

# A Development Agenda for the Economic Partnership Agreement between the EU and the Pacific ACP (PACP): A Concept Paper

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## Background

Under the trade provisions of the Cotonou agreement the EU and the ACP have agreed to enter into negotiations on a WTO-compatible trade regime no later than September 2002.<sup>1</sup> The precise configuration of the partnership agreement remains to be determined. There remains within the ACP group a strong view that the partnership or at least significant elements of the trade agreements should be negotiated on an ACP-wide basis. The preferred position of the EU has been for the negotiation of regional economic partnership agreements in the various sub-regions of the ACP where members feel they wish to proceed with a GATT Article-XXIV-compatible free trade agreement. In 1999, at a seminar on the future of the ACP–EU trade relationship in Suva the EU indicated its willingness to enter into a regional economic partnership agreement with the Pacific ACP states.<sup>2</sup> The Pacific ACP states have, at ministerial level, indicated their willingness to consider such an approach.<sup>3</sup> No substantive decision to negotiate has been made by either parties.

This chapter begins from the premise that the EU and the Pacific ACP countries, in whole or in part, will opt to negotiate an economic partnership agreement that includes, among other things, a free trade area agreement as broadly envisaged by the EU in its most recent pronouncement on the subject. Thus the paper begins having assumed that the process between the present and the decisions that will ultimately be made by September 2002. This paper focuses upon additional modalities within the context of the partnership agreement and already specified in the Cotonou Agreement that can be employed to further enhance the development

process in the Pacific islands region while simultaneously being advantageous to the trading interests of the European Union.

The chapter begins by considering several issues pertaining to the technical feasibility and economic desirability of an FTA between the EU and the Pacific ACP countries. The second section considers the salient features of the Pacific ACP economies and how WTO-compatible trade agreements may help overcome barriers to investment in sectors where the Pacific ACP states have an actual or potential commercial advantage.

## The technical feasibility of an FTA between the EU and the PACP

At present GATT 1994 Article XXIV(8) remains vague as to the definition of what constitutes ‘substantially all trade’.<sup>4</sup> Despite negotiations to clarify such matters during the Uruguay Round, contracting parties were at the time unable to reach a consensus on the precise definition of what constitutes ‘substantially all trade’,<sup>5</sup> although they have established a maximum ten-year transition period for interim arrangements. Despite the agreement by WTO members at Doha<sup>6</sup> to negotiate further disciplines in the area there is no reason to believe that there will be a greater consensus in the present round than there was during the Uruguay Round. However the decision to negotiate such disciplines creates further uncertainty as to the WTO compatibility of such a trading arrangement. These negotiations, despite their hypothetical time limits, will extend throughout much of the decade and create an atmosphere of uncertainty around the EU–ACP partnership negotiations. Without appropriate ‘grandfathering’ or special and differential provi-

sions for North–South FTAs the WTO Article XXIV negotiations may undermine the efforts of the parties to the Cotonou Agreement to negotiate with the WTO.

The EU has proposed in its intervention what has commonly become known as the ‘South African Formula’ to assure WTO compatibility of an FTA, that is 90% of bilateral trade.<sup>7</sup> Such a formula is of questionable technical viability as, of the 14 Pacific ACP states, five are least developed and, given the implementation of the EU’s ‘Everything But Arms’ proposal for LDCs, would gain no economic benefit in liberalising towards the European Union as duty-free and quota-free access to that market is already guaranteed.<sup>8</sup> The six new PACP countries<sup>9</sup> that joined the ACP group in 2001 have virtually no trading relationship with the EU, and hence it would be impossible to define a stable and consistent schedule of concessions based on the South African formula. Only three developing PACP countries, PNG, Fiji and Tonga could benefit from an FTA and have a trading relationship where a schedule of concessions could technically be defined. In the case of Tonga the trading relationship is characterised by very small volumes of imports and volatile annual shifts in the composition of imports from the EU, which is typical of an immature trading relationship and hence not normally conducive to a free trade agreement, which is normally the end product of a mature and highly developed trading relationship. This leaves only PNG and Fiji as two economies that could technically define a schedule of concessions though even in these relatively mature economies this technically remains problematic.<sup>10</sup>

