

## EPA negotiation issues between Pacific and the EU

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### About this update

CTA's *Executive brief: The EU – Pacific EPA negotiations*, was published in February 2009 and in CTA's *Agritrade: ACP–EU Trade Issues (2009 Compendium)*. This update consists of:

- 1. Background and key issues:** briefly summarising the original executive brief, and where necessary, updating developments related to key issues;
- 2. Latest developments and implications for the ACP:** reviewing developments that have taken place since the publication of the original executive brief; examining the implications of recent developments for the ACP countries concerned.

The original executive brief (2009) is available on request from: [agritrade-mail@cta.int](mailto:agritrade-mail@cta.int).

## 1 Background and key issues

There are 15 Pacific ACP (PACP) states: Cook Islands, Fiji, *Kiribati*, *Republic of* Marshall Islands, Federated States of Micronesia (FSM), Nauru, Niue, Palau, Papua New Guinea (PNG), *Samoa*, *Solomon Islands*, Tonga, *Tuvalu*, *Vanuatu* and *Timor-Leste* (least-developed countries – LDCs – are italicised).

Relations with the EU have been dominated in recent years by three issues:

- the establishment of a successor arrangement to the Cotonou Partnership Agreement (CPA) on 31 December 2007;
- the reform of the EU sugar regime, which has led to a reduction in the guaranteed price for ACP sugar exported to the EU; and
- fisheries-sector relations (especially related to tuna).

More recently the issue of enhanced opportunities for PACP exports of labour has also risen in prominence.

In 2007 governments of two (Fiji and PNG) of the 15 PACP states initialled interim economic partnership agreements (IEPAs) with the EU, (three others signed fisheries partnership agreements (FPAs) with the EU). Fiji and PNG dominate PACP exports to the EU. Their governments initialled an IEPA bilaterally (as opposed to regionally) primarily to ensure a continuation of duty-free access to the EU market. Failure to do so would have resulted in an imposition of standard GSP duties. In the case of Fiji this would have affected 70 of 180 products exported to the EU, with a total duty payable on 2007 export volumes of almost €60 million. In the case of PNG this would have seen the imposition of duties on 33 of the country's 201 products exported to the EU with a total duty payable on 2007 export volumes of €9.6 million (mainly on tuna exports). This would have severely disrupted exports to the EU. PNG signed its initialled IEPA on 30 July 2009 while Fiji signed its initialled IEPA on 11 December 2009. Once these signed agreements have been duly ratified implementation of the national tariff-elimination commitments of Fiji and PNG included in the tariff-reduction schedules will commence.

Agreement was reached in the negotiations on the removal of residual tariff barriers and quantitative restrictions on all goods and some improvement in the rules of origin were achieved. Some concessions were also secured on the export of labour to EU member states.

As LDCs Kiribati, Samoa, Solomon Islands, Tuvalu and Vanuatu faced few problems arising from the end of the CPA regime since they also benefit from the EU's 'Everything but Arms' (EBA) regime which offers similar preferences to Cotonou (apart from the provisions for sharing production processes among them – known in the jargon as 'cumulation'). The same does not apply to Cook Islands, Tonga, Republic of Marshall Islands, FSM, Niue, Palau and Nauru all of which were transferred by the EU in January 2008 to a less favourable trade regime. But this has had little effect on them as they export few if any goods to Europe that face significant tariffs (and FSM, together with Kiribati and the Solomon Islands has safeguarded access for fish exports through a bilateral FPA). Throughout the negotiations a major preoccupation was the impact of the terms and provisions of a free-trade-area agreement with the EU on PACP states' trade relations with their near neighbours Australia and New Zealand which are the region's main sources of imports.

The key issues for 2008-2009 have been:

- the trade effects of the implementation of the tariff-elimination commitments of the agreed bilateral IEPAs;
- whether other PACP states would join;

- whether contentious issues related to infant-industry protection, the standstill clause, tariff-liberalisation rules, MFN issues and trade in services could be included and progress could be made towards the conclusion of a full EPA.

