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A BRIEF ASSESSMENT OF THE POTENTIAL IMPACT OF ECONOMIC PARTNERSHIP AGREEMENT (EPA) AND PACER-Plus ON GOVERNMENT REVENUE, EMPLOYMENT AND MARKET ACCESS IN SELECTED PACIFIC ISLAND COUNTRIES (PICs)

ILAN A. KILOE
A BRIEF ASSESSMENT OF THE POTENTIAL IMPACT OF ECONOMIC PARTNERSHIP AGREEMENTS (EPA) AND PACER-Plus ON GOVERNMENT REVENUE, EMPLOYMENT AND MARKET ACCESS IN SELECTED PACIFIC ISLAND COUNTRIES (PICs)

by

ILAN A. KILOE

A thesis submitted in partial fulfillment of the requirements for the degree of Master of Laws

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School of Law,
Faculty of Arts and Law,
University of the South Pacific

June 2010
DECLARATION

Statement by Author

I, Ilan A. Kiloa, declare that this thesis is my own work and that, to the best of my knowledge, it contains no material previously published, or substantially overlapping with material submitted for the award of any other degree at any institution, except where due acknowledgement is made in the text.

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Statement by Supervisor

The research in this thesis was performed under my supervision and to my knowledge is the sole work of Ilan Kiloa.

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I thank you all for your patience and assistance.
This paper assesses the potential impact of the Economic Partnership Agreement (EPA) and Pacific Agreement on Closer Economic Cooperation (PACER-Plus) on aspects of economies in Pacific Island Countries (PICs). It basically focuses on revenue loss as a result of tariff reduction, loss of employments and market access issues. The paper also examines the intrinsic challenges confronting PICs. Most of the challenges identified relate to geographical size and location including small population, limited internal markets and lack of technology and expertise. Whilst the author acknowledges that the potential impact and challenges will limit PICs’ capacity to effectively participate in EPA and PACER-Plus and reap maximum benefits of trade, the paper nevertheless maintains the need for these agreements to be development-oriented. In particular, it highlights the significance of domestic industries’ development, human resource development, institutional development and trade assistance in facilitating trade. In doing so the main objectives of EPA and PACER-Plus may be safely implemented while minimising their adverse impacts on the economies of PICs.
### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ACP</td>
<td>African, Caribbean and Pacific Countries</td>
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<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
</tr>
<tr>
<td>ANZ</td>
<td>Australia and New Zealand</td>
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<tr>
<td>AUSAID</td>
<td>Australian Agency for International Development</td>
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<tr>
<td>BAT</td>
<td>British American Tobacco</td>
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<tr>
<td>EEZ</td>
<td>Economic Exclusive Zone</td>
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<tr>
<td>EPA</td>
<td>Economic Partnership Agreement</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>FTA</td>
<td>Free Trade Area</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>LDCs</td>
<td>Least Developed Countries</td>
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<td>LDMs</td>
<td>Least Developed Members of WTO</td>
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<tr>
<td>PACER</td>
<td>Pacific Agreement on Closer Economic Relations</td>
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<td>PACP</td>
<td>Pacific members of the ACP</td>
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<td>PANG</td>
<td>Pacific Network on Globalisation</td>
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<td>PICs</td>
<td>Pacific Island Countries</td>
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<td>PNG</td>
<td>Papua New Guinea</td>
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<td>ROOs</td>
<td>Rules of Origin</td>
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<tr>
<td>SPARTECA</td>
<td>South Pacific Regional Trade and Economic Cooperation Agreement</td>
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<td>SPS</td>
<td>Sanitary and Phytosanitary</td>
</tr>
<tr>
<td>VAT</td>
<td>Value added tax</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
</tr>
</tbody>
</table>
LIST OF TABLES & BOXES

Tables
Table 1: PICs Tariff revenue income 42
Table 2: Estimated adjustment costs 47
Table 3: PICs main exports 62

Boxes
Box 1: International Monetary Fund (IMF) report 44
Box 2: Fiji Garment Industry 49
Box 3: Fiji Sugar Industry 50
Box 4: BAT Industry 52
Box 5: Oxfam report 54
Box 6: Kava Ban 55
Box 7: Centre for Development of Enterprise (CDE) report 56
1. INTRODUCTION

Trade liberalisation brings real economic challenges for Pacific Island Countries (PICs). Geographical factors such as size, land scarcity and remoteness constitute some of the most important factors affecting their effective participation in trade agreements. The need to benefit from few export market opportunities and gain economies of scale has led them to specialise in a narrow range of agricultural products, exposing them to the instability of world markets. As net importing countries, they depend heavily on a small number of agricultural exports to pay for their imports.

Economic factors also contribute a great deal to the challenges posed by trade liberalisation. For example, population varies from approximately 5 million in Papua New Guinea to only few thousand in Niue, Tuvalu and Nauru. Income levels differ from US$7,500 per head in Palau to just over US$500 per head in Tuvalu. Human development ranges from relatively high in Cook Islands and Palau to very low levels in Papua New Guinea (PNG) and Solomon Islands. Natural resources vary across these countries from gold, copper, nickel in PNG and Solomon Islands to virtually nothing in Kiribati and Tuvalu. Finally, the degree of industrialisation varies widely from moderate development of light manufacturing in Fiji and to some extent PNG to virtually zero in smaller countries. Together these factors combined to restrict PICs’ capacity to diversify exports and structurally develop their economy.

To offset some of these challenges, PICs were granted preferential market access to European, Australian and New Zealand (ANZ) markets, particularly under the Lomé
Conventions and the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA). The Lomé Conventions were signed in 1975 between the European Union (EU) and African, Caribbean, and Pacific (ACP) states that are former colonies of the European powers. It came into force in April 1976. Since their inception, the Lomé conventions were renegotiated on a number of occasions as Lomé I, II, III, IV respectively. The SPARTECA on the other hand is an agreement between various PICs and ANZ. The agreement was signed in Kiribati on the 14th July 1980, was open for ratification thereafter and entered into force on 1 January 1981. The Lomé Conventions and SPARTECA are essentially aid and trade arrangements that do not require reciprocal free trade between Contracting Parties. In the words, Pacific parties are not obliged under these agreements to reciprocate the preferences given to them by EU and ANZ. The main objective of these preferential agreements is to promote and expedite the economic, cultural and social development of Pacific parties. The economic justification for these preferential trade agreements was to assure national sources of supply for ANZ and European markets.

Towards the end of the latter part of the 20th century, a controversial but interesting debate followed on whether the PICs free trade area (FTA) should include ANZ. PICs feared the economic consequences of opening up their markets to ANZ. They considered that an agreement involving only PICs (such as the Pacific Island Countries Trade Agreement (PICTA), offered them minimal adjustments and would be a more suitable step into the world of reciprocal free trade. On the other hand, ANZ as members of the Pacific Island Forum (PIF) insisted on being full time parties to any FTA in the Pacific region. The situation changed in 2000 when it became evident that under the terms of the

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5 Initially, the EU consisted of just six founding countries: Belgium, Germany, France, Italy, Luxembourg and the Netherlands. Denmark, Ireland and the United Kingdom joined in 1973, Greece in 1981, Spain and Portugal in 1986, Austria, Finland and Sweden in 1995. The Convention was extended to include some Pacific Island Countries when the United Kingdom joined the EU in 1973.
8 See for instance Art II (a), SPARTECA 1980.
9 Satish Chand above n 2, 3.
10 The Pacific Islands Forum (PIF) was founded in 1971 as the South Pacific Forum. In 2000, the name was changed to the Pacific Islands Forum to better reflect the geographic location of its members in the north and south Pacific.
Cotonou Agreement, PICs would be entering into negotiations for a WTO compatible Economic Partnership Agreement (EPA) with the European Union (EU).\(^\text{11}\) Instead of insisting as PIF members to immediate participation, ANZ considered that they could not accept being placed in a disadvantaged position relative to the EU in the Pacific markets.\(^\text{12}\) This led to the conclusion of Pacific Agreement on Closer Economic Relations (PACER) in 2001. The PACER among other things aims to secure more efficient access rights for ANZ in their real sphere of influence. Thus, it embodies ‘triggers’ that would require PICs to commence consultations with ANZ with a view to negotiating a free trade agreement (the PACER-Plus), if they began negotiations with another developed country or countries.\(^\text{13}\) It is in this regard that the EPA negotiations between the EU and various PICs for the EPA as envisaged under the Cotonou Agreement will likely to trigger the PACER-Plus with implications for regional trade.

### 1.1 Objectives

The main objective of this paper is to assess the potential impact of Pacific – EU EPA and PACER-Plus on government revenue, employment and market access in selected PICs. In the course of the paper the author also seeks to establish the particular intrinsic challenges facing PICs that undermine their effective participation in trade. In doing so, it is hoped that some ways may be suggested for giving effect to the objectives of EPA and PACER-Plus while minimising their adverse impact.

### 1.2 Methodology

Due to the nature of the topic, this paper draws largely on existing literature on trade law as it relates to the Pacific region. It basically focuses on literature review and qualitative analysis of both primary and secondary sources. In doing so, the paper presents

\(^\text{11}\) It should pointed out here that Fiji and Papua New Guinea (PNG) have entered into an interim EPA with the EU on similar terms as that currently being negotiated by the EU with all the Pacific Island Countries referred to above. However, for the purposes of this dissertation the draft EPA between the EU and Pacific Islands will be discussed because that is what is being currently negotiated among all the PICs.


\(^\text{13}\) Art. 6, PACER 2010.
investigative discussions as opposed to comparative analysis. Such a general approach is adopted due to the limited time and space in the paper available. In the course of the paper, a number of limitations were encountered. The idea to establish focal points of contact with various organisations and government departments around the region including the PIF, Pacific Institute of Public Policy (PIPP) and Vanuatu Ministry of Commerce and Trade for purposes of research was not successful. Also, the efforts to gather information through emails were only partly successful. Nevertheless this study has benefited from helpful feedback and constructive comments from supervisors.

1.3 Scope

The limited time and resources available to undertake research both dictated the scope of this paper. Generally, the paper focuses on principles governing trade in goods under the proposed Pacific -EU EPA and the PACER-Plus agreement and their potential impact on revenue, employment and market access. Discourses relating to trade-related investment and intellectual property issues, though important, are beyond the scope of this dissertation.

1.4 Structure

The paper is divided into seven (7) short chapters including the introduction. The introductory Chapter 1 provides a brief background to the topic and set out the objectives, scope, methodology and structure of the paper. Chapter 2 examines in brief the General Agreement on Tariffs and Trade (GATT). It focuses on the basic principles governing international trade and their exceptions with specific focus on regional trade arrangements. This chapter is necessary to provide context for subsequent discussions on EPA and PACER-Plus.

Chapter 3 discusses the Pacific –EU EPA. It begins by examining the overall EU-PICs EPA negotiating environment before discussing the 2006 draft text prepared by Pacific Parties. The discussion on negotiation is important to set the background leading to the
tabling of the draft text. The discussion on the draft text focuses on trade principles that aim to govern trade relations between EU and PICs. Chapter 4 examines the PACER-Plus. It is important to note that at the time of writing, negotiations for the PACER-Plus agreement have just begun. There is no PACER-Plus draft text available. Therefore, this chapter discusses the terms under the PACER framework agreement pursuant to which the PACER-Plus agreement will be negotiated. It attempts to outline the basic structure and principles envisaged for the PACER-Plus agreement.

Chapter 5 provides an overall assessment of the potential impact of EPA and PACER-Plus on government revenue, employment and market access in selected PICs. To support main arguments, literature reviews are undertaken, particularly to illustrate a specific impact identified. Chapter 6 provides an overall assessment of the intrinsic challenges undermining the extent to which PICs can effectively participate in trade with EU and ANZ. Most of the challenges relates to either geographical location or sizes of PICs.

Chapter 7 provides a brief summary of the main arguments before discusses the prospects for trade in the Pacific region. It basically suggests some ways which could be useful to mitigate the impact of EPA and PACER-Plus in view of the inevitability of trade liberalisation. The paper is structured in this way to ensure coherence and logical flow of argument when dealing with the core objectives.
2. GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)

2.1 Introduction

The Bretton Woods Conference of 1944 recognised the need for an international institution for trade, as a result of which the International Trade Organization (ITO) and its subsequent Charter was negotiated. The Charter provided for the establishment of the ITO and, for the first time, set out the basic rules governing international trade and related international economic relations. The Charter however never entered into force, due to the reluctance of the United States Congress to accept and ratify it on grounds that it would compromise internal economic policies.

At the same time, negotiations for a General Agreement on Tariffs and Trade (GATT) advanced well in Geneva and by 1947 a consensus was reached. The GATT was drafted as an interim agreement of provisional application not requiring parliamentary approval with some ratification agreed to in the ITO Charter. This was done purposely to get around the problem of consent and ratification which crippled the ITO Charter. Also, the GATT was framed in such a way to suggest that an organisation had not been established. Thus, when referring to its founding countries the term ‘member states’ was avoided. The functions stipulated under the GATT were assigned to all contracting parties by way of default.

Since its inception the GATT has evolved over a period of four (4) decades from 1948 to 1994 through a series of negotiation rounds. The most recent of these concluded rounds is

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16 Ibid.
19 Andreas Lowenfeld above note 17, 467.
the Uruguay Round, which was formally concluded and signed at the Ministerial Meeting in Marrakesh, Morocco on April 15 1994. The contracting parties committed themselves to seeking to complete all steps necessary and to formally establish the World Trade Organisation (WTO). The WTO is the institution that today gives effect to and continues the earlier work carried out under the GATT in the rounds of negotiations. In endorsing the establishment of the WTO, Article XVI (1) of the Marrakesh Agreement establishing the WTO states:

“…except as otherwise provided under the Agreement or multilateral Trade Agreements, the WTO shall be guided by the decisions, procedures and customary practices followed by the CONTRACTING PARTIES to GATT 1947 and the bodies established in the framework of GATT 1947.”

The endorsement of the WTO not only guaranteed further trade liberalisation but also transformed the GATT into a fully-fledged institution. The GATT now administered under the auspices of the WTO, governs the conduct of global and regional trade aimed at promoting economic growth and development. The member states have increased to more than one hundred. In the Pacific region, the first Pacific Island members were Solomon Islands, Fiji, and Papua New Guinea (PNG). Tonga has recently joined while Vanuatu and Samoa are currently on the observers list.

