

Pacific Civil Society Concerns and Questions regarding the ongoing EPA negotiations:

Briefing notes prepared in the lead up to the EU consultations with Pacific governments and civil society on the proposed Economic Partnership Agreements (EPAs). Madang, PNG. April 28-29, 2008.

This document puts forward some of the key concerns held by Pacific civil society in regards to the EPA negotiations between the EU and the Pacific Island Countries. This document also outlines some key questions that need to be answered. The document covers concerns and questions in the following key areas relating to the proposed EPAs:

- 1.) The overall negotiating environment
- 2.) Goods
- 3.) Services
- 4.) Investment
- 5.) Intellectual property rights.

This is followed by some concluding remarks from Pacific civil society organizations (as represented by the Pacific Islands Association of Non-Government Organisations, the Pacific Concerns Resource Centre and the Pacific Network on Globalisation).

1.) Overall negotiating environment:

Concerns:

- Extreme pressure was placed on Pacific Island countries in late 2007 to sign an interim trade agreement on goods. If PNG and Fiji had not signed for example, thousands of jobs would have been threatened when the EU raised tariffs on sugar and tuna exports to the EU in early 2008.
- The failure of the EU to provide alternative trade arrangements, was in contravention of commitments made by the EU under the Cotonou Agreement, which (under Article 37.6) guaranteed that no matter what happened during the EPA negotiations, no Pacific country should be left worse off.
- PNG and Fiji are the only nations to have signed the interim-EPA, and clearly these two nations have done so after bullying from the EU. The Pacific trade negotiating teams were insulted and humiliated in Brussels in late 2007 – with reports that Peter Mandelson was particularly rude to the PNG delegation.
- In 2008, the EU is pushing for all Pacific Island Countries to sign a full EPA that includes ‘new generation issues’ such as services, investment, intellectual property rights and government procurement. Developing countries have refused to negotiate many of these issues in trade negotiations at the World Trade Organisation – for very valid development reasons. Now the EU is trying to get around the blockage at the WTO, and gain market access in these areas for its big companies, by negotiating EPAs with 76 developing countries that include these issues.
- Under the Cotonou Agreement, there is no requirement for the Pacific nations to negotiate any ‘new generation issues’ with the EU. Most Pacific Island States do not meet the pre-requisite of experience applying Most Favoured Nation treatment under the General Agreement on Trade in Services (GATS). See Article 41 of the Cotonou Agreement for details.

- The EU is likely to seek an EPA with the Pacific that will be very similar to the EPA signed with CARIFORUM (Caribbean) nations at the end of 2007 (indeed the Caribbean EPA is similar to the EU Working Document that the EC presented to the Pacific in mid-2007).
- Signing a comprehensive EPA with the EU will have deep and far-reaching consequences for Pacific societies and will shape the ability of Pacific governments to design their own trade, industry and development policies in particular.
- There has been virtually no analysis of the implications of extending the same trading terms in any final EPA to the Pacific's much bigger trading partners – Australia and New Zealand. We know already that these countries will want the same access to Pacific markets as may be granted to the EU, and will pursue this through the Pacific Agreement on Closer Economic Relations (PACER).
- Pacific civil society hasn't had nearly enough of an opportunity to access information about, or be involved in, the EPA negotiations. The EPA texts are secretive, and negotiating proposals and texts have been kept from the public. Even now, the EU's requests for a final EPA with the Pacific are not available to the public.