## 2 Latest developments and implications for the ACP

### 2.1 The negotiations

#### 2.1.1 The impact of the IEPAs on exports

Both Fiji and PNG have signed bilateral IEPAs which contain significant differences in their liberalisation schedules. These commitments may have an impact on their import patterns and may have an effect on patterns of exports as well. However, these effects will only be felt once the agreement is implemented and will be influenced by the wider development of the trade regimes of PACP states (notably through its impact on trade relations with Australia and New Zealand under the PACER agreement). A number of potential areas where the agreement could impact on exports can however be identified.

In the case of PNG the principal impact of the loss of traditional trade preferences on the EU market would have fallen on the tuna sector and would probably have required a search for new markets. Given the fact that PNG will be liberalising only a very few items that face significant tariffs and which the EU can supply competitively, the IEPA may represent a 'very modest cost to avoid a less modest cost' option.

The IEPA has secured access to the EU for Fiji's sugar exports on the basis of duty-free, quota-free access within a transitional plan: this has a total ACP/LDC safeguard target of up to 3.5 million tonnes up to October 2015 (with targets for non-LDCs of 1.38 million tonnes in 2009/10, 1.45 million tonnes in 2010/11, and 1.6 million tonnes per season from the 2011/2012 season up to and including the 2015/16 season). The renunciation of the sugar protocol which came into effect on 1 October 2009 ends national quotas for ACP suppliers and allows a phasing out of price guarantees in the context of a reduction in administratively determined floor prices for sugar and movement over to market-based price determination for ACP sugar imports from 1 October 2012.

This has averted the need for Fiji to find alternative markets for its sugar, since any re-imposition of duties on sugar (which would have been equivalent to over two-thirds of the value of exports) would have made continued exports to the EU commercially non-viable. While the IEPA has secured duty-free, quota-free access to the EU market for Fijian sugar exports, it is unclear what the implications of this will be for long-term trade, given wider developments. This is despite the seven-year deal concluded in May 2008 to supply Tate & Lyle with 300,000 tonnes of raw cane sugar per annum. This commercial deal was intended to 'ensure that Fiji was able to take full advantage of the additional market-access opportunities for sugar in the EU as well as benefit under its long-term contract with Tate & Lyle'.

However, the Fijian sugar sector has been facing difficulties for some years now. In 2007 the EU recorded only 174,547 tonnes of sugar imports from Fiji, while industry sources reported a further drop in supply to Tate & Lyle in 2009. The situation was complicated by the high prices on the world sugar market which reduced the attractiveness of the EU market. Nevertheless overall sugar production did decline from 310,000 tonnes in the 2006 season to 208,000 tonnes in the 2008 season, with serious concerns being raised about the future of the industry.

Against this background the miller, Fiji Sugar Corporation Ltd, has made significant investments to upgrade the four sugar factories in a programme which is to be completed at the start of the next season. Furthermore, the government has adopted a strategy which is seeking, *inter alia*, to address land-tenure issues, revive the sugar industry and progressively bring sugar production back to former levels.

The future for Fiji's sugar trade with the EU nevertheless looks far from certain because:

- of the ongoing production difficulties in Fiji which the government is currently addressing;
- Tate & Lyle are seeking to develop alternative sources of supply from non-ACP LDCs (or even, according to reports in the UK financial press, to sell its sugar division);
- declining world market prices are likely to impact on prices offered for ACP sugar;
- of the ending of minimum import-price requirements for ACP sugar from 1 October 2012.

The growing number of countries with preferential access to the EU sugar market alongside a further consolidation of corporate alliances around six major players, which now control around 80% of the EU market, is likely to compound the situation, as a limited number of importers are in a stronger position to negotiate on price with a growing number of exporters. These developments could quickly make the EU an unprofitable market for Fiji sugar where the cost of production has been put at €309/tonne before transport.