22 Solomon Islands became a signatory of GATT on December 28, 1994 and joined the WTO on July 26, 1996.
23 Fiji Islands became a signatory of GATT on November 16, 1993 and joined WTO in January 14, 1996.
26 The final meeting of the Working Party concerning the accession of Vanuatu was held on 29 October 2001. The accession package has not yet been forwarded to the General Council.
27 The Working Party on the accession of Samoa was established on 15 July 1998. The Memorandum on Samoa's Foreign Trade Regime was circulated in February 2000. Multilateral work has been proceeding on the basis of a draft Working Party Report since 2003. The latest revision of the draft Report was circulated in May 2009.
2.2. Fundamental trade principles

The core principle underpinning the GATT is Non-Discrimination. Discrimination in the conduct of trade can be defined as according special treatment (such as a lower customs duty and tariff rate) only to some member countries. Countries who are signatories to GATT are prohibited from engaging in discriminatory trade practices and derogating from standard rules of trade. The GATT articulates specific ways in which the principle of non-discrimination may be observed, so as to provide maximum protection for WTO member states.

2.2.1 Most Favoured Nation (MFN)

The most-favoured-nation (MFN) principle underscores the notion of ‘equal treatment’ of all member states. The WTO members can not normally discriminate between their trading partners. They are obliged to accord equal treatment to each other with respect to ‘substantially all trade’. Accordingly, where a member country grants some advantages, privileges, rights and benefits to another member in respect to imports, exports or international transfer of payment, the same advantages, privileges, rights and benefits must be accorded to other like members.

The advantages so granted may be in the form of reduced import quotas, customs formalities associated with importation and exemption from foreign exchange, restrictions in repatriation of profits arising from imports and export or waiver of pre-shipment measures. The MFN principle is made the cardinal principle of GATT and is provided for under Article 1 (1) which states:

“…With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect

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29 Mohammed Ahmadu and Robert Hughes above n 7, 374.
to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation,…any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”

Where an importing country deliberately accords differential treatment to imported products, by setting different tariff rates, it violates the MFN principle. However, liability cannot be assigned to the derogating party automatically. Some conditions need to be satisfied before a member state can be held accountable for its actions.

First, advantages, privilege or immunity granted by a member state to any product originating in or destined for any other member country is accorded immediately and unconditionally to ‘like products’. This is sometimes referred to as the like product condition. Second, those products granted advantage or special treatment must originate from a state party. This means, advantages and immunities provided for under GATT Article 1 cannot be granted to products originating from a third-party country, not a member to the WTO.

Nevertheless, violation can also occur even though there is no apparent discrimination against the product of a most-favoured-nation. For instance, if Country (A) accords differential tariff rates on a variety of coffee beans imported from Country (B), this will result in de facto discrimination against coffee beans produced in country (C) if that particular variety is considered as a ‘like product’ using criteria such as consumer taste. Therefore to avoid violation of the MFN principle a member state is obliged to offer equal treatment to any other member in all trade relations.

2.2.2. National Treatment (NT)

The National Treatment (NT) principle underlines the idea that where products of one member country are imported into the territory of another member country, whatever advantages are given to the domestic product must be extended to the comparable imported product within the national territory. Article III (4) of GATT provides for the NT principle in the following terms:

“…the products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.”

This provision imposes a duty on the importing member country to apply the same rate of internal taxation and other charges to its domestic products as it does to like imported products. Consequently, where a member state applies different rate of taxation to imported products, it is said to have applied less favourable treatment, particularly when compared to treatment accorded to its domestically produced goods.

Similarly, Article III (1) imposes a duty on importing member countries to apply the same laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of important products. To avoid breach of this provision, internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions should not be applied to imported or domestic products so as to afford protection to domestic production.\(^{31}\) Therefore, where products of one member country are imported into the territory of another member country, those imported products are automatically entitled to the same and/or equal advantages as those extended to domestic comparable products within the national boundary.

2.2.3. Quantitative restrictions

The principle of Quantitative restrictions is on many occasions targeted at reducing the quantity of goods imported into the national territory of a member country. Quantitative restrictions are specifically prohibited by Article XI(1). This article states:

“…no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.”

However, there are a few exceptions to this principle, of which Article XII(1) is worth noting. This provision legally permits countries that are experiencing a balance of payment deficit to apply restrictions on imports or exports, if it is targeted at improving a country’s foreign reserves. Common examples of quantitative restrictions are:

a) export prohibitions or restrictions applied temporarily to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party,\(^{32}\)

b) import prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade.\(^{33}\)

Despite the fact that countries are allowed to use quantitative restrictions to aid balance of payment deficit, it should be noted that any such restrictions can only be enforced for temporary period.

\(^{32}\) Art. XI (2) (a), GATT 1994.
\(^{33}\) Art. XI (2) (b), GATT 1994.
2.3 Exceptions

There are several exceptions to the principle of non-discrimination stipulated under the GATT. In line with the objectives of this dissertation this section discusses the exception of free trade areas, customs union and waiver/enabling clause. For completeness, special privileges granted to less developed members of the WTO are also discussed as a condition for special treatment. The discussions relating to special treatment are necessary given their higher relevance for PICs. The exceptions considered here have different legal requirements for their application. It is thus best to examine them in turn to see precisely what conditions need to be satisfied.

2.3.1 Free trade area

A free trade area is a group of customs union or countries whereby between them most or all trader barriers are eliminated. Article XXIV (8) defines free trade areas as follows:

“A free trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce are eliminated on substantially all the trade between the constituent territories in products originating in such territories.”

Contracting Parties to GATT may establish amongst them a preferential trading arrangement and apply more favourable terms to each other, while applying less favourable terms to countries that are not party to their preferential trading arrangement. This may lead to results that are contrary to the principle of non-discrimination and may have negative effect on countries outside the preferential trading arrangement. Nonetheless, the ideal purpose of regional trade arrangements is to advance international trade through the integration of national economies within a particular region into the global economy. Therefore Article XXIV (4) states:

34 Mohammed Ahmada and Robert Hughes, above n 7, 376.
“The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.”

Consistent with this provision, regional integration may be allowed as an exception to the principle of non-discrimination where the following specific conditions are met:

a) Tariffs and other barriers to trade applied to outside countries must not be higher or more restrictive than they were prior to the establishment of regional integration.36

b) Tariffs and other barriers to trade must be eliminated with respect to substantially all trade within the region.37

Having this in mind, the types of regional trading arrangements permitted by GATT Article XXIV are free trade areas and customs union.

2.3.2 Customs Union

Customs union is a combination of countries that are members of the WTO whose territories are legally constituted into a single trading and economic bloc.38 Article XXIV (8) (a) defines customs union as:

“A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that duties and

36 Art. 5 (a), GATT 1994.
38 Mohammed Ahmadu and Robert Hughes, above n 7, 376.
other restrictive regulations of commerce are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and, substantially the same duties and other regulations of commerce applied by each of the members to the trade of territories.”

The distinction between custom unions and free trade areas can be understood in terms of their common tariff policy. Under a customs union, the constituent territories adopt a single common tariff policy, where all internal taxes and other restrictions are minimised or eliminated. Under a free trade area countries retain their national boundaries upon which their domestic tariff policies apply while setting out to eliminate forms of trade restrictions at own phase. The harmonisation of laws concerning trade is usually an outcome of a customs union. Nevertheless, similar to a free trade area exception, the underlying purpose for customs union is to reduce barriers to trade in such a way that it facilitates trade diversification and promote international trade.

2.3.3. Waiver

A waiver is another permissible exception under GATT under which a member may deviate from fully implementing some of the GATT provisions. For instance the EU countries have been granted a waiver for preferential concession granted pursuant to the Lomé Conventions under Article XXV GATT, albeit subjected to annual reviews. The waiver duration of the Lomé IV was from 9th December 1994 to 29 February 2000, for a five year period. The main focus of Lomé IV was on principle of partnership, conditions for recipient states, role of the private sector, environmental protection, democracy, good governance and rule of law as a means of improving ACP states economic performance.

Similarly, ANZ preferences for various PICs under the SPARTECA were accepted as exceptions under the Enabling Clause officially called the ‘Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing

40 Mohammed Ahmadu and Robert Hughes, above n 7, 377.
Countries’ adopted under GATT in 1979. The enabling clause allows ANZ to give differential and more favourable treatment to PICs in the conduct of trade.

Where a waiver is granted, a member is not obliged to comply with the measures that have been waived. In other words, a member to the GATT may deviate from implementing some of its provisions without being held responsible for not adhering to the waived provisions.

2.3.4. Less Developed Members

In consideration of their special needs, the GATT provided special privileges for Less Developed Members (LDMs). Article XXXVI (8) states:

“...developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less developed contracting parties.”

In accordance with this provision, LDMs are not legally obliged to grant equal concessions to developed members of GATT, or expected to fully implement or uphold some of the GATT provisions. This is a permissible justification purposely to help LDMs address and accommodate their unique economic need(s) necessary for economic development and improvement of standards of living. By utilising this provision LDMs may derogate from fully upholding their obligations under GATT to suit their domestic economic circumstances.

Notwithstanding this, the ideal expectation of this provision is to allow LDMs to diversify their economies and reduce, in the long run, their reliance on the exports of primary product.41 Accordingly, LDMs are prohibited from using this privilege to derogate from fully upholding their obligations under the GATT, unless there are legally justifiable grounds to do so.

41 Mohammed Ahmadu and Robert Hughes, above n 7, 378.
2.4 Conclusion

The basic trade principles considered above laid the foundation for rules governing negotiations and content of envisaged provisions under EPA and PACER-Plus. These agreements, for instance, would have to meet the requirements under Article XXII, which provide for regional free trade agreements. Having said this, it is important to note that current negotiations for EPA and PACER-Plus are carried out in the shadow of the GATT. Therefore, deviation from standard GATT principles/rules will render either of these agreements contrary to GATT and hence unacceptable. The next two chapters will now move on to examine the Pacific-EU EPA and PACER-Plus.
3. ECONOMIC PARTNERSHIP AGREEMENT (EPA)

3.1. Introduction

Following the establishment of the WTO in 1995, the EU prepared a green paper for the renegotiation of the trade preferences granted to ACP states under the Lomé Conventions. This was provoked by a number of factors. The most important factors are first, the emergence of the new philosophy articulated under GATT which advocated reciprocal trade liberalisation as the primary pathway to economic development and poverty eradication. The philosophy has overtaken development strategies based on trade preferences. Second, the Lomé preferences granted to ACP states were held by the WTO dispute panel as incompatible with GATT in a number of disputes lodged against the EU. Following the finding of the panel, the EU negotiated a temporary waiver of compliance to renegotiate a GATT-compatible agreement. The waiver expired on 31 December 2007. It is important to note that since their inception, the Lomé Conventions have never been accepted without question as GATT-compatible. It is with the establishment of the WTO and its dispute panel, with a more legalistic or juristic structure, that the Lomé Conventions formally expired.

The Cotonou Agreement 2000 replaced the Lomé Conventions. The Parties to the Lomé Conventions, by virtue of their membership, became state parties to the Cotonou Agreement. The agreement was signed and entered into force on 23rd June 2000.

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43 Nicaragua, Guatemala, Costa Rica, Colombia and Venezuela lodged a dispute against the EU bananas regime in 1993. In early January 1994 the WTO dispute panel held that the EU regime was incompatible with GATT. The WTO however vetoed its adoption of the ruling under the GATT rules that allow for consensus adoption of panel reports. In January 2001 the Appellate Body passed a resolution that the EU had not complied with the previous panel rulings. A brief of ‘Banana Trade disputes and United States-Import Measures on Certain Products from the European Communities’ can be accessed at http://www.wto.org (Accessed 24/12/2009).
45 There are at present 70 ACP countries who are ‘original members’ to the Cotonou Agreement, eight of which are Pacific Island Countries. These are Kiribati, Fiji, Solomon Islands, Papua New Guinea, Tonga, Vanuatu, Samoa and Tuvalu.
providing for the renegotiation of the Lomé concessions by January 2008, when the WTO waiver expires. The Cotonou Agreement the umbrella treaty, pursuant to which separate EPAs are negotiated between the EU and the various ACP regions, to better suit their individual requirements. Distinct to the Lomé Conventions, the Cotonou Agreement was designed to form the basis of new WTO-compatible EPAs based on reciprocal trade. Therefore, the Cotonou Agreement puts to an end the system of non-reciprocity and trade preferences previously granted under the Lomé Conventions. The ideal expectation is to improve economic, social and cultural development as well as to possibly eradicate looming poverty in ACP countries.\(^46\) While the EU committed itself to introducing trade agreements under the Cotonou Agreement that would not worsen the position of the ACP states\(^47\) it is also required to implement WTO-compatible EPAs.

### 3.2. Negotiations

The Pacific group of ACP states (PACP) have repeatedly raised a series of concerns about the implementation of the EPA. There is a widespread sense of inequity among PACP most of which are small island states and Least Developed Countries (LCD). They lack the capacity to conduct complex negotiations within the proposed timeframe. The cost of required adjustments and implementation of reciprocal trade obligations will cripple their small economies unless very substantial additional funding is provided.

A report prepared by the South Centre in Geneva described the Pacific – EU EPA negotiations as far from be achieved.\(^48\) The report stated that given the current status of the negotiations and the significant amount of work remaining, it is unlikely the EPAs will be completed on time.\(^49\) Apparently, the potential social, political and economic consequences of EPAs are still unclear and the pressure to finish on time will likely work to the disadvantage of the PACP countries. The EU used the Cotonou Agreement to guide the nature of regional integration in accordance with standards set by GATT. The

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\(^{46}\) Art. 1, Cotonou Agreement 2000.

\(^{47}\) Art. 37.6, Cotonou Agreement 2000.


\(^{49}\) Ibid.
EU has resorted to a development concept that is largely driven by reciprocal free trade. This may be potentially devastating for Pacific small developing economies especially if there is no clear adjustment reform plan in place.

The detailed terms for negotiating EPAs were articulated under the Cotonou Agreement 2000. The first phase of the EPA negotiations commenced in September 2000 including all ACP states and was concluded in October 2003. The Pacific EPA negotiations were launched on 15 September 2004 in Brussels pursuant to a Joint Road Map (JRM) that set out the principles, processes and general content of the negotiations. The JRM reaffirmed the objectives of the Cotonou Agreement, that is, the integration of ACP states into the global economy while fostering the need for sustainable development and eradication of poverty.

To achieve these objectives important guidelines for negotiations were outlined. First, the Pacific EPA was envisaged to be an instrument for development to gradually advance and further the process of regional integration. The phase of liberalisation would be flexible and highly asymmetrical in order to facilitate a steady degree of regional integration. Second, it recognises the need for special and differential treatment for all PACP states, to take account of the different levels of economic development. The special treatment may go beyond existing measures to include the transitional period and technical assistance. Therefore the PICs proposal for a highly asymmetrical master structure of an EPA (see below) appeared to be acceptable in principle.

Nevertheless, as a prevailing consideration, the EPA must be WTO-compatible. In particular the JRM requires the EU to work with PACP states to identify and further their

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50 Art. 37 (1) provides: “Economic partnership agreements shall be negotiated during the preparatory period which shall end by 31 December 2007 at the latest. Formal negotiations of the new trading arrangements shall start in September 2002 and the new trading arrangements shall enter into force by 1 January 2008, unless earlier dates are agreed between the Parties.”

