of a RPTF will assist in accelerating the discussions on the linkage between development cooperation and EPA adjustment support.

Measures to Implement the Agreement

Implementing the EPA requires establishing an effective institutional structure capable of fulfilling the challenging requirements and tasks relating to implementation and monitoring of the Agreement. Both sides have presented their ideas on the issue. The Pacific has detailed their proposals as part of the proposed legal EPA text. The structure needs to be established as part of the EPA arrangements and needs to be discussed further among the Parties as a matter of priority.

APRIL 2007

**€24M CAPACITY BUILDING PROGRAMME IN SUPPORT OF EPA NEGOTIATIONS
(PACIFIC Region)**

Table 1

COUNTRY	TYPE OF ASSISTANCE	IMPLEMENTED	FUNDS €
PIFS	Regional ACP Trade Officials & Ministers Meeting	5-6 th August 2002	57,607
PIFS	Pacific Regional Action Plan for EPA negotiations	May 2003- Nov.2004 – Grant Agreement with ACPS - €589,000 expenditures at closure February 2005-May 2007 – Committed €750,000 (Through CA with PIFS)	1,339,000
VANUATU	Technical Assistance to the Ministry of Trade, Industry & Investment	March 2004-March 2005	111,363
PNG	Market Access Training for the Ministry of Trade & Industry.	August 2006	7,480
GRAND TOTAL			1,515,450

**€11,2M PACIFIC REGIONAL INTEGRATION PROGRAMME
(PACREIP)
Table 2**

Component	1 PICTA Implementation	2 EPA	3 WTO Engagement	4 Regional economic Integration	5 Regional Tourism Development	6 Programme Co-ordination Unit	Totals
Budget Post							
1. Long Term-TA	435.000	531.000	894.000	967.000		616.000	3.443.000
2. Short Term - TA	250.000	615.000	100.000	1.414.000	375.000		2.754.000
3. Training and Meetings	190.000	1.979.000	-	674.000	305.000	-	3.148.000
4. Equipment	50.000	50.000	50.000	275.000	-	35.000	460.000
5. Operating Costs & Admin	85.000	90.000	160.000	360.000	-	79.000	774.000
Sub-total	1.010.000	3.265.000	1.204.000	3.690.000	680.000	730.000	10.579.000
Indirect costs							132.000
Evaluation							70.000
Audit							90.000
Contingencies							329.000
Grand total							11.200.000