Thus far the paper has not considered the economic desirability of such a WTO trading arrangement between the EU and the ACP. Unlike any of the other ACP regions the Pacific has a far more complex series of historical links with the former metropolitan powers than either Africa or the Caribbean, and as a result a series of explicit and implicit MFN trading obligations exist between the PACP and Australia and New Zealand and between the former US Trust territories and the USA under the Compact of Free Association.<sup>11</sup> This would mean that even should an FTA with the EU be deemed to

be economically or politically beneficial to Pacific island countries, the economic cost of the adjustment, induced by a *de jure* extension of tariff preferences to other and much more significant trading partners than the EU, would necessitate a wholesale reform of the taxation system. In Melanesia, where significant import-substituting industries exist this would also involve wholesale economic reform. Thus agreeing to an FTA with the EU will invoke a series of legal obligations that will ultimately result in the complete abandonment of tariffs as a source of revenue and industry protection.

It remains the subject of further analysis and investigation but it would not be imprudent to suggest that there may be some PACP countries that have a strong defensive trade interest in their existing market-access arrangements into the EU. This is certainly true of Fiji and PNG where canned tuna exports remain dependent upon the 24% nominal margin of trade preference into the EU market.<sup>12</sup> Also Fiji has a very substantial interest in its sugar quota under the Sugar Protocol. However, while an FTA with the EU will constitute a defence against an GATT Article I violation, it will not constitute a defence against an Article XI or Article XIII.2 violation,<sup>13</sup> which is the most likely point of attack on the EU quota regime. Moreover, the introduction of the EU’s Everything But Arms proposal will mean an elimination of much of the benefits of the Sugar Protocol by 2009.

### **The Cotonou Agreement and the Pacific ACP economies**

One of the greatest strengths of the Cotonou agreement and its Lomé predecessor has been its explicit recognition of the breadth of the constraints to the development faced by ACP states. It was this strength that was simultaneously one of its greatest weaknesses because it rendered the resources of the European Development Fund available under the Lomé Convention subject to capture by a wide range of domestic interests in ACP countries as well as within the EU. These interests were often wholly legitimate as they addressed one of the many pressing development problems confronting the ACP states. However, what this meant was that the

scarce resources of the European Development Fund were frequently dissipated in addressing development problems that could never be addressed in a sustainable and long-term manner without economic growth. The Cotonou Agreement constitutes a quantitative shift in thinking in that it attempts to focus on the twin problems of the establishment of an appropriate environment for investing in and assisting the private sector.<sup>14</sup> Regrettably, Cotonou is stronger on the former than it is on the latter. Implicitly the problematic raised by the EU in the lead up to Cotonou recognised that without economic growth stimulated by private investment Cotonou, or even government-funded projects which address legitimate and pressing social concerns, would ultimately prove unsustainable.

The Cotonou agreement contains numerous improvements over the Lomé Convention and attempts to sharpen the focus on economic governance and the development of the private sector. These efforts are wholly commendable. Unfortunately the new agreement has not closed the possibility of once again dissipating the scarce EDF resources on the multiplicity of legitimate and simultaneously 'aid-efficient' projects that have been the hallmark of funding until the 8th EDF. Using the 9th EDF to build more hospitals, roads and bridges cannot possibly be opposed as they invariably address burning social needs but this will not resolve the issue at the heart of the 'Cotonou problematic', which is addressing the question of private sector development. As we shall argue, this was unnecessary in the minds of the architects of Cotonou because private investment would respond to an appropriate environment, so little further intervention was necessary. While the Lomé instruments of private sector assistance were reformed in Cotonou, e.g. through the creation of the Centre for the Development of Enterprise (CDE), others such as the EIB interventions will, at least nominally, provide even less direct assistance to the private sector.<sup>15</sup> The implicit logic of Cotonou is that beyond technical assistance in creating the right economic and political environment, the use of scarce development resources for promoting private investment in ACP countries is largely unnecessary. 'Build a stable and economically well-governed and market-

friendly environment and the investors will come' is the implied logic behind Cotonou interventions in the development of the private sector, as it was behind much of the thinking of the architects of the global post-cold war economic context.