51 South Centre above n 48.


53 Ibid.

54 Ibid above n 52, 18.
common interest in the ongoing Doha Round negotiations to accommodate GATT requirements, particularly in regard to the issues of the definition of ‘substantially all trade’ and ‘special and differential treatment’.

Another important feature of the JRM is the acknowledgement of the relationship of the EPA to existing agreements in the Pacific region, in particular the PACER-Plus. This relationship may have profound implications for regional trade and needs to be reflected in all areas of the negotiation. Interestingly the JRM acknowledges that while the EPA will require PACP to undertake significant economic adjustments, no clear commitment is made by the EU to the provision of additional financial resources other than reference to the existing aid support mechanisms.

The structure of the negotiations was to follow the normal pattern, with a Ministerial-level regional negotiating team supported by negotiating groups addressing specific issues. It was anticipated that substantive negotiations would be completed by the end of 2006 with a final draft completed by mid-2007, leaving sufficient time for consultation with other relevant stakeholders. Since September 2004 PACP states have affirmed their commitment to gradual integration into the global economy pursuant to the Cotonou Agreement which mandated them to conclude the EPA with the EU by 2008. For over six (6) years since the commencement of the EPA negotiations, the conclusion of Pacific EPA is not imminent. The Pacific still needs to define more clearly their interests in a broad inclusive trade and development agreement and its scope.

Finally, in 19 April 2010, the second revise Cotonou Agreement 2010 was concluded and opened for signatures by all Parties. The second revision adapts the policy changes which have taken place over the last decade of EPA negotiations (particularly in topical

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55 Ibid above n 52, 17.
areas such as ROOs and SPS measures) and adopted a comprehensive framework for partnership and development between the EU and ACP members. It also reaffirms commitment towards tackling major challenges facing ACP states such as climate change, economic and financial crisis and the gradual integration of the ACP States into the world economy. The tabling of Cotonou Agreement 2010 is in line with the provisions of Article 95 of the Cotonou agreement 2000 which provides for its revision every five years, with the first having been done in 2005 in Luxemburg. Negotiations for the Pacific EPA will continue in 2010/2011.

3.3. Draft text

In June 2006 the PACP states proposed a creative draft Pacific-EU EPA (the ‘draft text’) roughly targeted at addressing their dissent and/or concerns. We now turn to consider the draft text. The draft text serves as a negotiating text thus discussions herein do not assume that it is comprehensive or complete. But in line with the objectives of this paper, discussions generally focus on trade in goods, trade facilitation and/or promotion.

At the outset it is important to note that the draft text adopted the basic principles embedded in the Cotonou Agreement and has accepted that integration into the global economy through trade liberalisation is a desirable means for alleviating poverty and promoting sustainable development.

The only noticeable modification made to the draft text relates to aid and development assistance. Instead of directly adopting the normal arrangement of the Cotonou Agreement, the draft text rearranged the liberalisation and development part to provide for an interactive relationship. This presumably was a genuine effort to create opportunity for Pacific Islands to decide their own development priorities in accordance with their domestic economic policies.

60 Jane Kelsey above n 57, 83.
3.3.1. Objectives

The fundamental objectives of the draft text reflect the development responsive objectives and guarantees of the Cotonou Agreement. In broad terms the overall objective of the draft text reaffirms the need to promote sustainable development and eradicate poverty in the Pacific Parties. It also aims to enhance the PACP states’ smooth and gradual integration into the global economy.61 This is an express endorsement of the core objectives of Cotonou Agreement.

To achieve this basic objective the draft text acknowledges three main preconditions as means for stimulating economic development through trade relations. First, the promotion of trade liberalisation through funding and supporting structures. Second the recognition of economic diversity of Pacific Parties and providing rooms for improvement through trade promotion and facilitation. Third, the recognition that the EPA should not undermine the Pacific states’ own integration arrangements.62 The Pacific Parties may be allowed to develop and transform themselves at an appropriate pace of adjustment and in a manner and sequence that is conducive to their economic and social development.63

In accordance with these preconditions, the Pacific Parties seek to implement the principle embodied under Article 37.6 of the Cotonou Agreement that offers parties. Article 37.6 offers parties who after consultations, may consider that they are not in a position to enter into EPA, the possibility of entering a new framework for trade that is equivalent to their existing situation and in conformity with GATT rules. This principle allows Pacific Parties to address their development priorities consistent with their national economic policy; in particular, those Parties who are not economically well off to meet the obligations of the EPA.

61 Art. 1.2 (1), EPA draft text 2006.
62 Art. 1.2 (2), EPA draft text 2006.
63 See generally Art. 1.2, EPA draft text 2006.
Similarly, Article 2.3 recognises the fact that not all Pacific Parties are members of the WTO. The EU is required to grant the MFN treatment only to goods and services originating from Pacific parties who are WTO members. Implicit in this stipulation is the controversial demand that Pacific Parties who are not members of the WTO should not be subjected to GATT rules that are onerous and inappropriate. In any event, the implementation of such standards remains highly unlikely. These terms may not be risk-free as it appears because the benefits of MFN treatment may mean very little in practice for Pacific Parties since they have insignificant current or potential trade with the EU. A major concern however is the resulting implications for trade liberalisation in view of the EPA relations to PACER-Plus.

3.3.2 Goods

A highly asymmetrical separate multilateral agreement on goods, adopting a standard GATT format and content with few deviations, was incorporated into the overall EPA. Generally, the EU is expected to grant duty and quota free access for Pacific products, while the Pacific will reduce customs duties on imports from the EU according to schedules of timetables and tariff lines that vary according to each country. The ideal purpose for this is to progressively reduce and eliminate unacceptable trade barriers that will disrupt trade flow. Nevertheless, this asymmetrical text has to meet the GATT article XXIV requirements. Trade liberalisation will cover substantially all trade. Tariffs and other barriers to trade applied to countries must not be higher or more restrictive than they were prior to establishment of regional integration. Liberalisation on substantially all trade in goods is to be subject to GATT/WTO principle.

The Rules of Origin (ROOs) define goods as originating in a Pacific Party if they are wholly produced or obtained in the territory of that Party, or the result of the final process

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64 Art. 2.3 (1) (2), EPA draft text 2006.
66 It should be noted here that the EU's ROOs were not included in the draft text. Thus, the question of whether or not the EU will agree to the Pacific ROOs remains uncertain. In any event, advantages for Pacific products exported to the EU market would require the EU to accept flexible rules as regards origin.
of manufacture performed in the territory of that Party and the goods have changed tariff
classification heading under the Harmonized System at a 6-digit level. The significance
of change in tariff classification heading is to ensure parties do not discriminate against
each other in the conduct of trade or use the ROOS directly or indirectly as instruments to
pursue trade policy objectives.

Goods wholly produced and obtained are defined to broadly to include (i) agricultural
products including live animals born and raised in the territory of a Pacific Party, (ii)
animals obtained by hunting, trapping, fishing, gathering or capturing in the territory of a
Pacific Party, (iii) products obtained from live animals born and raised in the territory of
a Pacific Party or plants (iv) plant products harvested, picked or gathered in the territory
of a Pacific Party.

The ROOs also cover fish caught within the 200 nautical mile exclusive economic zone
(EEZ) of a Pacific party by vessels of parties to the EPA or of non-parties where the fish
are landed in a Pacific territory as originating from that particular territory. The EEZ is
an area of sea within which a Pacific party exercises, in accordance with international
law, sovereign rights for the purposes of exploring and exploiting, conserving and
managing the living resources therein.

The use of anti-dumping measures by the EU is prohibited. These measures may be
used to protect local products against Pacific products or local industries. Article 12 of
the draft text went on to prohibit the introduction and imposition of new antidumping
measures and/or antidumping investigation on products originating in the Pacific Parties.
Similar provisions are incorporated dealing with safeguard measures. The use of
safeguard measures by EU parties is prohibited. Article 14 (1) states:

67 Art. 6 (2), EPA draft text 2006.
68 Art. 6 (3) (a) (b) (c), EPA draft text 2006.
69 Art. 6 (3), EPA draft text 2006.
70 See for instance Art. 12, EPA draft text 2006.
“In light of the small size of the economies and geographic isolation of the Pacific Parties and the development objectives of this Agreement, the Community recognises that its use of safeguard measures of trade from the Pacific Parties is unnecessary and undesirable.”

The prohibition of anti-dumping and safeguard measures by EU is said to be necessary in view of the various intrinsic economic challenges facing the Pacific states. The EU is required to progressively eliminate or modify anti-dumping and safeguard measures to make it easier for Pacific Parties to use and have access for their products in the European market.

The draft text also seeks to regulate the use of subsidies. The use of subsidies directed at boosting the production efficiency of a local product or subsidising the price of exportation is restricted. The use of a subsidy may be permitted where it is granted in a fair, equitable and transparent manner. In this regard, Article 13 in particular restricts the use of subsidies by the EU that might cause or threaten serious prejudice to a Pacific Party or material injury to its domestic industry. Article 16 on the other hand allows Pacific parties to raise tariffs where imports from another Party including the EU may retard materially the establishment of a domestic industry in like or directly competitive products.

Finally, the draft text stipulated provisions to reduce Sanitary and Phytosanitary (SPS) measures that may be classified as unnecessary trade barriers. They basically provide a two-way process. First, tightening SPS measures currently used by the EU and second allowing Pacific parties to challenge SPS export bans that are not supported by scientific evidence or supported by unverified evidence through a cheaper disputes settlement process than that at the WTO.71

71 Art. 4.1, EPA draft text 2006.
The later measure was prompted by the 2002 ban imposed on Pacific kava products to EU markets. The EU parties are to pay compensation to Pacific exporters for losses they may incur from any such ban, particularly when there is no clear scientific evidence to substantiate it. A process of consultation was established to allow parties to conduct a joint study to confirm through scientific evidence that a particular product is in fact harmful. Any proposed ban could be invoked after consultations whereby such evidence has been obtained.

3.3.3 Temporary movement of natural persons

We examine temporary movement of natural persons under the draft text because of its importance for PICs to consider in mitigating employment impacts as suggested in this paper. Natural person means a national of a Member State of the Community or a Pacific Party. Parties to the EPA are required to liberalise market access and national treatment to temporary movement of natural persons.

Natural persons or labour services that a Pacific Party can potentially export to the EU may be listed in each country’s specific schedule of services. This allows Pacific Parties to export labour service to EU countries. Training programs are designed to facilitate this type of service provision. The list is subject to review periodically by the partnership committee comprised of senior officials.

In mobilising labour services, each Party shall accord to suppliers of any other Party, in respect of all measures affecting the supply the principle of national treatment (NT). Accordingly, a Party may meet the requirement of NT by according labour services suppliers of any other Party either formally identical treatment to that it accords to its own like labour services or suppliers.

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72 See page 55 below.
73 Art. 4.6 (3), EPA draft text 2006.
74 Art. 4.1 (c), EPA draft text 2006.
75 See page 68 below.
76 Art. 6.2, EPA draft text 2006.
77 Art. 6.9, EPA draft text 2006.
78 Art. 6.4, EPA draft text 2006.
Formally identical treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of one Party (usually the importing country) compared to the like labour service or suppliers of any other Party. Nevertheless, specific commitments assumed under the NT principle shall not be construed so as to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

With respect to market access for labour supply, each Party shall accord labour services and labour service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions specified in its schedule of commitments.\textsuperscript{79} The sectors where market-access commitments may be undertaken include:

a) Service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

b) Service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

c) Service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

d) natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test.\textsuperscript{80}

\textsuperscript{79} Art. 6.3, EPA draft text 2006.
\textsuperscript{80} Art. 6.6, EPA draft text 2006.
In each of these sectors a Party shall not maintain or adopt less favourable treatment either on the basis of a regional sub-division or on the basis of its entire territory, unless otherwise specified in its schedule of commitments. The economic need test *inter alia* provides the basis of liberalising market access.

### 3.3.4. Trade facilitation

Trade promotion and facilitation is central to concepts of development embodied under the draft text. Chapter 4 of the draft text is devoted to trade facilitation and trade promotion. Individual sectors such as agriculture, fisheries, tourism and other products listed in the schedules which Pacific Parties may potentially export to EU markets are prioritised for development assistance.

The establishment and reinforcement of institutions that may enable Pacific parties to effectively participate in trade are also prioritised. These measures are deemed necessary to mitigate the economic and social impacts of trade liberalisation while simultaneously minimising the cost of needed adjustments.

The provision of development assistance is however made subjected to the principle of 'additionality'. The principle of additionality could be best described as the provision of additional extensive new “adjustment and trade development assistance to ensure full implementation of the EPA and achievement of the Pacific’s development goals.” The principle is codified under Article 9 (1) as follows:

> “The objectives of adjustment and trade development assistance shall be the provision by the Community and its Member States of the necessary additional financial and technical resources through an appropriate mechanism to ensure the full implementation of this Agreement and that the Pacific Parties achieve the development goals outlined in this Agreement.”

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81 Art. 9, EPA draft 2006.
82 Jane Kelsey above n 57, 91.
Hence, the EU is under an obligation to provide additional necessary adjustment and trade development assistance to Pacific Parties in addition to aid given for trade promotion and sectoral developments. The development of specific industries such as sugar and fisheries is covered in different parts of the draft text. In particular, Article 5.8 designs specific measures to secure the benefits Pacific Sugar industries enjoyed under the Sugar Protocol established pursuant to the Lomé Conventions. For instance, subsection 3 provides an ‘Agricultural Development Strategy’ with strategies to improve the efficiency of Pacific sugar industries to maintain growth of high-value sugar productions as well as projects that will provide short and long term income support to local farmers.

In the fisheries segment, various Pacific parties have decided to negotiate a separate stand-alone subsidiary fisheries agreement with the EU as part of an overall EPA. In particular, Solomon Islands, Federated States of Micronesia and Kiribati have existing bilateral fisheries agreements with the EU thus, are seeking to multilateral proposed fisheries agreement. A multilateral fisheries agreement may distribute to them more benefits than those gained from the existing bilateral fisheries agreements.

However, the EU has since expressed reluctance to engage in a separate multilateral fishing arrangement with individual Pacific Parties, as part of the EPA. The EU proposed that ROOs in this regard will be uniform across all six regions within the ACP. Presumably, if the EU adopts a different approach in concluding the Pacific EPA, it will undermine its interest in other regions within ACP such as Africa and the Caribbean.

