

Implementation of Article 37(4) of the Cotonou Agreement

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

QUESTIONNAIRE

(Disclaimer: all information collected is strictly confidential and views expressed here will not be attributed to the respondent in the final Report)

RESPONSE BY OXFAM NEW ZEALAND, 24 January 2007

I) Assessment of the Structure & Process of EPA negotiations

- What is the progress in implementation of the EPA negotiation work plans and 2004 Joint Road Map to date? How is the outlook to the end of 2007?

What is your assessment of the degree of participation of different actors in the EPA process? (e.g. at regional level? national consultations?)

Civil society organisations (CSOs) in the Pacific have begun to address some of the direct consequences of trade liberalisation policies in the region (impacting on issues such as land tenure, fisheries and the privatisation of public services like water and electricity).

However civil society in the Pacific has limited capacity to engage with the technical issues involved with a complicated trade deal such as the EPA (and its links with PACER, PICTA and the WTO). This lack of capacity stems from both a lack of knowledge of government policy and Forum negotiating positions, as well as a lack of financial support to co-ordinate across the considerable distances inherent in a region spread over such a large area.

One of the common complaints raised by CSO representatives attending the EPA capacity building workshop organised by Oxfam in Fiji in June 2006 was that consultations from their governments, and from the Forum, were very top-down, with little or no information available before the meetings, and little opportunity for feedback.

During the workshop it became apparent that there had also been little meaningful consultation with CSOs on assessments, impact studies or other research. This also makes it difficult for CSOs to participate because, in the absence of objective assessment, it is difficult for CSOs that are not trade experts to be able to anticipate the risks, costs and impacts that may result from particular policies.

Recently, the Forum has made a greater effort to encourage participation by CSOs, for instance asking for input to the agenda for the NSA meeting in February 2007. These efforts are commendable. We're concerned, however, that this NSA meeting has only room for 3 participants from each country (a Parliamentarian, an Investment Promotion Authority Head, and an NSA). The one place set aside for an NSA representative from each country is likely to be taken up by a business representative (eg from the chamber of commerce), meaning that there is likely to be a poor attendance by wider civil society.

Oxfam's engagement has been primarily with CSO contacts throughout the Pacific. We look to them to engage with their parliamentarians, media, and other representatives on this issue.

- Do you think the EPA process is transparent and decision-making at regional level reflects national positions and priorities?

Civil society has only been able to gain access to draft legal texts through leaks, and it is difficult to see why this should be the case, particularly when these texts have already been shared with the EU. Background papers have also been difficult to come by, although recently official papers have been posted on the PACREIP website, which is an improvement. If the negotiations progress, it will become vital that CSOs are up-to-date and consulted prior to offers being made to the EU, particularly in areas such as services schedules and tariff-line liberalisation.

Oxfam New Zealand is concerned that the Head of the EU Delegation to the Pacific Mr. Ridolfi, widely circulated an open letter strongly criticizing Oxfam's analysis of EPA negotiations and tried to get Pacific media to carry the open letter. This is particularly surprising since Mr. Ridolfi had clear evidence that supported Oxfam's analysis (as we detailed in our response). This seemed to be an attempt to intimidate Oxfam and to question our credibility using media exposure. This gives cause for concern over the EU's possible use of similar tactics in trying to counter criticism from others in the Pacific

For Ridolfi's letter and our response, see:

<http://www.oxfam.org.nz/imgs/eu%20letter%20to%20onz%20nov%202006.pdf>

and

http://www.oxfam.org.nz/imgs/onz%20response%20to%20eu%20open%20letter%20dec%202006%20final%20no%20email%20_2_.pdf

- What is your assessment of the support received to negotiate EPA from the Forum, the EU or others? (e.g. enough national/sectoral Technical Assistance, i.e. studies? logistical support?)

To date the EPA impact studies have been purely economic in nature and rather cursory in depth. The impact of the EPA is likely to vary considerably from country to country, but the economic modelling used can really only account for the differences in size between PACPS, and little else. The economic models also assume responses that are likely to occur in cases with well functioning markets, competition, enterprises with the ability to respond to price signals, infrastructure for markets and trade, information available to all, etc, etc. These are unrealistic in the context of many Pacific countries where market 'failures' are commonplace. Economic analyses need to be grounded in the realities of enterprises in the particular countries, not in the application of models to data and policies.