The authors do not dispute the need for the creation of an environment that is well governed and politically stable with market-friendly institutions. This is undoubtedly a necessary condition for attracting investment. However, what can be disputed is the implication that this a sufficient condition to attract foreign or even domestic investment in the PACP countries, which are characterised by small isolated and physically dispersed islands with their inherently high cost structure. In a globalised economy with greatly diminished trade barriers the international investor has a world of possible locations for their investments. The Pacific islands regrettably do not rank high on the list of possible locations for most investors. This is true even in cases like Samoa or Kiribati where the international community recognises that economic management has been excellent.

The economic partnership agreement should therefore be seen by the PACP as an opportunity to focus the instruments already in the Cotonou agreement on the particular problems of trade and private sector development of the PACP, which is one of the most challenging commercial environments. In the past the Pacific has suffered from marginalisation within the ACP, overshadowed by the larger concerns of Africa, which as the EU's immediate neighbour has been the principle focus of its concerns and interventions. Thus the upcoming negotiations should be seen as an opportunity to correct a historical imbalance in PACP-EU trade relations.

### **Elements of a mutually advantageous partnership agreement**

Before commencing any analysis of a development agenda for a regional EPA (or REPA) in the Pacific it is useful to recall that partnership must necessarily be mutually advantageous and ask what could possibly be of trade and investment interest to the EU in the PACP states. Agriculture has in the past been the main trade interest of the EU in the ACP coun-

tries in general. However, it is of greatly diminished EU trade interest as its policy no longer focuses on sources of supply of raw materials as it did in the 1970s and early 1980s. It is only the capture fisheries that the EU continues to have an interest in ongoing access to natural resources. By and large the EU trade focus has shifted towards access for exports and EU investment. Thus there exist only two sectors where the Pacific could constitute a possible destination for EU investments, and this is in tourism and fisheries.

The Pacific remains one of the few regions where the tuna stocks are not in overall decline. Recently the EU distant-water fishing fleet increased its commercial presence in the region. Tourism also remains an area of potential interest where little service trade currently occurs between the EU and the PACP but there remains a considerable presence of EU firms in the sector in the French DOMs in the Pacific. Several PACP countries have attempted to induce EU tourism investors into the region with limited success. What follows explores instruments that would increase EU trade and investment interest in the region. Entering into a regional arrangement with the EU on services would provide a guarantee of openness in tourism and related services. Such a commitment would enhance the viability of

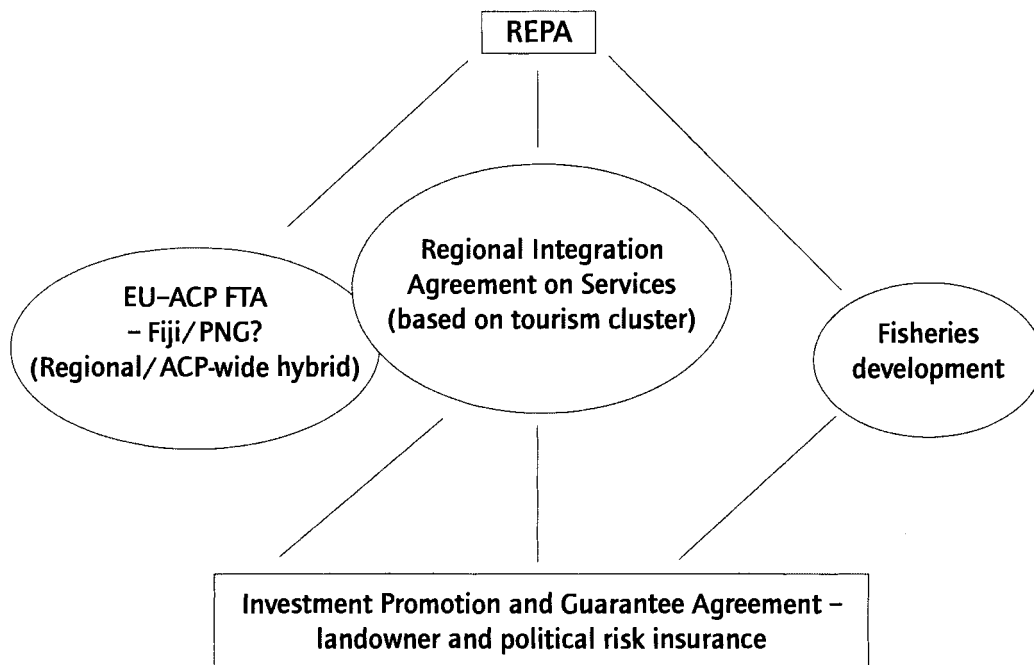
EU investment in the tourism sector in the region as it would provide a guarantee of market access. Fisheries and tourism are the two sectors where the Pacific ACP either has a commercial advantage or could develop one with appropriate interventions. Fortunately both these sectors are of trade and commercial interest to virtually all PACP countries.