Questions:

- Will the EC request an EPA with the Pacific that mirrors the EPA signed with the CARIFORUM countries?
- If the EC allows flexibility from the CARIFORUM EPA, what sort of flexibilities does it envisage – does this include not signing, not signing until a more thorough review is conducted, not including entire sections, completely renegotiating the structure of the EPAs – or mere tinkering with changes to timelines for implementation, the extent of commitments etc.?
- Can the EC make available their complete draft EPA text? Including proposals on services, investment, intellectual property, government procurement and competition policy?
- It is the view of civil society organizations in the Pacific that an EPA with the EU will have implications for human health, and potentially for access to basic services for vulnerable people. We believe the EU should help to ensure greater access to information and participation of the public and public interest civil society organizations in trade decision making processes that affect the realisation of the right to health. This would comply with the obligation to ensure freedom to seek, receive and impart information on matters affecting health according to article 12 of CRC, as interpreted by General Comment No. 14 (2000), as well as EU member-state obligations under general human rights principles of accountability, access to information and participation, including articles 19 and 25 of the International Covenant on Civil and Political Rights.
- If the EC will not make available their complete draft EPA text, can the Commission explain how keeping the text secret is consistent with the human rights obligations of EU member states (particularly in relation to health as outlined above, and in relation to articles 19 and 25 of the ICCPR)?
- Can the EC explain the development objective of keeping the draft EPA text secret from Pacific civil society?
- Will the European Commission consider extending the completely arbitrary deadline of December 2008 for the negotiations of a new EPA – to allow for a

more complete cost-benefit analysis of the deals to be carried out, and to allow greater consultation with Pacific Civil society?

2.) Goods:

Concerns

- The EU has forced Fiji and PNG to sign onto interim-EPAs that cover goods-trade. The EU did this by threatening to remove preferential market access to the EU on key Pacific exports – namely tuna and sugar – for nations that did not sign. This would have been devastating for PNG and Fiji, and would have led to job losses and business closures.
- The EU is looking for Pacific states to reduce tariffs on ‘substantially all trade’ with the EU. To see how the EU interprets ‘substantially all trade’ we can look at the interim agreements signed with PNG and Fiji in late 2007. The interim agreement with PNG provides for the liberalisation of 88 per cent of the value of PNG imports from the EU, and 81.6 per cent for Fiji over 15 years.
- Signing a binding agreement to lower tariffs (customs duty) on ‘substantially all trade’ lowers the ability of Pacific governments to collect taxes on imports – forcing them to either cut services or look at other forms of taxation. Other forms of raising revenue usually means a value added tax (VAT). This is a backwards step that shifts the tax burden from foreign exporters to the people of the Pacific, and disproportionately burdens the poor (as everyone has to pay the same VAT).
- There has been little concrete analysis of how Pacific governments will meet the revenue shortfall from a loss of tariff revenue, particularly smaller nations that are highly reliant on tariffs for their government expenditure. Whilst levels of imports from the EU are relatively small, we know that Australia and New Zealand are going to seek similar access for their exports, hence we need to consider the implications of a very dramatic drop in government revenue if tariffs are reduced to Australia and NZ as well. We know that it would be extremely difficult for some governments in the Pacific to raise similar amounts of revenue from other means, hence they would be forced to cut essential services to their people – like health and education.
- A binding agreement on goods also restricts the ability of Pacific governments to protect local industries. Local industries are often new industries, and are often restricted by economies of scale (they’re small!). Open competition with well established, large, exporting industries in the EU (and Australia/NZ) could lead to business closures, de-industrialisation and job-losses, when local industries are out competed by cheap imports. (This may be compounded by commitments made on investment as well, which could mean profitable local businesses would be swallowed up by large developed country corporations).
- It is much, much harder to shift workers out from protected industries (to industries where the Pacific might have a ‘comparative advantage’) in developing countries than it is in developed nations like the EU. There has been no planning at all in the Pacific for shifting people out of industries that currently exist because of tariff protections.
- The infant industry provisions in the EU’s proposed EPAs reduce Pacific governments’ ability to choose which industries they may wish to protect from foreign competition, to foster the development of local industries. Infant industry

provisions will also be phased out (probably within 12 years) leaving virtually no ability to nurture new industries through tariff protection.