**Table 1: Evolution of the EU sugar price (€/tonne)**

Year	2005/6	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13
EU price	523.7	496.8	496.8	448.8	Not less than 90% of 335.0	Not less than 90% of 335.0	Not less than 90% of 335.0	Market-related prices

Looking beyond sugar, the WTO's *Trade Policy Review* for Fiji (18 February 2009) noted that the EU's 'strict rules of origin on fish exports ... have severely restricted opportunities'. These have been relaxed under the IEPA by allowing non-originating product to be used by domestic processors. However in the short term the benefits of these changes to the rules of origin have been undermined by 'the EC's decision to prohibit all Fijian fish exports on SPS grounds in May 2008'.

A critical issue for Fiji and PNG is whether the full duty-free, quota-free access granted and improved rules of origin under the IEPA will support a diversification of exports to the EU. An analysis of the pre-2008 exports of Fiji and PNG to the world does not indicate any obvious products that are currently exported to other markets but which might be diverted to the EU with the removal of any residual CPA tariffs. Nor does it provide any foundation for a preliminary guess at possible new supply capacity. However, this being noted, the trade features section of DG Trade has recently carried an interview with a small Fijian cosmetics business which started developing production for export on the basis of contracts in the EU and subsequently expanded exports to over 50 countries. This company provides employment to 800 people in the agricultural sector and 65 workers in the processing factory, with further expansion planned. The question arises as to whether elements of the IEPA will encourage the development of production for export of these kinds of 'niche market' exporters, for while these exports may be statistically insignificant, their proliferation could be of considerable benefit to individual PACP states, given the small size of their economies.

However, SPS, food-safety and quality standards are likely to have a critical bearing on the scope for the development of these kinds of niche products. Establishing effective provisions and flanking measures around any EPA arrangement, which can effectively help small- and medium-sized Pacific-island enterprises penetrate the EU market is likely to be a critical determinant of the overall value of such an agreement.

The provisions of the IEPAs initialled with PACP states are less restrictive with regard to the use of export duties than other IEPAs. Article 10 of the PACP IEPA allows Fiji and PNG (plus any future signatories) to impose them if necessary in order to ensure fiscal solvency or to protect the environment. Also, and subject to mutual agreement, 'in exceptional circumstances' with the EC, it allows them to be imposed for a 'limited number of products' in relation to infant-industry development.

All in all, therefore, the main effect of the IEPA on the exports of Fiji and PNG appears to be one of avoiding disruption following the lapsing of Cotonou preferences rather than of creating new opportunities.

## 2.1.2 The impact of the IEPAs on imports

Once it applies the IEPA, Fiji's import regime will change significantly – and in the opposite direction to the recent trend. The WTO *Trade Policy Review* found that Fiji's MFN rates have gradually increased, from an unweighted average of 7.9% in 2003 to 10.4% in 2008, and reached 11.3% in 2009. The averages for agricultural and industrial products were 12.0% and 10.1%, respectively, in 2008 (12.7% and 11.1% in 2009). Fiji is scheduled to liberalise just over 84% of its imports from the EU in four tranches to be completed, in principle, by the end of 2008, 2013, 2018 and 2023. Unlike most other (I)EPA states, the liberalisation in each tranche will not occur through a series of incremental cuts. Instead, the IEPA contains no obligation to lower any tariff up to the day before it is scheduled to be set at zero. However to date none of the agreed tariff reductions have so far come into effect.

About 40% of the 1,173 products groups that Fiji is not liberalising are agricultural. Animal products followed by other agricultural products plus processed-food items account for just under one-half of all the exclusions. Many of the most sensitive products, facing the highest tariffs at present, have been excluded – but by no means all. Over half of the exclusions currently have tariffs of 10% or more, but only 6% are in the highest tariff band (which is 27%).