83 In November 2006 Pacific ACP Ministers endorsed a draft fisheries agreement but it is difficult to obtain a copy at the time of writing. ‘Trade and Fisheries Ministers Endorse Draft Fisheries Partnership Agreement to Negotiate with EU’ 14 November (2006) http://www.bilaterals.org. (Accessed 20/05/2009).
85 Jane Kelsey above n 57, 88.
86 Pacific Civil Society ‘Concerns and Questions regarding the ongoing EPA negotiations’ (Notes prepared in the lead up to the EU consultations with Pacific governments and civil society on the proposed Economic Partnership Agreements (EPAs), (2008) http://www.pang.fj (Accessed 30/03/2009).
3.4. Conclusion

The draft text provided a separate framework for trade cooperation on goods including fisheries with liberalisation commitments and related provisions envisaged to be undertaken in separate Sectoral Partnership Agreements. Any rights and obligations under sectoral Partnership Agreements are therefore intended to be adopted separately and their terms would take precedence over the EPA. The irony of locating liberalising commitments on trade in goods in a separate agreement is designed to limit the exposure of Pacific states to ‘PACER triggers’ that may trigger negotiations for a PACER-Plus agreement between PICs and ANZ.87 Thus, Pacific Parties aspire to pursue the EU to multilateralise goods agreements in a way that will not trigger PACER-Plus negotiations. This is probably unavoidable. The issue about a separated goods agreement is raised here because it would be important for understanding the relationship between the EPA and PACER-Plus.

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87 See page 36 below.
4. PACIFIC AGREEMENT ON CLOSER ECONOMIC RELATIONS (PACER – Plus)

4.1 Introduction

The PACER is a framework agreement pursuant to which a free trade agreement (the PACER-Plus) between PICs and ANZ will be negotiated. It aspired to operate as a platform for the steady and continuous integration of PICs into the global economy. Therefore, the PACER is not a free trade agreement *per se* but, basically a legal arrangement that will eventually lead to the development of a free trade area.\(^88\) It should be noted that the PACER, in effect, has replaced the SPARTECA and brought to an end the system of non-reciprocity and trade preferences previously granted by ANZ to various PICs. The PACER-Plus agreement, on the other hand, is a free trade agreement currently being negotiated between PICs and ANZ under PACER framework agreement. It aims to codify enforceable legal obligations that will govern substantially all trade relations in the Pacific region, particularly between Australia and New Zealand and PICs.

4.2 Negotiations

The negotiations for a PACER-Plus agreement were formally launched in August 2009 at the fortieth Forum Leaders meeting in Australia.\(^89\) PICs pledged their commitment to enter into a free trade agreement with ANZ. Consistent with this commitment, Trade Ministers met in Brisbane on 23 and 24 October 2009 to take the next steps in the PACER-Plus negotiations.\(^90\) The ‘outcomes document’ released at the conclusion of this Forum Trade Ministers' Meeting (FTMM) incorporates important decisions that will

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\(^88\) Art. 3 (7), PACER 2001.


\(^90\) Ibid.
guide future PACER-Plus negotiations.\textsuperscript{91} The outcome document \textit{inter alia} highlighted the following areas:

a) intensifying national consultations, bearing in mind the differing capacities of Members to undertake consultations; and
b) undertaking meetings at Officials level to deepen understanding on common priority issues including, but not limited to rules of origin, regional labour mobility, development assistance (focusing on physical infrastructure for trade, trade development and promotion) and trade facilitation, including Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Standards and Customs Procedures.\textsuperscript{92}

Despite the much highlighted willingness by PICs to enter into negotiations with ANZ for a PACER-Plus agreement, they raised widespread concerns. Among other things, the issue of compliance with ANZ's strict quarantine requirements, rules of origins and SPS measures has been raised as a significant concern for a number PICs. But it is also clear that there is great potential to develop a region wide labour mobility and skills development program for the PICs.

In any event, the standard principles of trade liberalisation envisaged for the PACER-Plus agreement were set out under the PACER framework agreement. Therefore, in the absence of a PACER-Plus draft text, it is important to examine the framework agreement with a focus on major objectives and underlying principles, in order to determine the form PACER-Plus may take.

\section*{4.3 PACER framework Agreement}

The PACER framework agreement was formalised on 18 August 2001 in Nauru and entered into force on 3 October 2002 with 24 Articles which set out the bearing for trade

\textsuperscript{92} Ibid above n 91.
relations and economic development in the Pacific regions. At the beginning of July 2004 Australia, New Zealand, Cook Islands, Fiji, Kiribati, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands and Tonga had ratified PACER. The Marshall Islands, Vanuatu and Tuvalu have signed the Agreement but have not ratified it. Vanuatu went as far as enacting national legislation to give effect to PACER domestically. The Federated States of Micronesia (FSM) neither signed nor ratified the Agreement. The implementation of PACER was a significant step towards ushering a sound legal trading arrangement between PICs and ANZ.

4.3.1 Objectives

The framework agreement aims to provide PICs with the incentive for sustainable trade and economic development. The main objectives of the agreement are provided for under Article 2 (2) as follows:

a) to provide a framework for cooperation leading over time to the development of a single regional market;

b) to foster increased economic opportunities and competitiveness through more effective regional trade arrangements;

c) to minimize any disruptive effects and adjustments costs to the economies of the Forum Island Countries, including through the provision of assistance and support for the Forum Island Countries to undertake the necessary structural and economic adjustments for integration into the global economy;

d) to provide economic and technical assistance to the Forum Island Countries in order to assist them in implementing trade liberalisation and economic integration and in securing the benefit from liberalisation and integration; and

95 Pacific Legal Information Institute (PACLII) above n 93.
c) to be consistent with the obligations of any of the parties under the Marrakesh Agreement Establishing the World Trade Organisation.

Apparently, some of the obligations were meant to be implemented or applied instantly. For instance, member states were supposed to work together to promote free trade, in particular at the World Trade Organisation (WTO). Accordingly, any trade arrangement purporting to promote trade in the region must be consistent with the GATT. The more potent objectives were meant to come into effect under PACER-Plus, such as economic integration of PICs into the global economy through the establishment of a single regional market.

### 4.3.2 Economic integration

The framework agreement envisaged economic integration of PICs into the global economy, at least by 2011. Article 2 (1) provides:

“...Parties wish to establish a framework for the gradual trade and economic integration of the economies of the Forum members in a way that is fully supportive of sustainable development of the Forum Island Countries and to contribute to their gradual and progressive integration into the international economy.”

Further, Article 3(2) provides:

“The trade arrangements established in accordance with Part 2 of this agreement are intended to provide ‘Stepping Stones’ to allow Forum Island Countries to gradually become part of a ‘single regional market’ and integrate into the international economy.”

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In order to achieve the gradual integration of PICs into the global economy, a single regional market is considered as a stepping stone. While there is nothing wrong about the move towards creating a single regional market, the apparent difficulty is the question of using a single regional market as a pedestal for stepping into the global economy, particularly in view of the intrinsic challenges facing PICs.\(^98\) There is currently no empirical proof to suggest that a single regional market is practical or even desirable for integrating Pacific small economies. Hence to assume that PICs will achieve economies of scale under a single regional market is unrealistic.

### 4.3.3 Tariff liberalisation

Tariff liberalisation is to be developed in accordance with the MFN principle.\(^99\) Parties shall not raise barriers to trade and shall endeavour to progressively reduce tariffs as part of their overall strategy of trade liberalisation.\(^100\) This in effect requires the gradual reduction and eventual elimination of tariffs, customs duties and other related charges imposed on goods and products imported into the territory of a particular member country.

According to Article 10 however, only members of WTO shall undertake to provide all other Parties with no less favourable treatment in relation to matters such as SPS measures, customs procedures, product entry standards. This raises the question of whether or not non-WTO PICs are obliged to apply the MFN treatment in respect of the abovementioned matters. What is also not clear is how existing members of the WTO particularly Australia, New Zealand, Solomon Islands, Fiji and PNG are to maintain their WTO obligations in a way that will not adversely affect the economic performances of other non-WTO PICs.

Notwithstanding this, Article 4 offers some degree of protection to PICs against trade liberalisation that would adversely affect their economic performance. This provision

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\(^98\) See page 58 below.
\(^99\) Art. 6 (7), PACER 2001.
\(^100\) Art. 8 (1) (2), PACER 2001.
allows PICs to liberalise trade and integrate their economies at different paces, in accordance with divergent priorities, rather than automatically integrating their economies with ANZ.\textsuperscript{101} There is however no mention of any structural mechanisms through which the process of integration is to be facilitated so as to address the different priorities and peculiar economic characteristics of PICs. Structural mechanisms to facilitate trade liberalisation are important to prevent possible situations where PICs’ weak economies may suddenly be besieged by the more advanced economies of ANZ.

4.3.4 Free trade arrangements

A free trade arrangement is defined under Article 6 (1) (a) as follows:

“…at least one free trade area or customs union, or at least one agreement leading to the formation of such area or union, as defined in Article XXIV (8) of the General Agreement on Tariffs and Trade.”\textsuperscript{102}

It is important to note Article 3 (7), in light of the above definition, which states:

“This Agreement is not intended to be: (a) a customs union, an interim agreement leading to the formation of a customs union, a free trade area, or an interim agreement leading to the formation of a free trade area notifiable under Article XXIV of the General Agreement on Tariffs and Trade; (b) an agreement notifiable under Article V of the General Agreement on Trade in Services; or (c) in derogation of any pre-existing arrangements, obligations or treaties.”

Whilst the PACER is not a free trade agreement or customs union \textit{per se}, the promotion of free trade and economic liberalisation are its crucial objectives that were expected to have immediate effect, especially at the WTO level.\textsuperscript{103} Apparently, parties are mandated

\textsuperscript{101} Art. 4 (2), PACER 2001.
\textsuperscript{102} Art. 6 (1) (a), PACER 2001.
\textsuperscript{103} Art. 2 (2) (c), PACER 2001.
to commence trade liberalization and economic integration amongst them, upon coming into force of the agreement. In general terms, the PACER is an agreement of cooperation and negotiation with a view to developing a customs union or a free trade area in the Pacific region. In that, one of its fundamental goals is for PICs to begin to negotiate and create a free trade area, in particular with ANZ.

4.3.5 PACER triggers

A trigger could be defined as a decision and/or process that may activate something to start.\textsuperscript{104} The PACER has a number of triggers that may or have activated negotiations for a free trade arrangement between the PICs and ANZ. These triggers are set out in Article 6. There are basically three situations where PICs who are parties to the PACER may have to offer ANZ what is described as ‘consultation with a view to negotiating a free trade agreement’.

a) All PICs who are parties to the Pacific Island Countries Trade Agreement (PICTA) jointly entered into negotiations for a free trade agreement with at least one developed non-forum country.\textsuperscript{105}

b) Any one PIC who is a party to the PACER concludes a free trade agreement with a non-developed country outside the Forum whose GDP is higher than that of New Zealand.\textsuperscript{106}

c) Any one PIC who is a party to the PACER begins formal negotiations for a free trade agreement with one or more developed country outside the Forum.\textsuperscript{107}

On the other hand, if ANZ commence formal negotiations for free trade arrangements with any non-Forum country, then they shall offer to undertake consultations, as soon as


\textsuperscript{105} Art. 6 (4), PACER 2001.

\textsuperscript{106} Art. 6 (3) (b), PACER 2001.

\textsuperscript{107} Art. 6 (3) (a), PACER 2001.
practicable, with each PIC with a view to commence negotiations for improved market access for products into their markets.108

With these triggers the PACER monitors and/or regulates the actions of PICs as they relate to trade liberalisation with ANZ. Perhaps the developed Forum members feared that other developed countries such as the EU would have better access to Pacific markets, hence they had these triggers included in the agreement in order to ensure PICs grant to them equal advantages granted to other developed countries.

It should be noted however, that even though none of the above triggers has been activated, negotiations for a free trade arrangement with ANZ has begun by operation of Article 2, which requires parties to gradually over time enter into consultations for a free trade agreement. The significance of the PACER triggers rests in the fact that when complied with by all parties, a mutual atmosphere of tolerance and sincerity will prevail in their endeavour to foster fair trading and economic relations.

4.3.6 Trade facilitation

The parties acknowledge the importance of developing an appropriate, efficient and transparent framework for facilitating trade liberalisation. They endeavour to establish training programmes as well as financial and technical assistance to assist the even integration of PICs into the global economy. The design of trade facilitation programmes, including the level of financial commitment and other resources required for the implementation of trade such programme, shall take into account the special needs, resources and capacity constraints of PICs.109 In this respect, ANZ are expected to maintain and continue the existing preferential market access for Pacific products into their markets, until PICs enter into a trade arrangement with them that provides equal or better market access.

108 Art. 6 (6), PACER 2001.
In view of the above, one can conclude that the obligations to enter into negotiation for a free trade agreement by all parties, by way of Article 6 (3) (4) which requires PICs to commence negotiation with ANZ, is conditional to trade facilitation measures in order to be effective. In other words, the important decisions that will guide PACER-Plus negotiations must take into account the significant need for development assistance and trade facilitation measures that will assist PICs’ safe integration into the global economy.

Nevertheless, it is also important to note that the obligations under paragraph 3 and 4 of Article 6 do not apply to negotiations referred to in Article 10 (a) (b) which states:

“The obligation in paragraph 3 and 4 do not apply to: (a) the accession of any Pacific Island Country or Territory to the PICTA, provided that the PICTA rules of origin do not discriminate between Australia and New Zealand and other developed countries; or (b) the negotiation of any bilateral or plurilateral free trade arrangements between or among countries each of which is a Forum Island Country, or a Pacific Island Country or Territory, or a least developed country, provided that the rules of origin of such bilateral or plurilateral free trade arrangements do not discriminate between Australia and New Zealand and other developed countries.”

It is apparent that trade between PICs and ANZ through PACER-Plus on the stated aim of integrating PICs into the global economy, requires comprehensive technical and financial assistance. Without development assistance and other structural adjustment mechanisms for trade facilitation, PICs will be at risk to the potential impact of PACER-Plus.

**4.4 Conclusion**

The framework agreement provides the overall structure for negotiating a free trade agreement, the PACER-Plus. Trade liberalisation is to be consistent with the GATT MFN
principle. The framework agreement basically seeks to integrate Pacific economies into the global economy through PACER-Plus in such a way that it improves their competitiveness in international markets. To achieve this aim, development assistance and trade facilitation is crucial to achieve these objectives. Hence, it is important that parties seek to negotiate under PACER a free trade agreement (PACER-Plus) that address their development goals and priorities independent of other aspects of their relationship.
5. IMPACT ASSESSMENT

5.1 Introduction

This chapter provides an overall assessment of the potential impact of EPA and PACER-Plus on revenue and employment in selected PICs. An assessment of market access issues is also provided. Such a general approach is taken since the paper is explorative or descriptive in nature in terms of its objectives, rather a comparative analysis. To put this assessment into perspective discussion begins by examining the basic legal requirements envisaged under the EPA and PACER-Plus. While there were careful efforts that went into the assessment of the potential impact of these agreements, these are by no means the only potential impact of EPA and PACER-Plus. However to illustrate the objectives of this paper, these areas were examined.