What is proposed in the organogram below is an architecture for a partnership agreement with the EU that focuses on key areas of mutual interest between the EU and the Pacific. It also develops a investment promotion and guarantee arrangement that focuses on the actual problems confronted by investors in the Pacific islands. The proposal is in line with various provisions already in the Cotonou Agreement and simply aims to operationalise the specific provisions that the Cotonou Agreement has for LDCs and small island states.<sup>16</sup>

### The structure and rationale of the proposed PACP-EU Partnership

#### The REPA

If the PACP countries wish to negotiate trade arrangements on a range of issues, not just an FTA in goods, there will be a need for a much broader umbrella agreement that will guide the arrange-



ments in goods and in other areas. The umbrella agreement would by necessity be preambular in nature and set out the broad principles and parameters of the trade and development arrangement that would govern relations between the Pacific and the EU. An umbrella agreement could contain:

- commitments to the sustainable development of the region;
- broad developed-country MFN obligations;
- an agreement to review and extend the relationship in light of the emerging agreements between the PACP countries and the French DOMs in the region; and
- subsidiary agreements pursuant to the umbrella would be entered into when PACP felt that their economy was ready for such an arrangement.

## **FTA**

The configuration of the FTA between the EU and ACP countries remains to be determined. However, for the moment ACP states in their preparation for negotiations with the EU have focused only on the trade in goods. Several ACP countries, especially in West Africa, have already expressed a preference, at least at official level, for a regional economic partnership arrangement, and this regional approach is supported by the EU. Mauritius has proposed an ACP-wide EPA with the EU. What appears possible is a hybrid architecture where several components of the agreement may be negotiated ACP-wide such as commodity agreements or perhaps rules of origin members. The precise configuration of this FTA as it pertains to the PACP remains to be determined but it is evident that few, if any of the PACP countries will find the arrangement either technically or economically feasible. Only the trade relationship between PNG and Fiji and the EU appears developed enough that an FTA is technically feasible.

### ***A regional integration agreement in services***

The reality of the PACP economies is that tourism remains one of the main sectors of export-oriented economic activity in several countries including the Cook Islands, Fiji, Samoa, Federated States of

Micronesia, Vanuatu and Palau. In the PACP region the service sector is relatively open. PACP WTO members will be asked to make market-access commitments in the sector in the current round of service negotiations, and hence PACP obligations may not be onerous and because there is no MFN obligation on services do not have to be extended to the USA or Australia and New Zealand. At present all three PACP states that are members of the WTO have made market-opening commitments in tourism services in the Uruguay Round. However, what is proposed in the draft annex on tourism currently before the WTO is market-opening commitments in a wide range of tourism-related services. What is being proposed is a 'cluster' approach to liberalisation.<sup>17</sup> What can be offered, following a thorough feasibility study, would be a WTO-plus commitment that would give strong commitments to market access for EU service providers and thereby decrease some of the perceived risks of investment in the Pacific tourism sector. Negotiations on services are also foreseen in the Cotonou agreement.<sup>18</sup>

A services agreement compatible with GATS Article V cannot simply be predicated upon PACP market-access commitments if it is to result in investment being attracted in a high-cost region such as the PACP. If such market-access commitments were all that were required to assure investment in the sector these no doubt would have been made already by the PACP. The development of tourism as a key sector of development of the region involves an agreement which focuses upon:

- what is needed is stimuli to investment for EU investors in the sector;
- commitments by the EU to strengthen training and experience of staff; and
- marketing of the region as well as 'product' and infrastructure development.