**Table 2: Summary of Fiji exclusions**

Description	Number of lines
Total	1,173 at HS6 and national tariff line level
Covered by WTO Agreement on Agriculture	469
In highest applicable tariff band	75 (= 27% or varying specific duties, whichever is greater)
Specific duty only	58
Tariff 10% or more	667
Tariff less than 10%	373
Duty free	—

Source: Commonwealth Secretariat, 2008, Table 3

**Table 3: Broad composition of Fiji exclusions**

HS Section	Description	Share of total excluded lines
I	Live animals; animal products	13.0%
II	Vegetable products	13.7%
III	Animal or vegetable fats/oils	1.1%
IV	Prepared foodstuffs; beverages; tobacco	19.2%
V	Mineral products	2.0%
VI	Chemical products	5.3%
VII	Plastics/rubber & articles	4.3%
IX	Wood & articles	5.7%
X	Wood pulp/paper & articles	3.2%
XI	Textiles & clothing	11.3%
XII	Footwear/headgear/umbrellas etc.	1.2%
XIV	Precious/semi-precious stones/metals & articles	0.4%
XV	Base metals & articles	9.5%
XVI	Machinery & mechanical appliances	2.1%
XVII	Vehicles/aircraft/vessels & associated equip.	7.3%
XIX	Arms & ammunition; parts/accessories thereof	0.5%

*Note:* There are no exclusions in HS Sections: VIII (hides/skins, leather, fur-skins and articles); XIII (articles of stone, plaster, ceramics, glass, etc.); XVIII (photographic/precision/medical/surgical etc. instruments); XX (misc. manufactured articles); XIX (works of art, collectors' pieces & antiques).

Source: Commonwealth Secretariat, 2008, Table 4

Of potentially greater importance in the short to medium term (during the period when only relatively low tariffs are being cut) is the limitation on quantitative import restrictions, even on goods that are excluded from liberalisation. In most of the (I)EPAs these are subject to a



blanket ban, but the Pacific accord includes some flexibility. Nevertheless quantitative restrictions can only be employed for safeguards on a maximum of 3% of tariff lines or 15% of total import value (Article 21). Other permissible forms of infant-industry support are only reactive (i.e. countries can impose safeguards if a threat arises to an infant industry) rather than proactive. Tariff surcharges can be applied for up to 10 years (and longer for any LDCs that accede) within the first 20 years of the IEPA – a lengthier timescale than in the other (I)EPAs. To date little progress has been made in addressing the concerns of PACP states around these and other contentious issues (e.g. the standstill provision, the MFN clause and the scope of commitments on trade in services).

PNG, uniquely among the ACP, is liberalising – at least on paper - everything that is to be liberalised (some 88% of its imports) on day one: entry into force of the IEPA. Without a recent *Trade Policy Review* and in advance of data on the applied level of tariffs in 2008 and 2009 it is not possible to determine whether this has yet happened. But, even when it does, it may not create the ‘shock’ that might be imagined since most of the goods involved are either already duty-free or are not imported. Of the 4,796 products to be liberalised, 4,491 are already duty-free. Of the 305 products that face positive tariffs many are not imported from the EU – in total imports of these goods accounted for just 0.07% of the total value of imports.

The goods being excluded from liberalisation include a high proportion (just under 40%) of agricultural items, notably animal products, followed by other agricultural products plus processed food items. A full 89% of the excluded items currently have tariffs of 15% or more, although only five are in the highest (70%) tariff band.

**Table 4: Summary of PNG exclusions**

Description	Number of lines
Total	1,048 at national tariff line level
Covered by WTO Agreement on Agriculture	399
In highest applicable tariff band	5 (= 70%)
Specific duty only	61
Tariff 15% or more	982
Tariff less than 15%	—
Duty free	-

Source: Commonwealth Secretariat, 2008, Table 7

**Table 5: Broad composition of PNG exclusions**

HS Section	Description	Share of total excluded lines
I	Live animals; animal products	9.3%
II	Vegetable products	14.1%
III	Animal or vegetable fats/oils	3.1%
IV	Prepared foodstuffs; beverages; tobacco	17.2%
V	Mineral products	0.4%
VI	Chemical products	3.1%
VII	Plastics/rubber & articles	3.1%
VIII	Hides/skins, leather, fur skins and articles	0.8%
IX	Wood & articles	6.8%
X	Wood pulp/paper & articles	4.9%
XI	Textiles & clothing	21.9%
XII	Footwear, headgear, umbrellas, walking sticks, etc.	2.2%
XIII	Articles of stone, plaster, ceramics, glass, etc.	1.3%
XIV	Precious/semi-precious stones/metals & articles	1.3%
XV	Base metals & articles	5.6%
XVI	Machinery & mechanical appliances	1.0%
XVII	Vehicles/aircraft/vessels and associated transport equip.	0.5%
XX	Misc. manufactured articles	3.5%

*Note:* There are no exclusions in HS Sections XVIII (photographic/precision/medical/ surgical etc. instruments), XIX (arms and ammunition), and XXI (works of art, collectors' pieces and antiques).