5.2 Contextualising legal requirements

There are two basic legal requirements of free trade envisaged under EPA and PACER-Plus consistent with the GATT. First is the standard requirement that products from all countries must be treated equally in relation to the imposition of tariff, import duties and other similar charges regardless of their country of origin. Parties must endeavour to progressively reduce and eliminate tariffs and related import charges. This principle of equal treatment has its basis in the GATT MFN principle.

Also, according to this principle, the preferential trade deals PICs have with the EU and ANZ under Lomé Conventions and SPARTECA respectively are no longer acceptable. As stated in earlier discussions, the EU and ANZ granted various PICs’ products preferential access to some or all of their markets under the Lomé Conventions and SPARTECA without demanding reciprocal treatment. The GATT where a waiver is granted or byway of an enabling clause in fact permitted these preferential arrangements.

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The rationale behind these preferences is to help PICs boost and diversify their exports by enabling their products (basically agricultural products) to enter EU and ANZ markets.

The second fundamental legal requirement relates to the internal use, sale and/or distribution of imported goods and products. A member country is prohibited from discriminating against imported goods and products by affording them less favourable treatment, compared to a comparable local product, within its national boundary. In other words, imported products shall be treated in the same way as identical local products. This requirement has its foundation in the GATT National Treatment principle. It imposes a duty on the importing member country to apply the same rate of internal taxation and other charges to its domestic products as it does to like imported products.

In compliance with the NT requirement, countries are required to stop protecting domestic industries and local producers through the imposition of subsidies, anti-dumping or safeguard measures. In order to meet these legal requirements ‘unacceptable’ trade barriers are required to be removed. Unacceptable trade barriers can be classified in various categories. At present the standard list of unacceptable trade barriers that countries must reduce and/or progressively eliminate are as follows:

(a) **Tariffs** - Tariffs are taxes that are imposed on imported goods and products, making them more expensive than locally produced goods.\(^\text{(111)}\) Countries usually impose tariffs for two reasons. First, tariffs are imposed on imported products to protect domestic producers and industries that cannot effectively compete with foreign producing firms or producers. Second, tariffs are imposed to raise revenue for the government, hence are important source of income.

(b) **Import quotas** - Import quotas are duties and/or import charges that are imposed on a quantity of imported goods and products by the importing country. Unlike tariffs, import quotas may not necessarily be used to raise revenue. However, it may be imposed to

generate surplus profit for firms that use an ‘import licence’ and at the same time increasing the welfare of domestic producers. An import licence restricts the quantity and type of products imported into the domestic economy of the importing country. Import quotas are often regarded as a form of quantitative restriction because they restrict the amount of products and goods that are imported into the territory of a particular country.

(c) Subsidies- Subsidies can be categorised into two categories namely export and domestic subsidies. Export subsidies are fiscal support afforded to exporters thereby enabling their products to be cheaper on the international markets. Domestic subsidies are fiscal support afforded to local producers to enable them to compete against imported goods and products or guaranteeing local products a minimum price.

(d) Temporary Import bans - Temporary import bans can also be classified into two categories namely anti-dumping and safeguard measures. Anti-dumping and safeguard measures may collectively be referred to as bans to protect infant industries by banning the importation of a particular good or product in order for a new local business to get established or as an emergency safeguard measure to inhibit a sudden flood of imports that may besieged a local producer and threatened its survival.

Where any of the abovementioned prohibited measures are applied contrary to the spirit of GATT envisaged under the EPA and PACER-Plus, countries are said to accord discriminatory treatment. The penalty for discriminatory conduct in trade relations may include severe trade sanctions and/or withdrawal of some trade privileges.

5.3 Revenue

Tariffs and import duties are important sources of revenue for all PICs. Like any other net-importing countries, PICs depend heavily for income on taxes collected as tariffs on imported goods and products. Statistics gathered by Nathan Associates Inc. and compiled

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112 Jane Kelsey above n 104, 10.
113 Jane Kelsey above n 104, 11.
in 2007 indicated that tariffs provided Pacific governments with more than half of their recurrent revenue.\textsuperscript{114} (See table 1 below) Table 1 shows that Tonga, Vanuatu, Kiribati and Samoa recorded the highest percentage of revenue collected from tariffs, followed by the Marshall Islands, Fiji, Federated States of Micronesia (FSM) and Cook Islands while other PICs show average rates. Tariff revenue as a percentage of imports from ANZ comprised a large percentage of total recurrent revenue, perhaps because PICs import more goods and products from these two countries than from any other developed country.

Table 1: PICs Tariff Revenue

<table>
<thead>
<tr>
<th>COUNTRIES</th>
<th>Tariff revenue as % of total revenue</th>
<th>Tariff Revenue from ANZ as % of total revenue</th>
<th>Tariff Revenues from ANZ, (USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cook Islands</td>
<td>15.1</td>
<td>12.2</td>
<td>6,460,122</td>
</tr>
<tr>
<td>Federated States of Micronesia</td>
<td>17.7</td>
<td>0.6</td>
<td>267,186</td>
</tr>
<tr>
<td>Fiji</td>
<td>17.4</td>
<td>4.9</td>
<td>35,173,983</td>
</tr>
<tr>
<td>Kiribati</td>
<td>23.0</td>
<td>14.3</td>
<td>7,917,941</td>
</tr>
<tr>
<td>Marshall Islands</td>
<td>21.3</td>
<td>2.2</td>
<td>718,881</td>
</tr>
<tr>
<td>Nauru</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Niue</td>
<td>2.9</td>
<td>2.8</td>
<td>399,982</td>
</tr>
<tr>
<td>Palau</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Papua New Guinea</td>
<td>3.6</td>
<td>1.4</td>
<td>17,735,890</td>
</tr>
<tr>
<td>Samoa</td>
<td>25.0</td>
<td>14.0</td>
<td>15,041,762</td>
</tr>
<tr>
<td>Solomon Islands</td>
<td>9.0</td>
<td>3.7</td>
<td>3,072,816</td>
</tr>
<tr>
<td>Tonga</td>
<td>33.3</td>
<td>17.2</td>
<td>9,845,417</td>
</tr>
<tr>
<td>Tuvalu</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Vanuatu</td>
<td>27.1</td>
<td>17.2</td>
<td>12,398,316</td>
</tr>
</tbody>
</table>

Source: Pacific Island Forum Secretariat 2007

In particular, total tariff revenue collected by the imposition of tariffs on goods originating from ANZ is recorded to be highest in Fiji, PNG, Samoa, Vanuatu and to some extent Tonga and Solomon Islands. These are the biggest economies within the

Pacific region. While smaller economies of PICs such as Niue and Federated States of Micronesia recorded relatively lower figures, this depends on their volume of importations. The figures above indicated that reduction and eventual elimination of tariffs under the EPA and PACER-Plus will result in substantial loss of government revenue in all PICs.

The report referred to above, commissioned by the PIF and completed by Washington-based consultants, Nathan Associates Inc., provided the estimated percentages of revenue loss likely under PACER-Plus in each PIC. The report revealed that Vanuatu stands to lose around 17% of its annual government revenue, as does Tonga, while Samoa and Kiribati stand to lose around 14% of their revenue. Bigger economies like Fiji and PNG stand to lose more than $10 million each year. These figures by far represent a large percentage of PICs total revenue.

Similar projections of revenue loss are expected under the EPA. The PANG study undertaken in 2007 revealed that Solomon Islands will lose 12% of it recurrent revenue while Samoa 13% and Kiribati 11% respectively. Despite the fact that PICs have negligible trade in goods with the EU, the PACER triggers which require them to commence consultations with ANZ for a free trade agreement and the resulting trade agreements, is anticipated to ignite unrestrained liberalisation with revenue of this estimated magnitude. In view of the above statistics, it is apparent both EPA and PACER-Plus will result in huge revenue loss with serious implications for Pacific vulnerable economies. The likely impacts of revenue loss are now discussed.

(a) Higher consumer taxes: The PICs will have to look for alternative ways to raise revenue for their governments to provide essential social services. This may lead to the introduction of other forms of taxations such as a Value Added Tax (VAT) to earn revenue. However, the introduction of VAT or a similar consumption tax will have
negative impact on people by shifting the burden of paying tax from wage and salary earners to customers regardless of the income level. Unlike income taxes which are imposed on what is earned, VAT is levied on what is consumed. While it is commonly claimed that VAT is equitable as it applies equally when imposed by government at the same rate to all customers and spreads the burden as widely as possible, such a tax system nevertheless falls most heavily on the poor. From a social and distributive justice perspective, such a tax is inequitable and unjust. In this regard, VAT may not be a desirable tool for raising revenue or meeting the cost of implementing a reciprocal trade agreement.

Against this backdrop, the Solomon Islands government has recently considered introducing VAT, with the hope that a shift from tariffs to VAT will be revenue neutral with no adverse effects. Nonetheless, a recent International Monetary Fund (IMF) study discovered that PICs, especially least developed countries (LDCs), will find it difficult to regain lost tariff revenue from a tax system such as VAT. (See Box 1)

**Box 1: IMF report**

The International Monetary Fund (IMF) study revealed that less than 30% of revenue lost from trade liberalisation over the last 25 years has been recovered through other means like the Value Added Tax (VAT) system. This finding is even worse for low income countries or Least Developed Countries (LDCs). The PICs are all categorised as low income earners with Solomon Islands, Kiribati, Vanuatu, Samoa and Tuvalu labelled as LDCs. This means the VAT system will not be able to help these countries to maintain and or regain earlier tariff-based revenue levels.

Source: International Monetary Fund (IMF) 2005

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118 Ibid above n 117, 20.
A regional example to illustrate the IMF findings is Vanuatu. In the late 1990s, when the Asian Development Bank (ADB) forced Vanuatu to lower tariffs and introduce VAT as part of the conditions for a new loan, the country suffered massive revenue loss from which it took many years to recover.\textsuperscript{120} According to some local observers, the VAT system contributed to large-scale urban drift resulting and associated social problems like over-crowding and squatter settlements.\textsuperscript{121} Over 90% of the cash available in Vanuatu at any one time circulates within Port Vila; it hardly gets out into the rural areas and is eventually sent out of the country as repatriated profits or to purchase consumer goods.\textsuperscript{122} Even most isolated rural dwellers need cash to pay for basic necessities such as tea, sugar, kerosene, iron and steel implements and school fees. As a consequence, they have to migrate to urban centres to access it.

Despite this, it is anticipated that countries such as Vanuatu and Samoa who already have VAT systems in place will be forced to raise their VAT tax rate. In 2006 for instance, the Samoan Government increased Value Added Goods and Services Tax (VAGST) from 12.5% to 15%.\textsuperscript{123} The Samoan government will have to raise VAGST again or extend VAGST to areas that are currently exempted (like health, education, bus and taxi transport) to make up for further revenue loss likely under EPA and PACER-Plus.

Overall, these observations inter alia indicated that VAT may not be appropriate or even a desirable alternative to mitigate revenue loss because of the adverse impact it has on consumers. It shifts the burden of paying tax from salary and wage earners to consumers and works to their disadvantage, thereby further reinforcing the gap between rich and poor. Therefore, to lessen the impact of such a tax, basic food and necessities such as sugar, kerosene, soap and rice should be excluded from VAT to ensure poorer sectors of the populations can afford them and avoid marginalisation.

\textsuperscript{122} Ibid, 4.
\textsuperscript{123} Wesley Morgan above n 120, 3.
(b) Undermining essential services: Pacific governments will find it difficult to provide essential services if they lose much of their revenue. Services such as health, education, water, electricity, police and emergency services are important services that should be available to everyone. Some of these services like health and education represent basic human rights and governments are obliged to provide them at affordable prices. For example, in Samoa revenue losses of the magnitude likely under EPA and PACER-Plus mean the government will have difficulty continuing to provide public services. This is illustrated by the announcement made on May 2009 where the government annual spending on education was to be reduced by 8% while spending on health would take a 14.9% cut.124

Furthermore, in light of the EPA and PACER-Plus negotiations the Solomon Islands government has significantly reduced budget allocation for the education sector to ensure other sectors such as health, agriculture and infrastructure development.125 Agriculture and infrastructure development in particular are designed to encourage and facilitate rural national development hence are also prioritised by the current government. This trend indicated that reduced government revenue may seriously limit the capacity of LDCs such as Solomon Islands, Kiribati, Tuvalu and Vanuatu to structurally develop their national economies. As Robert Scollay observed:

“… [I]t is important to emphasise that trade liberalisation will only deliver its full benefits if other necessary reforms are also carried out. Failure to implement other necessary reforms can substantially reduce and in extreme cases entirely negate the benefits of trade liberalisation…”126

Given this I am of the view that PICs will gain minimal benefits and in some cases no benefit from participating in EPA and PACER-Plus, especially when there are no

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124 Wesley Morgan above n 120, 4.
structural adjustments or reforms made to accommodate changes required by these agreements.

(c) High adjustment costs: Significant domestic structural adjustments are also anticipated to accommodate liberalisation commitments under EPA and PACER-Plus. These adjustments may range from reform of the customs and tax system of a country to broad reform options such as the introduction of VAT. The revenue consequences study commissioned by PIF, referred to above, provided the estimated costs of domestic adjustments for each PIC.127 (See Table 2)

As illustration, the cost estimation figures for bigger Pacific economies of Solomon Islands, Fiji and Vanuatu are discussed. This is necessary to show that adjustment costs in smaller PICs will be even more significant. Also, the limit of space in the paper do not allow me to deal exhaustively with each country but, by using the larger economies as illustration, one can extrapolate from that, the more significant impact on the smaller economies.

Table 2: Estimated adjustment costs

<table>
<thead>
<tr>
<th>Countries</th>
<th>Adjustment Cost estimates %</th>
<th>Adjustment costs estimates in figures (in USD Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solomon Islands</td>
<td>2-4</td>
<td>12 – 18</td>
</tr>
<tr>
<td>Fiji</td>
<td>2-4</td>
<td>22 – 45</td>
</tr>
<tr>
<td>Vanuatu</td>
<td>20-25</td>
<td>1.4 - 1.8</td>
</tr>
</tbody>
</table>

Source: Pacific Island Forum Secretariat 2007

127 Nikunj Soni, Belinda Harries and Betty Zinner Toa above n 111, 63 - 172.
In summary, table 2 shows the tariff adjustments required in Solomon Islands would be in the range of 2-4% of total recurrent revenue which is equivalent to about 12 – 18 million USD. This estimation took into account the changes in 2007 where the central government substantially lowered its tariffs on basic goods such as soap, noodles, clothes, boots, exercise books, water tanks and mattresses to a top rate ranging from 10-20%.\(^\text{128}\)

In Vanuatu the tax adjustments required would range between 20-25% of its total recurrent revenue. In terms of the local currency, the total estimated revenue loss is approximately 1.4 to 1.8 billion vatu (equivalent 1.8 million USD). It should be noted that Vanuatu does not have any income tax and import tax at the rate of 27% serves as a major source of revenue. The estimated figures factored previous loss of revenue as a result of import tax adjustments. The current VAT rate in Vanuatu is 12.5%.