- The EU is insisting that the EPAs contain a provision to eliminate all export restrictions. This would mean that ACP countries would not be in a position to limit or tax exports of their natural resources (fish, wood, oil, minerals, raw materials etc.) so as to preserve them for local value added-processing, in order move up from commodity producers to value-added producers.
- Papua New Guinea currently has an export tax of 30% on the export of logs (which is worth well over K100million each year to the PNG Govt.) Fiji has an outright ban on the export of logs. These measures are in place to try to develop downstream processing and value adding in Fiji and PNG. Indeed in Fiji, the log export ban has helped to develop the local furniture manufacturing industry. If Fiji and PNG sign their already initialed interim-EPAs they will have to do away with these export restrictions. The Solomon Islands also have export taxes on log exports, that they will have to eliminate if they sign a new EPA.
- The EU is also insisting that any EPA must contain a Most Favoured Nation (MFN) clause (for goods and other trade) – meaning that any new trade concessions offered to other nations must be offered to the Europeans as well. This dramatically reduces the Pacific's ability to negotiate on trade with other nations.
- Taken together, the EU's insistence on including the Most Favoured Nation provisions in the EPA, as well as the virtual elimination of the ability of Pacific governments to develop value adding of local resources (through the removal of export taxes and restrictions, and a much reduced ability to protect infant industries) aims to ensure the European businesses have continuing access to raw materials from all the ACP countries. This was been a key European interest in the Pacific, (and Africa and the Caribbean) for the whole history of colonialism and continues to be a key interest today.
- It should be noted that the difficulty in developing value-added industries in ACP countries (including the Pacific) would be compounded further by any investment chapter as part of the EPA (which would restrict Pacific governments' ability to impose performance requirements on new investments or to keep profits in the Pacific).
- Access to ACP resources is central to the EU's offensive interests in the EPA negotiations, as the EU wants to ensure raw materials will not be diverted to economic powerhouses like China (or locally, to industrial development in ACP countries). This trade priority overshadows the EU's much talked about commitment to 'development' in ACP countries.

Questions

- Given the pressure placed on Fiji and Papua New Guinea to sign an interim-agreement on goods in late 2007, will the Commission consider a re-negotiation of key issues in the interim agreement, including the removal of export restrictions, the MFN clause, and the infant industries provisions?
- Some EPAs and interim-EPAs already signed between the European Commission and other African and Caribbean countries contain better terms (eg. stronger safeguards, and less demands) for the ACP countries involved than the interim-EPAs signed by PNG and Fiji. Under the Most Favoured Nation clause included in the interim-EPAs initialed by PNG and Fiji, the European Commission should offer the most favoured provisions to the Pacific states as well. This

- should take no longer than the time to cut, copy and paste the text. So again the question is, will the European Commission consider a re-negotiation of key issues in the interim EPAs?
- The proposed EPAs restrict the ability of Pacific governments to support local firms in the Pacific, and develop value-added production. Can the Commission explain what concrete steps the EC will take to support small producers, and to promote local processing of natural resources to secure added value, and increase knowledge and technology transfer?
 - The European Commission is insisting that the EPAs contain a provision to eliminate all export restrictions. This would mean that PACP countries would not be in a position to limit or tax exports of their natural resources (fish, wood, oil, minerals, raw materials etc.) so as to preserve them for local value added-processing, in order move up from commodity producers to value-added producers. Can the Commission explain what the development objective is of banning export restrictions?
 - In particular can the Commission explain how the removal of export (and import) restrictions is good for value adding in the timber industries in Fiji and PNG?
 - Studies undertaken by the IMF have found that in the past 25 years, low income countries have completely failed to recover government revenue lost from the reduction of tariffs (and that the introduction of VAT has a negligible impact on meeting the shortfall)¹. Can the Commission explain what the development objective is of reducing government revenue in the Pacific?
 - Can the Commission explain the development objective of reducing the ability of Pacific governments to provide basic services to their people?