Source: Commonwealth Secretariat, 2008, Table 6

The same limitations on the use of quantitative restrictions and safeguard duties are applied in the case of PNG as in the case of Fiji.

In addition to tariff-elimination commitments the IEPA may require the removal of taxes other than tariffs. This depends on whether or not they have a differential effect on imports. Article 7 of the Pacific IEPA defines as ‘customs duties and charges’ any charge ‘of any kind imposed on or in connection with the importation of goods, including any form of surtax or surcharge ...’; these must be removed immediately. It exempts only anti-dumping, countervailing or safeguard measures and charges limited to the approximate cost of services rendered that do not ‘represent indirect protection for domestic products or a taxation of imports for fiscal purposes.’ Such fees and charges may ‘not be applied on an *ad valorem* basis.’

Judging whether or not a tax bears more heavily on imports than on domestic production is the responsibility, in the first instance, of the country that applies the tax. But if the EU considers that some Pacific taxes are wholly or partly trade-related and they are not removed, it can take the matter to dispute settlement. In judging the potential impact of the IEPA, therefore, it is wise to assume that all taxes that have a differential impact on imports may be subject to whatever rules have been agreed.

On the other hand, flexibility for both countries (and any future signatories) is built into Article 13 of the main text which allows them to modify their tariff-liberalisation commitments in case of serious difficulties if the Joint Trade Committee (representing all IEPA parties) agrees. But modifications must not result in the agreement failing to comply with GATT Article XXIV (which requires the liberalisation of ‘substantially all trade’ within a period of time that must be ‘reasonable’). The IEPA also allows countries to halt liberalisation in case of serious balance-of-payments difficulties or the threat thereof. It is the only one of the IEPAs that contains this provision. Another feature (unique among the IEPAs) is its provision on the consequences of natural disasters which might result in serious revenue decline (Article 45).

### 2.1.3 EU aid to regional integration and the agricultural sector

The Pacific Plan, endorsed by members of the ‘Pacific Islands Forum’ in October 2005, outlined the region’s vision on regional integration and cooperation. It provides a platform for regional cooperation on different dimensions of development and regional integration. This is being reflected in the 10<sup>th</sup> EDF Regional Indicative Programme (RIP). Under this some €95 million has been allocated, with the primary focal sector being regional economic integration, to which €45 million (47%) of available funding is allocated and the second focal sector being ‘sustainable management of natural resources and the environment’, to which €40 million (42%) is allocated. Some €10 million is allocated to the focal sector of good governance and security.

In terms of the actual utilisation of these funds a restricted call for concept notes was issued in November 2008. Some 28 concept notes were received with a total budget of €200 million. These concept notes then needed to be distilled down to operational programmes. This exercise was undertaken in the course of 2009.

On 4 March 2010 a €22 million programme for three fisheries-management programmes were signed. It is expected that an agreement for a €30 million programme of assistance for the implementation of a regional aid-for-trade strategy will shortly be signed. One of the activities under discussion within the focal sector is assistance to improving and harmonising regional customs and quarantine services, and building harmonised trade standards and conformance. A further €10 million is expected to be committed to a programme to combat climate change. This will account for 70% of the available 10<sup>th</sup> EDF RIP resources.

Even though there has been very little progress in negotiating a full EPA, work has continued on regional integration and cooperation. For instance, Tuvalu and PNG announced their commitment to start trading under the Pacific Island Countries Trade Agreement (PICTA) by July 2009. Kiribati, Nauru and Tonga are likely to follow soon. There has also been ongoing discussion on including French and US territories in PICTA.