In Fiji’s case, tariff adjustments required would be in the range of 2-4% percent of total recurrent revenue, approximately 22 to 45 million FJD. This estimate does not include other trade flow effects or the broader economic impact that reductions in tariff revenue may have. Adding those factors would make the impact more significant. Particularly, in view of recent political instability (military takeover), impact forecasts for 2010 are likely to be significant partly because of the various trade sanctions imposed by major trading partners especially ANZ. This suggests that the Fiji economy will be slower than expected.

In stark contrast, the study indicated that revenue loss in smaller PICs such as Kiribati or Tuvalu will be more severe. For example, Tuvalu will likely lose all of its import duty or tariff revenue, given that most of its imports come either from neighbouring PICs or ANZ.\(^\text{129}\) This loss is inevitable and Tuvalu must find alternative means of raising revenue to mitigate the potential economic impact of these changes. Even though the EPA

\(^{128}\) Pacific Network on Globalisation (PANG) above n 117, 69.
\(^{129}\) Nikunji Soni, Belinda Harries and Betty Zinner Toa above n 111, 165.
proposes giving ‘grace periods’\textsuperscript{130} to help PICs adjust their internal tax system, I am of the opinion in view of the above analysis that within this period PICs are expected to experience significant cost of adjusting their national economies.

5.4 Employment

The majority of businesses and industries such as fisheries, sugar, brewing, tobacco and garment manufacturing are major sources of employment in many PICs. However, these industries depend, to a large extent, on subsidies and preferential trade arrangements to sustain production efficiency and rates of employment. In Solomon Islands for instance, the fisheries industry were granted subsidies by the government to subsidise costs of production at the same time ensuring competitive prices.\textsuperscript{131} The same is true for other local businesses, farmers and fishermen who depend heavily on governments to protect them against harsh competition through subsidies and tariffs.

Given this, the erosion of preferential arrangements as well as the removal of measures like subsidies and tariffs will potentially increase unemployment, since many local firms will go out of business due to harsh competition. Local industries would not be able to compete with cheaper imports that would flood the domestic economy.

In particular, opening Pacific markets to well-established industries in Europe and ANZ, who do not operate with constraints, may not necessarily make Pacific businesses more efficient but will have the potential to wipe them out. There are empirical findings corroborating this contention. For instance, a recent study on the Fiji garment and textile industry has discovered that subsidies and preferential trade arrangements have helped the industries to structurally develop and expand, providing a large section of the population with employment opportunities.\textsuperscript{132} (See Box 2)

\textsuperscript{130} See for instance Article 9.5 (5), EPA draft text 2006.
Box 2: Fiji Garment Industry

The Fiji garments, clothing and textile industry has been a major source of employment for Fiji’s growing labour force in 1990s, when protected and facilitated by tax-free concessions and preferential arrangements, primarily under SPARTECA. The contribution of the clothing and textiles industry to employment, in the manufacturing sector, rose from about 32% in 1988 to 49% in 1999 while its contribution to total paid employment showed a similar growth trend from 6.8% in 1988 to 12.8% in 1999. Following the coming into force of PACER and now negotiations of PACER-Plus, tax-free concessions for the garment industry were seriously affected. For a fairly extended period of time, the industry has ceased operation and export of locally made clothing and textiles and many workers lost their jobs.

Similar discoveries were made in a study examining the potential impact of the EPA on the Fiji Sugar industry. (See Box 3 below) In brief, the study revealed that even though Pacific countries export few products to the EU market, the potential flow-on effect of removing trade preferences and tariff liberalisation will be high on industries (such as Sugar and Fisheries) that have preferential concessions with the EU market under the Lomé Conventions. The study concluded by stating that losses due to erosion of preferences and removal of subsidies will be more costly to PICs than the gains from global free trade competition.

To summarise the findings, the authors of the Fiji’s Sugar, Tourism and Garment Industries study Prasad and Narayn in commentary observed that the current proliferation of free trade agreements have the potential to wipe out PICs’ manufacturing industries, unless policy makers and industry stakeholders recognise the need to re-organise these industries towards niche market production, and are able to improve their competitiveness.133

133 Paresh Narayan and Biman Prasad above n 132, 17.
Box 3: Fiji Sugar Industry

The Fiji Sugar Industry is one of the major employers in Fiji. The industry employed about 200,000 people, approximately 25% of the Fijian population. The majority of employees are unskilled low income labourers or farmers and women whose livelihood depends solely on the industry. The industry has been assisted by the sugar subsidy granted under the EU sugar protocol. The sugar subsidy provided guaranteed import quotas for Fiji sugar to the EU market and stable prices for local producers which are approximately three times higher than what would have been earned at the world market. With the advent of the EPA, the sugar subsidy has to be removed to pave the way for non-reciprocal commitments and obligations. Approximately 200,000 employees will lose their jobs. Those who will be severely affected are small scale farmers, unskilled workers and cane cutters. The costs of resettling displaced small scale farmers will be enormous for the government. Small scale farmers are those engaged in least efficient and low production farms.

While it is generally accepted that trade liberalisation and the resulting competition may force local firms to become more efficient, the above examples indicated that instead of becoming more efficient, many local businesses and industries will face significant constraints and farmers and workers will likely lose their jobs. The poverty implications of unemployment will be enormous for the PICs to address effectively. In my view, free trade rules and pressure from neo-liberal policies of developed countries have created a combination of circumstances that threaten the viability of the economic base of PICs.

5.5. Market access issues

Market access is one of the hotly debated topics in the EPA and PACER-Plus negotiations particularly the ROOs. Generally, the ROOs set out the legal criteria to

134 Padma Lal and Rashmi Rita ‘Potential Impacts of the EU Sugar Reform on the Fiji Sugar Industry’ School of Economics, University of the South Pacific (USP) (2005), 4.
determine the national origin of products. Where a product is produced wholly in one
country, determining the origin is not difficult. Nonetheless, where products are produced
through the amalgamation of inputs from different sources and countries, conferring
origin to products is a complex legal issue. And it is more difficult to determine the
country of origin of a product when its manufacturing takes place in more than one
country. This section provides an overall assessment of the likely impact of market access
principles under EPA and PACER-Plus with specific focus on ROOs and SPS measures.

5.5.1 Rules of Origin (ROOs)

The ROOs envisage under EPA and PACER-Plus will basically be accessed against three
(3) broad criteria. These are (i) change of tariff classification (ii) national value content
(iii) processing requirements. Usually, change of tariff classification rules use the product
categories of the national tariff nomenclatures to identify materials used in the production
of a good that may, and may not, be imported from a particular country. In terms of value
content and processing requirement, it is a condition that the processes performed in
manufacture of all products, be performed in the territory of a particular country, where
not less than half of the factory or work costs of the goods is represented by the value of
labour or materials, or both, of that country.

For PICs to be able to export their products to EU and ANZ markets under the EPA and
PACER-Plus, their products must meet the respective ROOs under these agreements.
Accordingly, products must be wholly produced in the territory of a particular Pacific
country in order to qualify under the ROOs. However most, if not all, PICs export semi-
produced products that are not wholly produced locally. This is due to a number of
factors. The most significant of these factors are first, PICs have very limited
manufacturing industries that use local material, labour and cost of production to produce
goods. Second, most of the industries operating in various PICs are owned by foreign
countries and companies, hence use foreign inputs in the production of goods. In light of
these, it is clear that PICs will continue to face difficulties in meeting the requirements
under the respective ROOs, unless specific capacity building strategies are designed to boost the manufacturing sectors.

In my assessment production will concentrate only in countries whose products meet the ROOs, especially if they also have advantages of size, technology and transport systems. This assessment is supported by the analysis of Jane Kelsey in a report prepared for the PIF where she described the likely impact of ROOs envisaged under PACER-Plus on local foreign-owned industries.135 (See Box 4)

**Box 4: BAT Industry**

The concentration of production in countries that meet the ROOs under PACER-Plus will then result in the emergence of regional monopolies, since the regional market is too small for two competitors to operate in. The emerging monopolies can not be effectively regulated by an individual country and the quest to make profit will adversely affect consumers, quite the opposite of the price cuts and consumer benefits said to be the advantage of trade liberalisation.

Similarly, under the EPA, PICs will face significant market access problems. Pacific parties who will potentially export goods to the EU market will have to satisfy the EU

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135 Jane Kelsey above n 104, 15.
ROOs. It is important to note that ROOs under the draft text were drafted by Pacific trade negotiators and the EU still have to respond or agree with these ROOs, hence they are not final. The EU ROOs will have to define and determine products originating from a Pacific Party that could be exported to the EU market in accordance with their stringent SPS measures.

As anticipated, the EU ‘working document 2007’ for negotiating the EPA outlined different terms of ROOs, particularly on fisheries products. They are similar to those stipulated under the EU-PNG interim EPA. The ROOs under the EU-PNG interim EPA provide that only fish caught in the territorial sea (of 12 nautical miles) qualify as wholly originating in PNG. Thus, fish caught in the 200-mile zone are not qualified as wholly originating unless they are caught by an ACP, EU or Overseas Countries and Territories (OCT) registered vessel or a vessel sailing under ACP, EU or OCT flag and crewed by at least 50 percent ACP, EU or OCT nationals, or owned by EU, ACP or OCT nationals.

A study conducted by Oxfam New Zealand in 2007 discovered that if similar ROOs to that of EU-PNG interim EPA are incorporated in the proposed EU-Pacific wide EPA, they will work to disadvantage PICs. (See Box 5). This is true since many boats fishing in Pacific fishing industries are owned by foreign companies and/or countries. For instance, in Solomon Islands most fishing vessels for the Solomon Taiyo (Soltai)

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139 These are countries which have links to Denmark, France, the Netherlands and the United Kingdom and are associated with the EU as listed under the EC treaty. For instance the Pacific Island Countries of New Caledonia, Pitcairn and Wallis and Futuna have links to France. Their nationals are in principle EU citizens, even though they are not subject to EU law in the way that citizens of the EU Member States are.


fisheries industries are registered under Japanese flag. Similarly, of all fishing vessels fishing in PNG fisheries industries, only 7 are flying the PNG flag and thus meeting the ROOs. While comparable quantities of fish are caught within the 12 nautical miles, most of the fish stock that is viable for exporting is found within the 200-mile zone where foreign-owned vessels fish. Clearly a change in the ROOs to match those under the draft text is necessary in order for fish caught within the 200-mile EEZ to be considered as originating for respective PICs.

**Box 5: Oxfam NZ report**

The report by Oxfam New Zealand discovered two (2) ways in which the EU ROOs for fisheries would work against PICs. (i) They will encourage export finishing efforts to be concentrated close to coastal waters, thereby threatening inshore fisheries stock and other marine resources; (ii) They will compel PICs to sign access agreement with EU in order to be able to obtain originating fish for export to the EU. The report recommended that changes to the definition of ROOs is crucial under the Pacific wide EPA to enable PICs retain processes and exports to EU larger proportion of their catch from within their waters. The necessary changes must allow any fish caught in a Pacific party’s 200-mile zone to qualify as fish caught from that country.

Source: Oxfam New Zealand 2007

In view of the above discussion, it is apparent that PICs need to negotiate with EU and ANZ flexible ROOs under EPA and PACER-Plus that will work towards improving their competitiveness in trade. The implementation of such ROOs will not only allow PICs products to enter EU and ANZ market, but will also play a critical role in nurturing and/or formation of domestic manufacturing industries. At present, it is impossible to

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143 Oxfam New Zealand above n 141.
determine any benefits of a particular form of ROO as they appear in the draft text or envisaged under PACER-Plus at any level of generalization. It is therefore crucial that PICs prioritise, in both EPA and PACER-Plus negotiations, how to utilize the ROOs to facilitate their exports without putting their products and producers in a disadvantaged position.

5.5.2 Sanitary and Phytosanitary (SPS) Measures

The SPS measures are commonly used to protect ‘national health and safety’ from products containing toxic substance exported or imported into the territory of a particular country.\(^{145}\) A country may invoke SPS safeguards and ban the importation of a particular product if it can prove primarily through ‘scientific evidence’ that the importation of a particular product is in fact hazardous to human health.

Box 6: Kava Ban\(^{146}\)

The German Federal Institute for Drugs and Medicinal Devices (BfArM) claimed that Pacific products containing kava or kava’s active ingredient (kavain) are harmful to human health. As a result they withdrew product licenses for all kava products into German markets. A number of European Countries followed suit by placing similar bans on kava imports, particularly from Pacific kava exporting countries. Some European countries called on kava producers to voluntarily recall their products. The effects of the ban(s) and consequent negative publicity have greatly disadvantaged Pacific kava industries. Kava exports into European markets came to a virtual halt in 2002. To date, kava products are not imported by Germany and other European states.


However, SPS measures can be used as ‘distinguished protection’ if applied contrary to the spirit of GATT. The Pacific experience on the kava export ban (see Box 6 above) in various European markets offers a classic example of the way in which SPS measures could be used as distinguished protections.

However, in another significant discovery, the BfArM claim that Pacific kava products are harmful to human health was held as ‘unproven’ (see Box 7). The PICs simply do not have the technology, expertise and laboratories to verify the BfArM claim so the legality of the ban was not challenged.

**Box 7: CDE report**

In 2003, a report commissioned by the Centre for Development of Enterprise (CDE) in Brussels, Belgium entitled “In-depth Investigation into EU Member States’ Market Restrictions on Kava Products” discovered that the severe toxic effects of kava, claimed by German and EU drug regulation authorities cannot be regarded as proven. The scientific evaluation component of the report revealed that the benefit - risk ratio for kava evidently has to be regarded as positive and the withdrawal of market authorisation of kava preparation was unjustified. The report further indicated that the safety and efficacy of kava in the treatment of anxiety and stress is proved by 20 clinical trials involving more that 10,000 patients.

There are a number of important lessons to draw from the above studies. First, PICs need to acquire the ability, expertise and technology or laboratories to confirm or verify scientific claims and enforce standard regulations. The CDE study shows that PICs lack

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the required technology, skill and equipments to carry out sophisticated scientific experiments to verify whether products meet SPS requirements and therefore are safe to export or import. Second, PICs need to obtain the industrial capacity in production to meet the standard SPS requirements of EU and ANZ markets. The BfArM study on kava ban clearly illustrated how difficult it is for Pacific products (particularly agricultural products) to reach the standard required by SPS measures in other developed markets without sound industrial base.