3.) Services:

Concerns

- There is no requirement whatsoever for Pacific countries to sign an EPA that includes commitments to open up the Pacific services sector to foreign competition.
- European service sector corporations (in water, electricity, telecommunications, banking and insurance etc.) are very keen for the EPAs to allow greater access for EU corporations in ACP countries. The EU is pushing for commitments on trade in services that go beyond what is required of members of the World Trade Organisation, this being despite the fact that few states in the Pacific are even members of the WTO.
- A services agreement with the EU allows EU service companies to supply certain services in the Pacific. In those services EU corporations must be given at least as favourable treatment as is given to local suppliers. A service agreement within the EPA may mean governments cannot favour local suppliers, impose requirements for local content, or regulate services in a way that impedes foreign firms. Crucially, a services agreement would prevent Pacific governments from supporting local/regional services firms. The Pacific would lose forever the policy tools that could be used to nurture and support the development of their own services sector.

¹ International Monetary Fund, 2005. *Tax revenue and (or?) trade liberalisation*. (prepared by Thomas Baunsgaard and Michaels Keen). June, 2005.

- To permanently remove these policy options represents an incredible erosion of the sovereignty of Pacific governments. If a Pacific government wants to develop local services firms a range of options previously available would suddenly be closed off. If, for example, a firm comprising a cooperative of local landowners wanted to establish new tourism services in a rural area, or on an 'offshore' island – which may be important for preventing rural-urban drift, promoting culturally sensitive development, and providing appropriate sustainable livelihoods for Pacific villagers – their government may not be able to provide those landowners with preferential credit (to build new tourist accommodation for example), or time-bound tax breaks, or training grants to send young people to hospitality courses, *without extending those same treatments to any EU corporation interested in establishing a similar enterprise!*
- There are very few opportunities for Pacific Islanders to export services to the EU, except where people travel to the EU to provide those services (as nurses and maritime workers for example) under trade designated under Mode 4 of the General Agreement on Trade in Services (GATS). The EU has rejected Pacific proposals for opening temporary labour migration (for Pacific Islanders to the EU) under Mode 4 of GATS.
- Pacific trade negotiators made proposals in June 2006 that would have provided developmental safeguards to ensure that public services are not subjected to pressures for privatization. This would allow Pacific governments to introduce measures to guarantee access to essential services for all Pacific people, and withdraw commitments where they hinder development. These proposals were also rejected in the EU's draft EPA text.
- Perhaps the biggest concern regarding a services agreement as part of the EPA is that services liberalization could lead to a cut in essential services to vulnerable people. Services like water supply, education and healthcare should be provided to all the population at affordable prices (these services represent basic human rights). Deregulation can allow private corporations to 'cherry pick' profitable segments, resulting in a decline in quality and availability of services in other areas. Civil society in the Pacific is concerned a services agreement may place the 'rights' of EU corporations ahead of the rights of Pacific peoples to demand adequate and universal supply of basic services.
- There is a serious concern that liberalising service sectors as part of the EPA would undermine a number of human rights in the Pacific. One of these is the right to health. The right to the highest attainable standard of health is enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Its application is further developed in General Comment no. 14 of the UN Committee on Economic, Social and Cultural Rights which states that the right to health demands the functioning, good quality health care facilities be available and accessible to all without discrimination. Pacific civil society is concerned that opening Pacific health services to foreign service providers would lead to the fragmentation of national health systems (as private sector facilities run by foreign providers typically draw the most skilled and experienced staff away from the public sector, leaving poor and remote areas short of essential health staff).
- A further human rights concern is water, as the right to water is indispensable for the realization of the right to health. Trade liberalisation opens the way for the privatization of water services in the Pacific. Previous experiences of water

privatisation in developing countries, has seen a reduction in access to water for poor and vulnerable people (as water has been priced out of their reach).