A major potential source of assistance to agricultural restructuring was the sugar-protocol accompanying measures programme envisaged for Fiji. While it was initially agreed to allocate €8 million to programme development in Fiji, the total amount would have been substantially more had political developments not led to the suspension of this programme. With the first phase of the sugar-protocol accompanying measures programme coming to an end in 2011 and unutilised funds having been reallocated to other sugar-protocol member countries, the overall volume of aid likely to be made available to Fiji to support sugar-sector restructuring is likely to be substantially reduced, even if a rapid resolution of the political impasse which gave rise to the suspension of the programme is reached.

## 2.2 Implications for the PACP countries

Negotiations have continued on extending the IEPA to a full EPA and bringing other PACP states on-board. Neither element has yet made significant visible progress.

### 2.2.1 Extending IEPA membership

Given the limited ‘costs’ for other PACP states of the termination of the CPA trade regime (see Section 1 above) and the relative unimportance of Europe as an export market, they appear to consider the reciprocity requirements of the IEPA to be ‘a price not worth paying’. A WTO *Trade Policy Review* of Solomon Islands (1 April 2009) notes that China has been established as the main export market (with 55% of the total in 2007 up from 13% in 2000). The EU is an important export market only for palm oil (Italy) and fish, in particular tuna.

PACP concern is sharpened by fear that provisions in the IEPA and in PACER could produce an escalating circle of commitments. The PACER agreement with Australia and New Zealand (both in the top four import sources of the Solomon Islands, according to the WTO report) which foresees free-trade area negotiations (notionally by 2011) also provides that the commencement of free-trade negotiations with any other party will advance this date so that parallel negotiations should take place. If there were a parallel free-trade area with Australia and New Zealand the implications of the IEPA would be ‘scaled up’: whereas the 27 EU states account for only about 9% of Pacific trade Australia alone accounts for 23%. Furthermore, three of the Pacific states, Palau, the Republic of Marshall Islands and the FSM, are in a similar situation with regard to the USA.

Agreements with these countries could in turn trigger the IEPA MFN clause (Article 16). Under this the Pacific states must extend to the EU (and *vice versa*) any more favourable treatment that they grant to other major trading economies except where this simply reciprocates better treatment than offered by the EU, in which case the parties will consult and ‘jointly decide’ what to do.

### 2.2.2 From an IEPA to an EPA

Preferences on services are of much greater interest to the non-signatory PACP states than are those on goods, so the EPA negotiations on trade in services are of particular interest (arguably close, or on a par with, tuna and sugar). Of particular interest is labour mobility. Their hope is to see progress in ‘Mode IV’ liberalisation by EU, which would be of particular value for the tourism sector, cultural exchanges, and sports. Although ‘Mode IV’ liberalisation by Australia and New Zealand under the PACER+ would be of more direct value (as these markets are closer and already operational), the region believes that inclusion of concessions in an EPA would strengthen their negotiating position with these neighbours.

To date the PACP interests appear to have received very little traction, with limited progress having been made.



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**L**aunched by CTA (Technical Centre for Agricultural and Rural Cooperation EC-ACP) in 2001, the Agritrade website (<http://agritrade.cta.int>) is devoted to agricultural trade issues in the context of ACP (Africa, Caribbean and Pacific) – EU (European Union) relations. Its main objective is to better equip ACP stakeholders to deal with multilateral (World Trade Organization - WTO) and bilateral (Economic Partnership Agreement – EPA) negotiations. Thus it provides regular and updated information and analysis on technical aspects of the trade negotiations, developments in the CAP and their implications on ACP-EU trade, as well as on major commodities (bananas, cereals, sugar, fisheries, etc).

CTA was created in 1983 in the framework of the Lomé Convention between ACP (Africa, Caribbean, Pacific) and EU (European Union) countries. Since 2000, the Centre has been operating under the ACP-EU Cotonou Agreement. CTA's tasks are to develop and provide services that improve access to ever-changing information for agricultural and rural development, and to strengthen the capacity of ACP countries to produce, acquire, exchange and use information in this area.

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