5.6 Conclusion

The above assessments indicated that if PICs start from sufficiently disadvantaged positions and participate in trade, then the application of trade principles envisaged under EPA and PACER-Plus, without any other compensating adjustment mechanisms will in fact disadvantage. PICs would be required to make expensive economic adjustments and tariff reduction reforms which they cannot effectively undertake, especially when there are very limited alternatives to mitigate the likely impact of these trade liberalising measures. It is also equally difficult for PICs to meet the SPS and ROOs requirements under EPA and PACER-Plus, unless significant improvements and developments are undertaken in the manufacturing sectors.
6. CHALLENGES ASSESSMENT

This part provides a brief assessment of the main challenges confronting PICs. It argues that these challenges have to a large extent limited PICs capacity to participate effectively in trade with EU and ANZ and to reap the benefits of trade. It begins by exploring the comparative advantage theory. This is important to explain the philosophy underpinning neo-liberal trade ideologies and the benefits of free trade. The challenges identified herein could commonly be referred to as geographical or economical constraints, because they all relates to physical and geographical features.

6.1 Comparative advantage

The benefits of reciprocal trade underpinning EPA and PACER-Plus are largely premised on the theory of comparative advantage. David Richardo first coined the theory of comparative advantage in his book ‘Principles of Political Economy and Taxation’ where he described it as follows:

“… [it] would be mutually beneficial for countries to specialize in goods for which they had comparative advantage and trade, and by doing so, citizens in all trading nations will benefit reciprocally from exchanging goods in international markets...”

The theory has profound charisma in the sphere of trade law worldwide. In particular, the principle of non-discrimination espoused through core trade principles (such as the MFN and NT) has its origin in the comparative advantage. The theory holds that reciprocal trade liberalisation may stimulate economic growth by increasing the output and real incomes of trading partners through reallocation of resources from less productive to more productive sectors. This in turn could lead to more efficient resource utilization

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149 David Richardo, Principles of Political Economy and Taxation (1817).
and decline in consumer prices and benefits all countries who apply it.\textsuperscript{151} To date, this explanation forms the basis of the economics of trade and is used to counter arguments in favour of protectionism policies.

The rational of the comparative advantage was stated in the preamble of the agreement establishing the WTO, and was worded as the ‘optimal use of the world’s resources.’\textsuperscript{152} It suggests that it would be mutually beneficial for countries to specialise in goods in which they had relative advantage and trade.\textsuperscript{153} In that way the world’s resources could be optimally used and maximised.

Based on the comparative theory rational it is often argued that PICs should stop producing what they cannot produce as efficiently as other countries and refocus their resources on what they can produce better than any other country and trade in those goods.\textsuperscript{154} In doing so, they would be able to diversify their economies and compete in regional and international markets.

The theory itself assumes the global marketplace is a ‘level playing field’ where PICs will automatically get access to new markets for their exports in return for opening their own markets.\textsuperscript{155} The assumption however does not match the reality of the PICs situation. As Fiji’s Minister for Commerce, Industry, Trade and Public Enterprises, Isimeli Bose, at the first WTO Ministerial Conference in Singapore noted:

“… [We] are told in a forum such as this that we are all equal and we have a level playing field. However, when I consider my inability to influence opinion, to mobilize razor-sharp executives who lobby convincingly, to

\textsuperscript{151} Anne Osborn Krueger ‘Dismantling Barriers and Building Safeguards: achieving prosperity in an age of globalisation’ (2003) 17 \textit{Asian-Pacific Economic Literature} 2.


\textsuperscript{153} David Hyman, \textit{Economics} (1989).

\textsuperscript{154} Anne Osborn Krueger above n 151, 25.

stage-manage events as they unfold, and my lack of authority to influence the debate, then I realize that there is no level playing field in trade, and some are indeed more equal than others…”\textsuperscript{156}

This statement described the existing paradox of the notion of equality \textit{vis-à-vis} non-discrimination as it was embedded in neo-liberal trade principles. Indeed PICs are not equal in terms of economic development, technology, expertise and/or human power.

Given this, the principle itself is not self-evident, and there are doubts about its persuasion, practical validity and application in the Pacific. It may be difficult to perceive how PICs will reap any tangible benefits from automatically integrating their small economies into the global economy. The theory of comparative advantage and neo-liberal ideologies thus assumed idealistically that a country can automatically achieve benefits from participating in global trading.

\textbf{6.2 Smallness}

PICs vary in size, their land area, population and resource endowment, degree of industrialisation, human development and composition of exports.\textsuperscript{157} The smaller the size of a country, the fewer natural and human resources it has. For instance, the Polynesian and Micronesian group of islands such as Tonga, the Cook Islands, Samoa and Federated States of Micronesian have basically medium size volcanic islands with slightly rich soil but with very little or no mineral wealth.\textsuperscript{158} These countries may have prospects for development of land resources for agriculture and forestry. However, any land and agricultural development will require immense labour and technological input.


\textsuperscript{157} Philip Powell, ‘Too young to marry’: economic convergence and the case against the integration of Pacific island states’ in Satish Chand (ed.) \textit{Pacific Islands Regional Integration and Governance} (2005), 218.

Nonetheless, a potential opportunity to boost these countries’ trade capacity depends on the development of marine resources within their EEZ. Hence, the implementation of favourable ROOs under EPA and PACER-Plus dealing with fisheries may perhaps help these countries to gain from trading.

For smaller PICs such as Kiribati, Marshall Islands, Tokelau and Tuvalu, the problem of smallness is a major concern. These are atolls, small and isolated groups of islands with very poor soil for agriculture and limited resource endowments. Most of these islands are no more than three meters above sea level. Their only prospect to materialise trade benefits and develop their economies depends on the development of marine resources within their EEZ. Even so, developing marine sectors for trade would need financial assistance and sound development policies, which could only be effectively facilitated by development assistance.

6.3 Remoteness

The problem of smallness also relates to geographical isolation and remoteness from major markets, particularly since PICs are surrounded by large tracts of ocean. This makes transportation very difficult and costly. The supply and delivery of goods to and from international markets are unnecessarily expensive with additional cost of production. It is more difficult when only unreliable, infrequent and irregular transports are available. The costs of transportation also go with high communication costs. As Statish Chand described it:

“…the Pacific Islands as a group face cost disadvantages due to their small local markets and isolation from major markets…”161

159 Ibid above n 158, 3.
161 Satish Chand above n 2, 2.
While trade liberalisation may offer an increasing volume of trade and investment, it has its impact on the most isolated Pacific Island economies. Isolation and remoteness therefore indicate that PICs have a greater tendency to trade amongst themselves than with developed countries located far away. And when considering trade with distant trading partners, regionalism offers that opportunity to reap the benefits of scale, but only where specific structural adjustment mechanisms are in place to facilitate trade and economic integration. Even so, the prevailing challenge for regional trade is the homogeneous nature of products produced by all PICs.

### 6.4 Identical products

The idea of forming a single Pacific regional market as a pedestal for stepping into the global economy as envisaged under PACER-Plus would be difficult. Amongst other factors, this is primarily due to the identical nature of goods produced or exported by PICs, whether it is fish, cocoa, timber or copra (See Table 3).

**Table 3: PICs’ main exports**

<table>
<thead>
<tr>
<th>Countries</th>
<th>Imports</th>
<th>Main merchandise exports</th>
<th>Main Import sources</th>
<th>Main export destination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiji</td>
<td>825m</td>
<td>Garments, sugar, gold, fish, tourism</td>
<td>ANZ, Japan</td>
<td>Australia, Japan, EU</td>
</tr>
<tr>
<td>PNG</td>
<td>1100m</td>
<td>Logs, fish, gold, copper, palm oil</td>
<td>Australia</td>
<td>Australia</td>
</tr>
<tr>
<td>Samoa</td>
<td>113m</td>
<td>Fish, beer, taro, garments.</td>
<td>ANZ</td>
<td>American Samoa, US, EU</td>
</tr>
<tr>
<td>Solomon Islands</td>
<td>65m</td>
<td>Timber, fish, (palm oil), copra, cocoa</td>
<td>Australia</td>
<td>Japan</td>
</tr>
<tr>
<td>Tonga</td>
<td>91m</td>
<td>Squash, vanilla, tuna fishing, tourism</td>
<td>ANZ</td>
<td>Japan, US, NZ</td>
</tr>
<tr>
<td>Vanuatu</td>
<td>73m</td>
<td>Copra, cocoa, cattle, forestry, fishing, offshore financial services, tourism</td>
<td>ANZ</td>
<td>Europe, Japan</td>
</tr>
</tbody>
</table>

Source; 2002, WTO; #2001, WTO
This factor implies that the chance for specialisation and diversifying their economies through export will be minimal. For instance, if Solomon Islands export fish and copra to the envisaged regional market, these products have to compete with Vanuatu’s fish and copra.

Similarly, if Vanuatu exports meat to Fiji, it will threaten the survival of Fiji’s domestic meat industry. Alternatively, if each PIC focuses on the production of one of its products, it will risk losing export earnings on a number of products that they can alternatively export. Therefore, to assume that PICs will achieve economies of scale under a single Pacific regional market is not realistic.

6.5 Technology and capital

PICs also lack the necessary technology and capital to produce high quality goods and products in order to effectively compete in international markets. There are very few high-value foods and goods that Pacific Islands can produce more efficiently than other countries. This would be a major challenge if PICs venture into trade agreements such as the EPA and PACER-Plus involving developed countries in Europe or ANZ. These developed countries have more sophisticated technology and production capabilities to produce comparable goods. This suggests that Pacific products would not be able to compete with them. In other words, PICs products cannot realistically compete with other products in international markets.

In similar respects, an anticipated risk exists where developed trading partners (EU, Australia and New Zealand) may open their markets and import similar products from other regions of the world, such as the Caribbean or Africa. Competition to secure access for Pacific products in those developed markets would be extremely difficult. Then

162 Jane Kelsey above n 104, 11.
again, if PICs open their internal market, richer nations will invest in Pacific territories and gain more benefits. As Jane Kelsey observed:

“…if Pacific islands open their market, foreign investors will bring in new technological inputs to the Islands…Unrestricted global competition means most Pacific Islands will be left selling unprocessed natural resources like fish, timber or minerals to other countries that make the big profits out of ‘adding value’…”163

In accordance with this assessment it is apparent that opening up Pacific markets would be disastrous to domestic industries that strive to develop and to be efficient in the production of limited mostly agricultural raw materials.

6.6 Limited internal markets

PICs lack an efficient domestic manufacturing base as a result of which they have very limited markets to diversify their export products and gain economies of scale. According to Robert Scollay:

“…only larger Melanesian countries of Fiji, Papua New Guinea and to some extent Solomon Islands and Vanuatu have moderate developments of light manufacturing industries, whereas in smaller island countries such Tuvalu and Kiribati, there are virtually no such manufacturing industries…”164

In the absence of efficient domestic industries, it is difficult to see how PICs can effectively engage in trade, either regionally or internationally. This problem, compounded by the current migration of workers, further hollow out domestic industries as most productive labour and capital gravitates towards the metropolis in the

163 Jane Kelsey above n 104, 11.
164 Robert Scollay above n 126, 5.
surrounding neighbouring industrialised countries. Consequently PICs continue to face disadvantages of unproductive domestic manufacturing industries.

**6.7 Conclusion**

It is extremely important to bear in mind the intrinsic challenges facing PICs when negotiating the EPA and PACER-Plus. For PICs to develop their economies through trade relations these challenges must be adequately addressed and specific measures need to be designed to address them. Only then, can PICs graduate to a level where they can participate effectively in trade and reap the benefits promised by the EPA and PACER-Plus. We must not forget that in our collective keenness to create Pacific WTO-consistent trading blocs, we run the risk of disregarding that trade development is all about people. Developments that do not work in favour of people must be revisited and implemented in the best way possible in order to minimise the adverse impact of such economic measures on people living in these economies and societies.
7. CONCLUSION AND RECOMMENDATIONS

7.1 Conclusion

“...[t]he key question should be ‘how can trade assist with improving development outcomes in the Pacific’ not ‘how can we make trade more palatable?’”\textsuperscript{165}

This paper focuses on the EPA and PACER-Plus agreement and their potential impact. The major impact discovered are loss of government revenue and consequent reduction in essential government services, unemployment and regressive measures that may harm consumers, failure to harness the potential benefits from utilising the Pacific’s resources, loss of the PICs’ productive capacities, high market access standards and damage to the welfare of their people.

The paper acknowledges that PICs have accepted the fact they are part of the global economy and economic integration through reciprocal trade liberalisation is inevitable. This acceptance was elucidated in 1997 by the then Secretary General of PIF, Noel Levi in a statement where he expressed:

“…we are mostly small and isolated and lack any influence as individual countries. A free trade area creates a larger economic unit or bloc that gives us a stronger foundation for responding to globalisation and universal trade liberalization… The more the region acts as a group, the more political influence it will have. A regional trade agreement will be important both economically and politically...”\textsuperscript{166}

Therefore, the crucial questions for Pacific governments to vigilantly ponder on are; ‘how can PICs reap maximum benefits from reciprocal trading while progressively developing their vulnerable national economies? What free trade rules benefit PICs and how could

\textsuperscript{165} Wesley Morgan above n 120, 3.
\textsuperscript{166} Noel Levi ‘Question and Answer Brief on Free Trade Issues’ Pacific Islands Forum, Suva April 21, (1999), \url{www.forumsec.org.fj} (Accessed 14/02/2009).
they be properly implemented?’ The question is no longer ‘are you for or against free trade?’ The importance of these questions was highlighted by Mele Amanaki, the Chair of the South Pacific Organisation of Councils of Trade Unions (SPOCTU) in a press conference where she commented:

“… [b]efore we rush into free trade agreements let’s take a step back and assess their impact. Find what the problems are and inappropriate trade policies that we have, which may cause the problems that, will cost the livelihoods of millions of people.”

On this note, the paper cautioned that if the EPA and PACER-Plus are framed in the right way, the outcome could support PICs to build on their assets, strengthen their capacity and accelerate progress towards economic development and the eradication of poverty. If framed in the wrong way, the EPA and PACER-Plus will both exacerbate the problems of poor economic performance, growing economic hardship and poverty.

In the course of the paper, the discussions frequently emphasised the need for EPA and PACER-Plus to focus on improving PICs’ capacity to participate in trade with EU and ANZ rather than on the adoption of standard free trade agreements, that would entail high liberalisation costs and generate little benefit for the Pacific.

Accordingly, the paper concluded by highlighting the need for EPA and PACER-Plus to be development-oriented economic cooperation agreements. While the difficulties in creating a development-oriented agreement with reciprocal trade commitments is acknowledged, this paper maintains that trade facilitation, broadening special and differential treatment, local business creation and development of domestic industries as important mitigation measures to ease the potential impact of trade liberalisation. These mitigation measures are important to take into consideration in both EPA and PACER-Plus negotiation, in order for these trade agreements to deliver maximum benefits to PICs

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on their stated aim of promoting economic development and poverty eradication in the Pacific region.