- If Pacific governments make service-sector commitments under any final EPA with the EU, it may be very difficult (virtually impossible) to de-privatise any services that are run by EU corporations in the sectors committed. De-privatising water supply services (for example) is a perfectly rational policy if corporate management fails to provide services adequately. There have been numerous examples of privatization failures around the world. Perhaps the most famous of which was the privatization of water services in Cochabamba, Bolivia – which led to massive price hikes (where water bills were up to one-third of the average wage in Bolivia) and consequently to mass civil unrest.
- If Pacific governments agree to service sector commitments that are similar to the EU's 'wishlist' for the GATS at the WTO, it could mean closing off de-privatisation as a policy option, locking in corporate power indefinitely.
- Civil society groups in the Pacific would like to remind our policy makers of their obligation to ensure that new trade liberalisation commitments do not result, in law or in practice, in discrimination in access to basic services such as health care, education, or water.

Questions

- Will the European Commission combine services and non-services investment as the Commission has with the Caribbean ACP countries under the CARIFORUM EPA?
- When the European Union made requests to PNG and the Solomon Islands under the current round of negotiations for the General Agreement on Trade in Services (GATS) at the World Trade Organisation. The requests included asking PNG and the Solomons to remove the reservation from the GATS schedule that "foreign nationals and foreign-owned companies may not purchase land, but may lease from government or land-holding groups". Can the EC give a clear guarantee that the Commission will not try to open up Pacific Island land to foreign ownership as part of any services agreement under the EPA (particularly under provisions relating to tourism)?
- What areas of services trade have the EC (and the PACP countries) put forward to be liberalised under a schedule of commitments for a potential services agreement? What limitations on market access and national treatment have the EC (and the PACP) countries put forward as part of their draft commitments on services liberalisation?
- There has been no real movement from the EC on an area of key Pacific concern, namely temporary labour migration to the EU under Mode 4 of the General Agreement on Trade in Services. Why has the EC been so reluctant to assist the Pacific on this key Pacific trade priority?
- Why has the EC rejected the Pacific's draft EPA proposals for a services agreement as part of the EPA?
- Can the Commission explain the development objective of avoiding safeguards to ensure public services would not be subjected to pressures for privatisation?

4.) Investment:

Concerns

- There is no legal requirement whatsoever for Pacific countries to sign an EPA that includes an investment chapter.
- Investment is another area that has been rejected from negotiations at the World Trade Organisation because developing countries are interested in maintaining the policy space to regulate foreign investment so it benefits the nation as well as the investors. The EU wants to include investment in the EPA as a way of re-introducing issues that have been rejected at the WTO and in the controversial Multilateral Agreement on Investment (MAI), which was overwhelmingly rejected by a global network of concerned citizens.
- The Pacific put forward their own proposal for an investment chapter in the EPA, one that aimed to provide a balance of rights and responsibilities for governments and investors. The Pacific proposal was ambitious in its scope, encouraging greater EU investment in the Pacific including through reorienting investment funds (European investment Bank, ProInvest and the Centre for the Development of Enterprise) and undertaking joint work to identify opportunities.
- As well as providing certainty to investors from the EU, the Pacific's proposed agreement on investment included responsibilities of foreign investors towards Pacific communities and the society in which they invest. Safeguards included allowing Pacific governments to give preferences to local companies on the basis of local benefits or environmental impacts, and to regulate foreign investors in the public interest. Other responsibilities to be included in the investment chapter would include responsibilities of foreign investors to maintain high environmental standards, abide by internationally agreed human rights and labour rights, and adopt sound systems of governance – including transparency, fair competition policies and paying taxes.
- The EU has refused to accept the Pacific's proposals for an agreement on investment that includes responsibilities as well as rights. This is probably because the EU is worried signing the agreement would set a precedent for other agreements.
- If the EU really wants to promote development (as they profess in the framing of the 'pro-development' EPAs) they would accept the Pacific's proposal on investment as a more developmentally friendly framework.
- What are the dangers of including an investment chapter in the final EPA with the EU? Many countries impose careful regulations on foreign investors (so they can only own a certain percentage of telecommunications or strategic national infrastructure) or set conditions to ownership. Many countries impose performance requirements on foreign investors so that they have to hire a certain proportion of local workers, or use a particular level of local content.
- Large corporations in the EU are keen to see an investment chapter as part of the EPA in order to provide 'certainty' for investments in ACP countries. This 'certainty' would come as binding, enforceable rights for investors (with few responsibilities) and a reduction in government ability to regulate investments.
- An investment chapter may also have human rights implications in the Pacific, if an investment chapter impedes the ability of Pacific governments to regulate foreign investments (particularly investments in the provision of essential services, like water, education and health care) to ensure a universality of access to those services.
- The Pacific faces real difficulties attracting new investment to the region. It remains unclear how an EPA with the EU would assist in attracting new investment to the Pacific. Indeed a report commissioned by the Pacific Islands