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

The June 2006 CSO workshop and a regional CSO meetings held on the sidelines of the annual 2005 and 2006 Pacific Leaders Forum have stressed the

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

In terms of support received to negotiate EPA from the Forum, in September 2006 Oxfam was glad to be able to attend the EPA workshop for trade officials organised by the PIFS in Suva, led by Dr. Chris Stevens of the Overseas Development Institute (ODI), and funded by Dfid. The workshop was not an exercise in economic modelling, but a practical attempt to get Pacific officials to consider the consequences of joining the EPA by using a simple excel spreadsheet tool with real data on their imports, tariffs, and other information. One of their biggest challenges was second-guessing what the impact of trade liberalization under EPA will be on PICTA/PACER. This was a worthwhile initiative by the Forum and is an example of the type of exercise that, if more widespread, could improve the Pacific’s ability to engage in negotiations.

- Should alternatives to EPA be explored? (e.g. were they discussed with EU? did you devote any effort to the ‘alternatives’ debate?)

It is **vital** that alternatives be explored so that an informed decision can be made on the EPA.

The Pacific is in an unusual situation in that any impacts from an EPA will be amplified when PACER is negotiated. It is clear that Australia and New Zealand will expect at least as good a deal as extended to the EU under an EPA, but Pacific-A/NZ trade is far larger than Pacific-EU trade, and so to negotiate the EPA without this in mind is short-sighted in the extreme. There is only cursory mention of this fact in impact assessments, and no quantification of it.

Negotiating a goods agreement as part of an EPA will also trigger PACER negotiations with A/NZ before the 2011 deadline for these negotiations to commence. One advantage of waiting until 2011 is that by that time the Pacific will have more experience with FTAs (through PICTA and the MSG). It is thus very important that alternatives are explored, especially ones that will not trigger, or set an unhelpful precedent for, the PACER negotiations. For a short paper on the need to explore alternatives, see Oxfam NZ’s paper “Offering a Realistic Alternative: The EU’s obligation to provide alternatives to the Economic Partnership Agreements” available at:

<http://www.oxfam.org.nz/imgs/pdf/realistic%20alternatives%20to%20the%20epas.pdf>

A recent article in the Journal of World Trade, 40(6), “Are the Economic Partnership Agreements a First-best Optimum for the African Caribbean Pacific Countries?” by Romain Perez uses economic modelling to show that opting for a GSP-based option would be better for the Pacific than concluding an EPA.

- In terms of capacity and preparedness of the region to conclude & implement an EPA:
 - do you think more time is needed to prepare for/effectively conduct negotiations?

Yes, definitely. The gap between the Pacific's draft text, and the EC's position is enormous, particularly on the development dimension. It will also be very difficult to implement the capacity building component of any EPA if there is no additional funding for that component. There has also not yet been any study completed on alternatives, a vital step before an informed decision is made on whether to go ahead, and there is no detailed schedule of commitments drawn up, let alone an assessment of their impacts.

➤ is more capacity necessary?

Yes, definitely. Many Pacific governments have limited ability to understand the details of the agreements, particularly in the complicated areas of services, investment and IP that the majority of countries are considering signing up to.

➤ what in particular are the measures necessary to support timely **completion of the negotiations**? (e.g. capacity building for negotiators, a better negotiating structure, more funds for consultations?)

Even if these elements are included (and this is unlikely given the failure to do so to date), it is not possible for negotiations of a fair agreement to be completed on time. Timescales in the Pacific required for capacity building (which is likely to require recruitment of new staff, training and a period of becoming more capable in different aspects of the negotiations), research and assessment of policy alternatives, consultation with civil society, business and Parliamentarians, information dissemination and debate within the broader society, and decision-making are far longer than those in many other regions. A rushed agreement will be an undemocratic agreement and an unfair agreement (insofar as Pacific negotiators do not have sufficient time to negotiate effectively). A step in the right direction, however, would be more resources available for consultation and study on the EPA, its impacts, and alternatives.

➤ regarding **EPA implementation**: is there need for trade capacity-building measures?

Yes. Simply liberalising developing countries' economies without first building up the capacity of those countries to compete on the global stage is doomed to failure. For any EPA to be a success there needs to be help with capacity building to make the most of the Pacific's strengths. The EU has so far used the terms in its narrow sense, but for any EPA to generate development benefits there must be a far broader concept of capacity building applied. This should include upgrading infrastructure, human resources (through training etc.), clarification of issues of intellectual property, links to the CBD, capacity building for businesses to meet SPS and other technical standards, capacity building and training to enable a supply response from businesses, capacity building in terms of building marketing expertise, capacity building for government regulators, and so on.