### 7.2 Recommendations

Being mindful of the limited space in the paper available, this section recommends some of the possible ways that could be useful to mitigate the potential impact of EPA and PACER-Plus and challenges for trade identified in the paper. The recommendations seek to give effect to the main objectives of EPA and PACER-Plus, while minimizing their adverse impact on PICs economies. It is the hypothesis of this section that in order for PICs to reap maximum benefits of trade through EPA and PACER-Plus, trade facilitation and development assistance must be prioritised.

#### 7.2.1 Revenue

To mitigate revenue loss under EPA and PACER-Plus, non-tax revenue sources must be identified and developed. This suggestion is supported by the analysis of Manjula Luthria, a World Bank Senior Economist for the Pacific, where she explained that an essential non-tax revenue source useful for mitigating revenue loss in the Pacific region is ‘aid’ - in particular aid for trade development.\(^{168}\) Aid for trade can be defined as development assistance to help developing countries particularly, LDCs to develop trade-related skills and infrastructure that is needed to implement and benefits from WTO-compatible agreements.\(^{169}\) Implicit in this definition is the need for meeting revenue shortfalls through development assistance. Ultimately where trade policies and activities have an adverse impact on the national economy, it becomes the state’s responsibility to mitigate against such an impact.

It is recommended that Pacific governments should prioritise for development assistance the specific sectors which are possible targets for reduced government budgetary

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allocation, in particular, those sectors that provide basic social services such as education, health and sanitation. The use of development assistance to provide social services is justified on the grounds identified in the IMF study, that is, moving from tariffs to VAT system will be difficult for many PICs (especially with large informal sectors) to regain revenue shortfall and sustain the provision of much-needed services to citizens. This was illustrated in our example showing the way in which the Vanuatu government suffered massive revenue losses in the 1990s when introducing a VAT system as a condition of a new loan obtained from the ADB that took many years to recover.

Alternatively, to boost export earnings to make up for further revenue loss; it is recommended, at least in the long run, to develop areas that PICs may potentially use for diversifying their exports. In other words, a robust emphasis on development assistance would be required to help PICs develop areas in which they have a comparative advantage on, such agriculture and labour. This is significant given the dominance of agricultural sectors in the Pacific (for subsistence and cash-income – and climate advantages for tropical fruits and root-crops) that remains much under-developed.

The development of agricultural sectors will help opening new export pathways for agricultural exports into EU and ANZ markets. And by promoting or providing expertise, resources and domestic trading infrastructures (ports, rural road and pre-shipment quarantine facilities for instance) through development assistance, PICs can afford to meet EU and ANZ quarantine standards.

Therefore, the development assistance delivered by the EU and ANZ governments to PICs to make up for revenue shortfalls and time bound structural adjustment is justified until the benefits of EPA and PACER-Plus are realised. Such assistance could be facilitated through the trade development and facilitation segments under the EPA and PACER-Plus. PICs simply need to develop clear national strategies for development in accordance with the objectives of EPA and PACER-Plus before seeking development assistance for their implementation.
### 7.2.2 Employment

The potentially impact of EPA and PACER-Plus on employment identified in this paper include loss of jobs in domestic industries due to harsh competition. A case in point is the Fiji garment industry, raising not only employment and livelihood issues, but also poverty issues. Therefore, mitigation measures targeted at addressing impact on employment should be designed in such a way that they cater for employees who will potentially lose their jobs. This is crucial to eradicate poverty and improve standard of living simultaneously advancing domestic economic developments.

It is recommended that Pacific governments focus on encouraging local business creation and development. This will provide locals with employment opportunities and chance for self-employment. This option is in association with the idea of developing areas in which PICs may have some comparative advantage on (suggested above) and uses them for diversifying their exports. Accordingly, local business ventures may include a range of options from creating avenues for citizens to sell local products (such as woven Island baskets, carvings, customs arts and other artifacts) to the promotion of small scale farming in a variety of agricultural plants such as banana, vegetable, poultry, fish and other root crops or tropical fruits.

A classic example of local business creation is the VANWOOD project in Vanuatu. The VANWOOD project is a support credit scheme for locals, particularly women and those who have no stable employment. At the time of writing it is understood that funding for this project was provided by the United Nations' Plan of Action Against Poverty (UNPAAP). The program is based on small groups of five, all undertaking different businesses of which two are given loans. When they have repaid their loans, the next two receive a loan, and when those are paid off, the last receives a loan. Under the scheme there is no necessity for borrowers to have money in a bank, and the people

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171 Ibid.
receive guidance in money management as part of the loan. To date, the VANWOOD program is working well in Vanuatu and has helped many people to be self-employed and in some cases create new job opportunities for others.

To sustain local business development, it is further recommended that PICs’ governments must ensure specific measures and strategies to attract development assistance for trade development to assist local farmers and business. For instance, scheme such as the Rural Constitutional Development Fund (RCDF)\textsuperscript{172} in Solomon Islands is an essential tool devised specifically to attract development assistance for local business creation. In Solomon Islands the RCDF was sourced from aid assistance and administered by Members of Parliament (MPs) for each constituency to fund a variety of rural micro-projects, including timber saw-mill projects, carving retailers and different types of subsistence farming. However, in some cases, the effective delivery of RCDF to rural communities solely through MPs has been problematic, due to widespread misuse of funds.\textsuperscript{173} Hence, to address the possibility of funds being misused by MPs, an integrative framework involving non-governmental organizations (NGOs) and other stakeholders should manage and facilitate the delivery of RCDF to rural areas.

In my observation, Job creation for local people through the establishment of local business is essential since PICs could use this opportunity as the basis for developing manufacturing industries in the long term. The development of manufacturing industries will then eventually create supplementary employment opportunities for local people and boost the growth of PICs export base crucial for collecting government revenue through export earnings.

Alternatively, the option of mobilising temporary labour for categories of workers from PICs to work in ANZ and EU countries is also considered as a significant measure to mitigate employment impact of EPA and PACER-Plus. A good example of such labour


\textsuperscript{173} Ibid, 42.
mobility scheme in the Pacific is the Regional Seasonal Employer (RSE) scheme. Through the RSE scheme, Pacific Islanders are recruited to work in ANZ fruit farms. In particular, New Zealand has been active in recent years recruiting workers from Vanuatu to work on local farms picking and packing fruits. Australia has recently introduced a pilot seasonal workers’ scheme to test its feasibility. At best, seasonal schemes should target unskilled and semi-skilled workers such as drivers, mechanics or carpenters, those that would find difficulty in finding employment in domestic industries. In doing so, these workers can contribute to economic development in home countries through employment experience, training and remittances.

To mitigate the risk of depletion of labour required for domestic development, as a result of labour mobility, it is important to create job opportunities for returning workers to put in practice skills and expertise acquired overseas. As recently experienced in Vanuatu, seasonal workers became more easily dispirited in the absence of jobs they have become used to in their working career overseas. This indicated that without practical measures to assist returning workers to find jobs in local industries, the tendency to opt for opportunities overseas is high. Thus, progressive and systematic professional counseling efforts and de-briefing are essential for returning workers. This will help to lessen any tendency to elevate oversea methods and technologies for work that would lower the morale of returning workers and reputation of domestic industries. Such counseling needs to take into account the fact that returning workers would also be exposed to pay differentials, since wage differentials are powerful factors in determining the outlook of workers working in different countries.

7.2.3 Market Access

In terms of market access, the major concerns for PICs that have been identified are products entry requirements and dumping of low-quality goods. A particular difficulty identified irrespect to products entry requirements is the lack of sound and efficient

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industrial and manufacturing base, as a result of which PICs produced semi-produced goods and products that may not be able to meet the content requirement under the envisaged EPA and PACER-Plus ROOs.

To address product entry requirements, PICs should be allowed to retain the policy space to nurture and protect infant industries that play important economic roles (such as income generation and export diversification) through the adoption of flexible ROOs under the EPA and PACER-Plus. In particular, the respective ROOs under EPA and PACER-Plus could be negotiated across product sectors and determined by corresponding national trade interests, rather than by confining them under a common principle to be adopted in a uniform manner. For instance the content value of domestic input could be helpfully set not more that 50% of the total value of any product manufactured in any Pacific Island territory. This is necessary because even relatively basic items produced by few PICs, such as shoes have inputs from multiple countries, with the leather, laces, fabric, eyelets, soles and so on all potentially coming from diverse sources

In the same way, conditions for conferring origin must be clearly defined in a way that they have no restrictive, distorting or disruptive influence on trade. This is particularly important to avoid incentives for manufacturing industries to shift to countries that will satisfy the ROOs and take advantage of the infrastructure and capacities within those countries. The shift of major manufacturing industries, coupled with reduced revenue from tariffs, would see PICs left with a greater demand for services like education and training, but with fewer resources to provide them. Therefore it is necessary to ensure that the ROOs applied selectively on the basis of origin are not avoided by minimal processing, trade deflection and similar circumvention methods.

Apart from the potential difficulty PICs are anticipated to face inrespect to ROOS, the paper also discovered that PICs’ agricultural products and wood-based exports face similar constraints, specifically in terms of quarantine and SPS requirements. In particular, PICs do not have suitable treatment facilities to ensure products are pest-free,
laboratory and research facilities to prove the safety of produce, or sufficient bureaucratic
efficiency to fulfil administrative requirements. As illustrated in the kava ban example,
there are currently no institutions to perform the function of scientific verification. This
sort of problem for instance, will potentially result in the EU and ANZ exporting bananas
from Latin America than from countries in the Pacific regions. This indicated that, even
though agricultural products is the most viable export in most PICs, the difficulty in
complying with SPS measures and quarantine standards will potentially cripple PICs
chance for export diversification.

To be able to obtain the capacity to meet SPS standard in EU and ANZ markets, it is
recommended that PICs prioritise the development of domestic industries’ work
environment, productivity, efficiency and hygiene through development assistance. In
doing so, Pacific domestic industries may acquire the ability to produce products that
meet the quarantine requirements in EU countries and ANZ.

Similarly, PICs can become dumping grounds for low quality goods in the absence of
strong regulatory controls, and food and health safety and consumer rights bodies. Therefore, to be able to acquire the ability to verify product bans, it is recommended that
PICs strengthen their existing quarantine and custom systems to monitor imports.
Alternatively, it is recommended that each PIC should look into the possibility of
establishing competent institutions (well equipped with laboratory apparatus and human
resources) to work closely with customs departments to ensure goods and products
imported in the country are no harmful to human health and safety.

I consider that measures aim to address the issue of dumping of low quality goods in
PICs domestic economy could hardly achieve its rationale without proper institutions put
in place to verify imports. The dumping of inferior or low quality goods in PICs’
domestic markets will potentially affect lower income earners who would be forced to
buy cheaper products regardless of their quality. Therefore the undesirable impact of

176 Department for International Development ‘Developing Country Concerns about, and Needs for Trade
Facilitation: Next Steps and the Way Forward’ Prepared for the World Forum on Trade Facilitation,
unregulated importation needs to be closely monitored and proper institutions be put in place to regulate and control the potential impact.

### 7.2.4 Challenges

To address the challenges for regional trade identified in this paper, this section recommended the need for capacity building. In particular, capacity building in areas that has great potential in developing PICs’ national economies; strengthens their production capability and boost export diversification. For instance, capacity building in the manufacturing sector is significant to mitigate high costs of production and related transportation costs associated with the problem of isolation.

That being said, it is important to note that where an industry expands the cost per unit falls as output increases, hence the industry is said to gain economies of scale. Empirical research has shown that one conventional way to mitigate constraints (such as high transportation costs and industry inefficiency) is by broadening the scope of treatment for at least the poorest countries through special and differential treatment.\(^{177}\)

It is recommended that the scope for acceptance of PICs as a case for ‘special and differential treatment’ under the EPA and PACER-plus be expanded in accordance to the spirit of the GATT. Such approach is desirable to nurture and develop manufacturing industries to the point they can achieve economies of scale. Specifically, it is crucial to broaden the scope of special and differential treatment in topical areas such as subsidies, ROOs, and safeguards in such a way that it boosts PICs competitiveness in production of goods and products. In my view, safeguard measures imposed for the purposes of establishing, developing or reconstructing a particular industry or enhancing their exports until the benefits of trade are achieved are therefore justified. Nevertheless, there should be a timeframe for the maintenance of any such measures under EPA and PACER-Plus. Within the timeframe each Pacific party must take every step necessary to elevate the production efficiency of its domestic industry. In other words, provisions providing for

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safeguard measures may be terminated after the period necessary for the fulfilment of
their purpose.

Furthermore, the maintenance of safeguard measures is justified in view of the fact that
previously products from various PICs entered EU and ANZ markets on preferential
basis basically under the Lomé Conventions and SPARTECA. The preferences act to
ensure low production costs and guaranteed product prices to Pacific products, hence are
instrumental in the development of some domestic industries. As discussed in our above
discussion of preferential treatment for the Fiji garment, clothing and textile industry under
the SPARTECA that help to structurally develop and maintain the industry. Accordingly,
this section suggests that in order for PICs to effectively participate in trade under the
EPA and PACER-Plus it is crucial that safeguards necessary to promote domestic
production of particular products or the establishment of a sound market for a particular
industry or branch of agriculture are maintained.

Again the broadening of treatment in these areas may be justifiably implemented through
trade development aspect of both EPA and PACER-Plus. Both EPA and PACER-Plus
negotiating texts explicitly emphasised the importance of nurturing PICs’ capacity and
noted the use of special and differential treatment as desirable to achieve trade expansion
goals. For instance, the language used in the EPA draft texts stated the commitment to
enhanced technical assistance by EU. These commitments could possibly be used to
increase the scope of special treatment.

The main purpose however is to construct the EPA and PACER-Plus as economic
cooperation and partnership agreements (as intended) that would improve the Pacific’s
trade prospects while avoiding many of the potential risks. The focus on improving the
capacity of PICs to effectively participate in trade through the above discussed measures
is therefore justified.

Finally it is recommended that human resource development under the EPA and PACER-
Plus is prioritised. Institutions mandated to carry out impact assessment, develop policies
and monitor impacts must be staffed with qualified analysts, scientists, economists or other people qualified in relevant disciplines. To achieve this goal, education and training for Pacific Islanders is so crucial. This option would require either the establishment of quality technical training institutions in Pacific countries or boosting of existing training institutions. Australia has already commenced the Australia Pacific Training College (APTC) which is expected to offer Australian-Level trade qualifications to Pacific Islanders.\textsuperscript{178} This initiative is highly desirable and significant, if PICs are to graduate to a level where they can deal effectively with technical aspects of trade without depending on the EU and ANZ. The costs of human resource development could be negotiated as aid packages under the development windows of both the EPA and PACER-Plus.

\textsuperscript{178} Australian Agency for International Development (AUSAID) above n 174, 33.
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