Forum Secretariat entitled “Distant Prospects: Promoting investment in the Pacific through an ACP-EU agreement” highlighted the fact that a new EPA is unlikely to help attract new investment².

Questions

- Can the Commission provide evidence that investment agreements do anything to address the factors that deter foreign investment from the Pacific region?
- The EC’s proposals on investment will remove the ability of Pacific governments to regulate foreign investments to ensure investors do not withdraw all investments and profits from the country at short notice. This would allow investors to simply strip assets and then withdraw their investment, with no requirement to reinvest. Can the Commission explain the development objective of removing the ability of governments to regulate foreign investors in the public interest?
- Why did the Commission reject the PACP’s proposed investment chapter for a new EPA? In particular, why is the EC reluctant to pursue an investment chapter which includes responsibilities of foreign investors towards Pacific communities and the society in which they invest?
- Can the European Commission explain the development objectives of preventing Pacific governments giving preferences to local service providers on the basis of local benefits or environmental impacts?

5.) Intellectual Property Rights:

Concerns

- It is unclear what intellectual protection rights the EU wants to include in its draft EPA with the Pacific. However, it is likely to be similar to the provisions included in the agreement on Trade Related Intellectual Property Rights (TRIPS) at the WTO.
- Currently a number of countries in the Pacific (who are not members of the World Trade Organisation) do not have patent law at all. Patents are a legal mechanism to grant a monopoly on the sale of new inventions for a period of time. By not having patent law, those countries can buy generic products which are often much cheaper. For countries like Palau, the Marshall Islands and the Federated States of Micronesia, this means important inputs for agriculture (machinery, herbicides, pesticides, seeds, etc) are not patented, and so are cheaper. This advantage for these small developing countries would be removed if the EU forces them to introduce TRIPS level protection.
- Complying with the provisions of TRIPS-style agreements on intellectual property is extremely expensive for developing countries (including having to pay new royalty payments to patent holders). This could be a major burden for Pacific countries, and a wholly avoidable one – especially for nations that are not members of the World Trade Organisation.
- In terms of the costs associated with complying with new TRIPS-style intellectual property rules the Asian Development Bank has flagged a warning that these costs will be very high. In the ADB Economics and Research Department

² AV Hughes (2004) “Distant Prospects: Promoting investment in the Pacific through an ACP-EU agreement”, Pacific Islands Forum Secretariat.

Working Paper No. 21 '*The Doha Agenda and Development: A View from the Uruguay Round*' some estimates are made of the administrative costs of complying with TRIPS in various developing countries. In Chile, additional fixed costs from this upgrade were estimated at \$718,000 and annual recurrent costs at \$837,000. Egyptian fixed costs would be perhaps \$800,000, with additional annual training costs of around \$1 million. Bangladesh anticipated one-time costs of administrative TRIPS compliance (drafting legislation) amounting to \$250,000, and over \$1.1 million in annual costs for judicial work, equipment, and enforcement efforts. If training costs were included it is likely that a comprehensive upgrade of the IPRs regime in the poorest countries could require an up-front expenditure of \$1.5 to \$2 million, plus recurrent costs. Finger and Schuler (1999) report World Bank surveys finding that these costs could be far higher.³