➤ what is the status of regional and national needs assessments? is funding of NIPs/RIPs for EPA sufficient? Who should be the major beneficiaries of capacity building?

Oxfam has not been involved in discussions around the allocation of NIPs/RIPs, but few civil society organisations at the June 2006 conference (many of them representing the peak NGO, church or trade unions bodies in their country) had been engaged in consultations.

The point was made at the conference that allocation of aid funding for trade adjustment measures should not come at the expense of aid programmes that are directed to meet the needs of the poor. Trade adjustment must be additional to existing funding mechanisms and levels of aid.

If there is to be additional funding for capacity building related to EPAs, it is very important that the poorest and most vulnerable people in Pacific society are able to benefit from it. For instance, in the tourism sector, capacity-building should be aimed at making it possible for small and medium-sized enterprises owned by Pacific Islanders to get a fair share of the market, rather than being aimed at large, foreign-owned operations that usually contribute little to the local economy and people.

II) State of play of the negotiations (Substance of EPA negotiations)

- BY *TOPIC* PLEASE INDICATE:

- was the topic discussed/negotiated sufficiently?
- areas of agreement&disagreement between the Parties
- what are possible benchmarks for a development-friendly EPA?
- what are, if any, the differences between individual Pacific ACP countries' positions?
- are more Technical Assistance/studies needed (e.g. at national/sectoral level)?

TOPICS:

- ❖ core objectives, principles and structure of an EPA agreement
- ❖ coherence between Pacific regional and sub-regional integration processes and EPA commitments

On fisheries, the Pacific is seeking a regional agreement on tuna fishing with the EU, which should put the Pacific in a better position to negotiate collectively with regard to this shared resource. The EU has so far refused to entertain this, a stance that is not coherent with the stated aim of the EPA to promote regional cooperation. This stance also goes against the EC Treaty (article 178) that calls for coherence in external policies (eg fisheries policy and development policy) when dealing with developing countries.

There is also the possibility that an EPA would lessen intra-regional trade, as imports from the EU (and later A/NZ), would become more competitive, so there is an argument that the EPA could hurt PICTA. This is shown to be the case in the Romain Perez article mentioned above. It is not clear, however, whether this would have an impact on the arguably more important political cooperation.

- ❖ trade in goods and services (e.g. tariff schedules/sensitive products, fisheries, rules of origin, tourism)

As noted above, complicated issues such as services need much greater discussion and understanding, both by governments and CSOs, before any commitments are made. PIFS have made some efforts to inform, but a one day consultation is not enough for issues such as these.

In particular, GATS is one of the world's most complex agreements with many of its terms as yet undefined, or in the case of issues such as emergency safeguards and domestic regulation, still in the process of negotiation. The experience of

countries with service liberalisation, even EU member states, has been that liberalisation in advance of sound regulatory systems results in risks of poor services and exploitation, particularly for essential services. As a result, WTO members, including the EU, are extremely cautious in making commitments, and, as UNCTAD has advised, should only do so on the basis of extensive analysis and consultation. PICs do not have the capacity to understand the full ramifications and complexities of GATS, they have not undertaken the research or the assessments, and consultation has been cursory. Therefore PICs should not be making far-reaching services commitments under EPA.

❖ trade-related aspects (e.g. investment)

We believe that the Pacific draft investment text is a good attempt at balancing the rights of investors and the rights of Pacific citizens, as well attempting to encourage investment at the SME-level that is most likely to benefit Pacific people. The indication by the EC (in a letter to then-chief negotiator Kaliopate Tavola in October 2006) that they are unwilling to include responsibilities of foreign investors, flexibilities for PICs to support pro-poor investment, or to even look at reform of the existing investment instruments such as the CDE and EIB means that an agreement on investment is not likely to be in the interests of the PICs.

❖ institutional (e.g. Management Institutions, Joint EPA Council) and legal issues (e.g. WTO Compatibility)

Although it is commonly understood that part of the reason for these negotiations are to meet WTO compatibility requirements, it seems to not be widely understood that this impetus only applies to trade in goods, and that there is no pressing reason to negotiate on other issues (such as services, investment, IP, etc.). Ongoing EU attempts to introduce “Singapore” issues in the EPA are inappropriate at a time when the multilateral Doha round has rejected these issues.