Thus a developmental component of the regional agreement is required that would act as a special and differential commitment. Funding of the development component will be discussed in the subsequent sections of the paper but funding will have to come from the regional indicative programme of the 9th EDF.

However an FTA consistent with Article V implies an exchange of reciprocal obligations, which raises the serious issue of what meaningful reciprocal obligations the EU would undertake in such an arrangement. The PACP only export tourism and financial services, but also relatively large quantities of unskilled and semi-skilled labour. Given that PACP services firms are highly unlikely to seek market access, EU commitments could be based on 'GATS MFN plus standstill on existing Mode 4'. In the case of Kiribati and Tuvalu, for example, the single greatest source of foreign exchange has been remittances from nationals working on EU vessels. This has been an ongoing and mutually advantageous arrangement which is offshore by nature and therefore raises few immigration concerns in the EU. Market-access commitments on Mode 4 that are outside the context of corporate intermediation would not be politically acceptable to the EU. However arrangements similar to those that operate in formal arrangements between German shipping companies and Kiribati and Tuvalu with only limited immigration concerns could be developed with EU fishing fleets and tourism plant operators in the EU and abroad. These provisions could be developed within an exchange of obligations in a services agreement.

As the PACP has an interest in the opening of tourism *per se*, this should be seen as a benefit and not a cost. However the following options could be considered in an EU offer:

- a standstill on existing market-access provisions in marine shipping; and
- commitments to further expansion of on-the-job training and work experience in other key sectors such as fisheries and tourism.

Such programmes could be developed and funded within the context of the regional indicative programme.

### ***A fisheries development framework agreement***

One vital component of the development of the trading relationship between the EU and the Pacific ACP region is the development of the region's

abundant tuna resource. At present most PACP countries that lie in the tropical convergence zone where large quantities of tuna are to be found do not have the capacity to localise the capture fisheries within their EEZ. It is an objective of all these states but none have the experienced labour force, financial resources or entrepreneurial capacity for localisation, especially in the relatively capital-intensive purse-seine fisheries. There has been some localisation in the long line and pole-and-line tuna fisheries and the domestic prawn fisheries sector has been localised in PNG. For some time to come the principle economic benefit to the PACP region of their tuna resource will be the revenue gained from access fees. Over the last few years the EU distant-water fishing fleet has begun to enter the EEZ of the PACP. At present some 20 purse-seine vessels fish in the EEZ of the PACP region. Fisheries agreements are foreseen in the Cotonou Agreement<sup>19</sup> and have been negotiated on a bilateral basis with countries in the region.

Any agreement between the PACP countries and the EU on fisheries would have to recognise the imminent negotiations of fisheries subsidies disciplines at the WTO.<sup>20</sup> This will mean that much of the assistance provided as subsidies to domestic fleets will be phased out over time. However, in relevant WTO agreements' development assistance is not deemed to be a subsidy and it is assumed that this principle will extend to any future agreement on fisheries subsidies.<sup>21</sup> The formation of a strategic alliance with a resource-rich region such as the PACP that strives to localise fishing operations may assist the EU in facilitating the adjustment of its capture fisheries to a more liberalised trading environment.

The components of a fisheries development framework agreement with the PACP countries could focus on:

- training PACP nationals on EU vessels in the region and outside;
- provide assistance to facilitate the long-term localisation and effective joint ventures in the industry;
- environmental sustainability commitments;

- transparency in bilateral access agreements;
- commitments on the treatment of EU vessels in PACP countries;
- commitments to full compliance with all relevant PACP surveillance provisions including paid observers; and
- provision of concessional assistance to PACP entrepreneurs to assist in the localisation of distant-water purse-seine vessels.

Funding for such a proposal would be largely to national governments and hence a formula approach to the disbursement of resources from the agreement should be agreed. The disbursement should be on the basis of catch levels in the EEZ of particular PACP regions. However, as some of these activities are regional in nature a fixed percentage of the revenues associated with this agreement could be devoted to region-wide fisheries development. Funding could also come from a combination of the regional indicative programme and a levy linked to catch levels.