- Intellectual property rights are often included in trade agreements to protect the patent rights of pharmaceutical companies (to grant the designers of a drug a monopoly over the production and sale of that drug in the agreement's party countries). It is not disputed that competition in drug manufacturing (instead of a monopoly) leads to cheaper medicine, sometimes up to 95 per cent cheaper.
- TRIPS provides pharmaceutical companies with a 20 year monopoly on the use of a patented invention, and so signing agreements on intellectual property rights as part of a trade agreement can put medicine out of reach of many people (particularly the poor, in developing countries).
- Many nations in the Pacific are not members of the WTO, and TRIPS does not apply to them. If those governments sign a TRIPS or TRIPS+ style agreement on intellectual property as part of the EPA, they will reduce their ability to provide affordable medicines to their peoples (as things stand today, many Pacific governments could import or manufacture generic medicines to provide to the public at much cheaper rates than their patented alternatives).
- It is unclear whether the EU will seek to extend intellectual property protection further than the requirements of TRIPS (often called TRIPS+) or will impose further trade penalties on governments who want to use generic medicines.
- By pursuing TRIPS-style intellectual property rights (or TRIPS+) as part of the EPA negotiations, EU governments are contravening their own human rights commitments. Under the International Covenant on Economic, Social and Cultural Rights (which most EU states are party to) State parties are obliged to take steps (individually or through international assistance and cooperation) towards the full realization of Covenant rights (article 2(1), as interpreted by CESCR General Comment No. 3 (1990)). In relation to the right to health, this includes the obligation to respect the enjoyment of the right to health in other countries, to give due attention to the right to health in international agreements and to take steps to ensure these instruments do not adversely impact on the right to health (article 12, as interpreted by CESCR General Comment No. 14 (2000))⁴.
- To sign a trade agreement that makes medicine less accessible to the poor in their countries would also be a contravention of the human rights obligations of

³ J. Michael Finger (2002) *The Doha Agenda and Development: A View from the Uruguay Round*. Asian Development Bank, Economics and Research Department Working Paper Series 21.

⁴ Committee on Economic, Social and Cultural Rights (CESCR), *General Comments No. 14 (2000), The right to the highest attainable standard of health*. E/C. 12/2000/4, 11 August 2000.

Pacific Island States that are party to the International Covenant on Economic, Social and Cultural Rights.

- Furthermore, in view of concerns about the implications of the EPA for human health, the EU should help to ensure greater access to information and participation of the public and public interest civil society organizations in trade decision making processes that affect the realisation of the right to health. This would comply with the obligation to ensure freedom to seek, receive and impart information on matters affecting health according to article 12 of CRC, as interpreted by General Comment No. 14 (2000), as well as its obligations under general human rights principles of accountability, access to information and participation, including articles 19 and 25 of the International Covenant on Civil and Political Rights.

Questions

- Can the EC make a commitment that they will not seek WTO or stronger, commitments from non-WTO members in the Pacific?
- Can the EC make a commitment that they will not seek TRIPS+ provisions from Pacific countries? Especially following the passing of a resolution at the European Parliament (12, July, 2007) on the TRIPS Agreement and access to medicines. That resolution indicates that the European parliament;
 - a.) Stresses that access to affordable pharmaceutical products in poor developing countries and LDCs is essential to attain the proposed EU development goals and would contribute to poverty reduction, increase human security, and promote human rights and sustainable development;
 - b.) Believes that EU policy should aim at maximizing the availability of pharmaceutical products at affordable prices in the developing world; and
 - c.) Calls on the Council to meet its commitments to the Doha Declaration and to restrict the Commission's mandate so as to prevent it from negotiating pharmaceutical-related TRIPS-plus provisions affecting public health and access to medicines, such as data exclusivity, patent extensions and limitation of grounds of compulsory licences, within the framework of the EPA negotiations with the ACP countries and other future bilateral and regional agreements with developing countries.