- The trade and development dimension of EPA:

- What is your assessment of the development content of trade and trade-related provisions discussed under EPA so far (e.g. flexibility, asymmetry of liberalization commitments, adjustment mechanisms, the sequencing of trade liberalisation with regional integration processes, special needs of LDCs and small island countries)?

There is a yawning gap between what the EC appears willing to discuss, and the Pacific’s initial proposals. The EC’s refusal to countenance capacity-building measures linked to the Pacific’s commitments in the EPA leaves the EPA looking much like any other FTA between two completely unequal “partners”, except that the Pacific is starting from a position where there is virtually nothing to gain (as they already have access to the EU market), leaving the EU as the sole beneficiary. The Pacific could be forced to open its economies to EU goods and services, as well as adjust legislation to accommodate EU investment. Thus the asymmetry of liberalisation commitments works in favour of the EU, not the Pacific.

Oxfam’s briefing ‘Slamming the door on development’ sets out the arguments more fully, but, in summary, almost every avenue that could be used to make the agreement development-friendly is thwarted:

- The EC is refusing to provide additional funds for capacity-building, meaning that any EU funds that are used to improve trade performance will be to the detriment of existing EDF spending. The EC argues it has no mandate to

negotiate additional assistance – a stance completely at odds with the concept of coherence enshrined in the EC Treaty.

- The EC has so far refused to look at a collective agreement on fisheries that would aim to both improve revenues from vessel access agreements, and also foster the Pacific fishing and processing industries. Again, this is a non-coherent stance.

- The EC has indicated it will not include responsibilities of foreign investors, the flexibilities required for PICs to be able to promote pro-poor investment, or reform of EDF-based investment facilities (eg EIB) to better suit the scale of Pacific enterprises.

- The draft EC services text makes no mention of any SDT or flexibility for LDCs or SIDS, and appears to assume that all PACPS are already WTO members when most are not.

- Development cooperation issues: how was this approached (e.g. through a specific working group)? were capacity-building, strengthening of regional organisations, adjustment costs, infrastructure upgrading, and other competitiveness-enhancing measures covered? was the EDF 10 process satisfactory? could you give examples of areas where more funds are needed?

III) Crosscutting questions

- Is there any country-specific issue you would like to raise (e.g. sugar sector & EPA)?

The issue of sugar is a big one for Fiji, and it seems hard to imagine that this does not affect Fiji's conduct in the EPA negotiations. Fiji may be prepared to sign a less-than-beneficial EPA in order to ensure that it remains onside with the EC and thus eligible for sugar adjustment payments. Isikeli Mataitoga, CEO of Fiji's Foreign Affairs and External Trade, has stated that "Fiji's position on EPA is going to [be] dictated on what will happen to the sugar negotiations which are running parallel to this and with European Union," (Fiji Times, 8 Nov 2006). This raises obvious questions about the fairness of negotiations, and poses a hazard for smaller PACPS who, with little capacity to engage fully in negotiations, may tend to follow Fiji's lead. The December 2006 coup in Fiji has also affected the context of negotiations, with the EU threatening sanctions against Fiji.

A further issue is that of legitimacy and stability of the negotiating governments. The Solomon Islands has had major civil unrest and upheavals in the last year. Likewise, Tonga has had a major conflagration resulting in 80% of the Central Business District of its capital being razed. Fiji recently suffered a military coup, posing questions over the freedom of expression of its civil society.

- Is there any particular official document/press statement/other reference capturing any of your views above (to be mentioned in the final Report)?

All of the following reports and briefing notes are available online at www.oxfam.org.nz

- Oxfam International (Barry Coates and Nick Braxton) “Slamming the Door on Development: Analysis of the EU’s response to the Pacific’s EPA negotiating proposals”, December 2006
- Oxfam New Zealand (Barry Coates), “Key Issues in Pacific Trade Negotiations with the EU: Analysis of the Negotiating Draft submitted by the Pacific in June 2006”, October 2006.
- Oxfam New Zealand (Nick Braxton), “Offering a Realistic Alternative: The EU’s obligation to provide alternatives to the Economic Partnership Agreements”, October 2006.
- Oxfam New Zealand (Barry Coates and Mary Wareham), “Report of the Pacific Civil Society Conference on Trade Capacity Building, Nadi, Fiji, 13-16 June 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 (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 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.

THANK YOU FOR YOUR CONTRIBUTION