### ***Investment promotion and protection agreement***

The most significant component of the series of agreements that would go into making up a development-oriented partnership between the EU and the PACP would be an investment promotion and protection agreement. Such agreements are not unknown in the PACP<sup>22</sup> are also foreseen in the Cotonou agreement<sup>23</sup> though the form of such an arrangement would of necessity have to confront the specific challenges confronted by investors wishing to invest in the PACP that are quite different from that of any region. Two overarching barriers exist that need to be confronted:

- Perceived landowner risk of investment that stems from the absence of clearly defined freehold or leasehold title to land. While this risk is greatest in Melanesia the effects of the perceived risk have affected threshold rates throughout the PACP. An investment guarantee agreement could also cover issues of sovereign risk associated with the region.

- The PACP, by virtue of its inherent characteristics, has a high cost structure and has witnessed an erosion of the commercial value of trade preferences due to trade liberalisation. In the past trade preferences compensated investors for the inherently high costs. The region has also witnessed the loss of concessional funding for the private sector because development banks, including the EIB, have moved to more and more market orientation.<sup>24</sup> As a result several of the funds that invest in the region such the Kula fund require rates of return greater than 25%. These thresholds are often 10% higher than for similar projects in larger and less isolated economies and reflect the market's perception of those risks.

Thus two separate financial instruments that address the risks of investment and the barriers to promoting investment need to be fully considered and investigated. The first is a fund for covering landowner risk, especially in tourism and agriculture where such risks are major barriers to new investment. Such insurance already exists on the commercial market and its necessity stems from an externality created by the absence of land as a commercial factor and therefore the governments of Melanesia in particular may wish to consider offering such protection to new investors using RIP resources.

There is a need for a second instrument to focus more carefully the new investment facility of the EIB on the needs of the private sector in the region. An analysis of the problems confronting trade and investment in the Pacific must commence from the peculiar predicament that the private investor in the region does not, by and large, face a shortage of loanable funds. Indeed many of the PACP commercial banks in the smaller countries export their surplus loanable funds on a regular basis to their head offices in Australia. What is in short supply in the region is bankable projects at the market rate of interest, gestation, and terms and conditions. The absence of significant concessional funding will mean that the EIB market-based revolving funds will replicate the results of already available commercial funds and may simply act to crowd out private financial institutions. The Kula fund, which takes equity positions, because of the high threshold

rate of returns has invested virtually its entire portfolio in mining projects in PNG and some large projects in Fiji. If the new EIB facility is going to be based solely on market criteria with a revolving fund based on a maximum 3% concession it will likely to replicate the geographic and sectoral concentration of the investment portfolio found in the Kula fund.

To address the real handicaps faced by investors in the region a fund, administered by the EIB and that provides significantly more concessional funds the greater the inherent disadvantage faced by the country is required. Countries such as Kiribati and Tuvalu, which face particular disadvantages stemming from size and location would have access to very highly concessional funding and less concessional funds would be available to larger countries such as PNG and Fiji. Moreover, the value of the concessional component must be passed to the investor and not to the intermediary institution, as was the case under the Lomé Convention. This fund should be administered through local commercial banks as partners (to avoid moral hazard) whose overheads for the administration of such investments would be subsidised by the fund. Without a much more significant concessional component from the EDF than is found in Cotonou, the EIB portfolio in the PACP will almost certainly be concentrated in resource sectors, with a likely crowding out of private sector funds. As the EU is unlikely to reform the EIB facility in any way the PACP themselves may wish to consider the use of their regional indicative programmes to create a fund that would stimulate such investments.

### **Funding a development agenda**

This paper is principally concerned with devising trade and development instruments that will facilitate the development of the private sector of the region. However, while trade agreements can be helpful in providing an appropriate legal and economic environment they are insufficient to ensure the successful stimuli of the private sector in such challenging commercial environments as found in the PACP region. Much of what is proposed above rests upon mobilising the resources of the RIP. Only the fisheries programme is envisaged as having

Cotonou-plus resources. The necessity to divert resources from other development projects into directly supporting the private sector must stem from an explicit recognition of two underlying facts by the political leaders in the PACP region. First, the largesse of the EU and even the region's other donors will continue for a finite period and will eventually taper off. Second, that a growing private sector is vital to the long-term development of the region but will not develop without market-friendly assistance from governments and the international community.