Concluding remarks

Pacific civil society organisations are concerned that Pacific governments are being asked to compromise policy space that allows governments to discriminate in favour of local firms and suppliers, and to regulate widely to meet the social and environmental needs of Pacific peoples, in return for completely unproven and volatile benefits in the form of additional investment and non-binding promises for new development assistance.

We note that European trade negotiators have bullied Pacific Trade Ministers during the trade negotiation process, and that concerns about the EU's tactics have been formally lodged (by Pacific trade ministers) with the European Trade Commissioner Peter Mandelson. We note that the EC has undermined regionalism in the Pacific by pursuing a 'divide and rule' strategy in the EPA negotiations with the Pacific countries.

We note that the EPA envisaged by the EU has implications for the ability of Pacific governments to meet their human rights obligations to their own peoples – particularly

the right to the highest attainable standards of health, the right to housing, and access essential services like water, health, and education.

We note also that the European Union is making considerable new funds available to ACP countries who sign an EPA through the European Development Fund (EDF). This funding is to assist with 'trade-reform' arising from signing new EPAs. The EU's prioritising of funding for trade reform means that countries who don't sign an EPA will receive less foreign aid from the EU. We note that this is a considerable and unfair penalty for countries who do not sign an EPA.

Despite considerable pressure on our governments from the European Union to sign new EPAs, Pacific civil society well understands that there is no legal obligation for Pacific states to conclude an EPA that includes 'new generation issues', and Pacific states are under no legal obligation to sign an EPA on goods-trade either.

There is also no *political* obligation for Pacific leaders to agree to an EU-imposed model of development. Pacific peoples need a model of development that is sustainable, and culturally and environmentally suitable. We need a renewed focus on addressing real constraints in the Pacific – like access to health and education services, improving key infrastructure (transport, electricity, telecommunications etc.), building service industry capacity (in tourism for example), supporting niche agricultural and industrial products, developing new markets (and improving market access) for Pacific exports, improving management and local value-adding for Pacific resources (in areas like mining, fishing and forestry) and targeting investment at small and medium enterprises.

We feel that addressing the constraints faced by many Pacific societies should not be linked with selling our sovereignty and opening our markets to foreign competition in binding trade agreements.

Leaders from nations in Africa (like Malawi, Nigeria, Senegal and South Africa) feel the EPAs proposed by the European Union will harm development in their countries. Leaders in those countries are refusing to sign an EPA with the European Union at all. Nigeria feels so strongly that the EPA represents a bad deal for their people, that Nigeria's leaders refused to sign an interim-EPA in late 2007. Because they did not do so, the EU raised tariffs on cocoa exports from Nigeria to the EU, and now Nigerian cocoa producers and processors face losses worth millions of dollars this year. We urge Pacific leaders to listen to the concerns of their counterparts in Africa and reject the EUs aggressive trade agenda represented by these EPAs.

If it truly is in the Pacific's development interest to reduce trade 'barriers' in particular areas, then Pacific governments are free to do so unilaterally at any point they like. A binding agreement designed by a foreign power (the EU), and potentially leading to massive pressure for trade liberalisation from Australia and NZ, is frankly unnecessary and detrimental to the realization of the Pacific's development interests.

Pacific civil society will be making its voice heard loud and clear in coming months. We will be raising concerns in particular, about trade issues that we feel have human rights implications, trade commitments that reduce the policy space of Pacific governments – to plan their own trade and economic policy – and commitments that potentially reduce the sovereignty of Pacific peoples.

It is our sincere hope that Pacific governments, and Pacific trade ministries, will listen to their peoples, and not only to developed country trade officials, and some sectional business interests.