Hence without a vibrant private sector development efforts will not be sustainable in the PACP region. The region needs to face the realities constraining investment. Without political and economic stability all interventions by government or the international community are doomed to failure. Here the advice being offered by the international community is, in our opinion, fundamentally correct. However, the presumption underlying this advice is that the economic and political stability is in itself sufficient to attract investment. Outside the resource extraction sectors this assumption is probably incorrect throughout most of the ACP, but is particularly flawed in the Pacific where the combination of smallness, geographic isolation and dispersion of population creates overarching barriers to private investment. Unless instruments are devised to provide incentives to private-sector investment to overcome the inherent cost disadvantages of locating in the Pacific then the Pacific ACP region faces a future of stagnant or declining real per capita incomes.

Using the resources of the RIP to attract investment into sectors where the region has a comparative advantage is the most sustainable use of those resources in the long term as it will ensure the growth of income that sustains the region's development effort. Moreover, using those resources in this way would constitute a powerful signal to the international community that the Pacific itself is willing to devote scarce resources over which it has some say to solving its long-term development problems. There is a need to address the highly political issue of ensuring that there is an adequate balance of interests in such an arrangement or, like so many

past decisions on the allocation of the RIP, there will be a division of benefits by countries such that the potential economic benefits will be dissipated in a shopping list approach to the allocation of these resources. Given that the two focal sectors of such a programme are based on fisheries and tourism there is the possibility of an appropriate balance of benefits to all countries in the region. Whether the financial resources available from the RIP would be sufficient to cover the costs of a proactive private-sector development programme in fisheries in tourism remains the subject of a future feasibility study should the concepts be accepted.

## Conclusion

This paper has attempted to map out an alternative approach to the economic partnership agreement between the PACP countries and the EU. The suggested structure offers, on an *à la carte* basis a series of trade agreements that the PACP may wish to consider as a basis for the development of the trading relationship with the EU. These agreements focus on the sectors in which the PACP has a comparative advantage while incorporating the original EU proposal for an FTA based on the trade in goods. It is recognised that the FTA with the EU is of the most doubtful technical viability at this point in time for most of the fourteen PACP countries. For Fiji and PNG an FTA with the EU may be technically feasible though is also of doubtful economic viability given the low benefits and very high adjustments induced by MFN obligations to other development partners. Nevertheless the FTA should remain open to future ratification by the PACP region as and when their economies and trading relationships with the EU evolve to a level of a maturity that renders such an arrangement feasible.

A services agreement based on a 'tourism plus' cluster with a development component has been proposed. The development component could involve standstill arrangements and on the job training for PACP nationals in existing arrangements plus new arrangements with EU tourism plant operators. Two other agreements, including fisheries and investment protection and promotion, have also been mooted. The success of the package in attracting

export-oriented investment into the PACP will depend in part upon the funding of the proposal, which would largely be funded from the RIP of the 9th EDF. However part of the funding for the fisheries agreement could be based on Cotonou-plus resources as this would be part of the broader commercial arrangement.

## Endnotes

1. Cotonou Agreement, Article 37.1
2. Workshop on post-Lomé Trade issues for Pacific ACP countries held in Suva in March 1999. The EU delegate to the Pacific stated:  
'There has been some speculation as to how the Pacific region would be represented in a Regional Economic Partnership Arrangement with the EU.....The negotiation of a REPA will be completely voluntary: the EU will negotiate with those regions, sub-regions or countries "which express an interest".'
3. Report of the Meeting of Pacific ACP trade ministers, May 1999.
4. In the GATT/WTO there is extensive jurisprudence on the quantitative definition of what constitutes an FTA. In 1957 a working party reviewed the consistency of the EEC treaty arrangements with those of Article XXIV. The EEC position at the time was that: 'a free trade area should be considered as having been achieved for substantially all trade when the volume of liberalized trade reached 80% of the total' (GATT Document, L/778, adopted on 29 November, 6S/70, 99 para. 30). This definition has never been accepted and increasingly the more common quantitative measure that has been employed has been based upon 90% of total bilateral trade. However, neither the 80%, nor 90% figures have any legal foundation. Moreover, countries such as Australia have suggested that the definition of substantially all trade should be based on the concept of 95% of tariff lines.
5. *Understanding on the Interpretation of Article XXIV of the GATT 1994*.
6. See Ministerial Declaration, Fourth Session, Doha, 9–14 November, para.29 WT/MIN(01)/DEC/W/1.
7. European Commission Staff Working Paper. Workshop on post-Lomé IV Trade Arrangements, 2 June 1999, p. 18.  
'Therefore, in view of the extent to which the EU has already liberalised vis-a-vis the ACP and of the structure of trade between the parties, the ACP may not have to liberalise to the extent assumed by the studies to fulfil the requirement of 90% coverage of global trade.  
For the Pacific ACP countries and on the basis of present trade data and excluding sugar, only 77% of the imports from the region enter the Community market duty free. If sugar were included in the EU liberalisation plan, moving from a transitional quota to complete liberalisation after a transition period, WTO compatibility would be easy to achieve. Under this assumption, the Pacific countries would have to liberalise only 45% of their imports to the EU'
8. UNCTAD & Commonwealth Secretariat 'Duty Free and Quota Free Market Access for LDCs: An Analysis of Quad Initiatives', Geneva 2001.
9. These include Cook Islands, Marshall Islands, Micronesia, Nauru, Niue and Palau.

10. R. Grynberg 'Asymmetric Reciprocity in the Post-Lomé Framework – Implications for Trade Relations in the Pacific', Pacific Islands Forum Discussion Paper, 2000.
11. While a multiplicity of trading arrangements also exist in the Caribbean, only the US arrangement, the Caribbean basin initiative, contains explicit MFN provisions. No similarly explicit provisions exist in AGOA.
12. Until the recent closure of the Taiyo facility in the Solomon Islands it also had a strategic trade interest in tuna fish exports to the EU, but as it is an LDC it is covered by the EBA market-access provisions.
13. The US and the EU had agreed to an Article XIII waiver for bananas in April 2001. This was in recognition of the apparent violations of those provisions in the EU's banana regime. While sugar quota arrangements are quite different the quota allocation mechanism could be deemed to violate the chapeau of Article XIII.2. When the WTO waiver was finally granted at Doha it was only for Article I and did not include an Article XIII waiver for bananas.
14. While private-sector development has been greatly increased in importance in the new agreement it is by no means the only shift in development policy found in the new ACP-EU agreement. The inclusion of new actors such as NGOs and the private sector as well as an improved functioning of development assistance have also been pivotal changes in the Cotonou Agreement from the previous Lomé Convention arrangements.
15. Under the Cotonou Agreement the EIB bears the exchange risk of its interventions in the ACP region, thus avoiding the need for state loan guarantees. However while the new investment facility avoids the need for state intervention, a major flaw of the Lomé arrangements is that it creates a minimal concessional component. Under Lomé there were much larger concessional components but the state was the principle intermediary and it frequently absorbed the concessional component as state revenue to compensate for the risk taken. Alternatively the concession was passed on to the intermediary DFI and was absorbed. Interest rate concessions in EIB actions were rarely passed on to the private sector investor under the Lomé Convention.
16. Cotonou Agreement, Article 85 and Article 89.
17. See '2nd Draft Annex on Tourism', Working Group on Liberalization, Third meeting, Madrid, November, 2000.
18. Cotonou Agreement, Article 41.4.
19. Cotonou Agreement, Article 53.1.
20. Ministerial Declaration, Fourth Session, Doha, 9–14 November, para.28, WT/MIN(01)/DEC/W/1.
21. Given the very vocal opposition from the environmental NGO lobby on this issue it cannot be assumed that ODA will be excluded from the definition of subsidy.
22. PNG has signed five investment protection agreements with trade and investment partners.
23. Cotonou Agreement, Article 78 and Annex II, Article 15.
24. Cotonou Agreement, Article 31 and 32.