

# Pazifik

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## INFORMATIONENSTELLE

Pazifik-Informationsstelle, Hauptstr. 2, 91564 Neuendettelsau.

Telefon: +49 (0) 9874/91220. Info@Pazifik-Infostelle.org. www.pazifik-infostelle.org.

### **Dossier Nr. 105**

## Fiji's Dilemma in the EPA Negotiations with the EU

*Converting the Challenges into Opportunities*

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*Fidschis Dilemma in den EPA Verhandlungen mit der EU*

Englischsprachiges Dossier

Autor: **Setaita Tupua Kalou**, Suva, Fidschi

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**Author:** *Setaita Tupua-Kalou* is an employee of Fiji's Ministry of Foreign Affairs since 2006, when she started as an Economic Planning Officer in the Ministry's Economics and Trade Division. She has been posted to Fiji's Embassy to the European Union in Brussels and is currently working with the Ministry's Political and Treaties Division. She holds a Bachelor of Arts in Economics from the University of the South Pacific and participated in a three-months course on trade diplomacy in Singapore in 2008. Next to her participation in DiploFoundation's CD Pacific Programme, she is also enrolled in an online Master in Contemporary Diplomacy offered by DiploFoundation.

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

ACP	African, Caribbean and Pacific
C-EPA	Comprehensive Economic Partnership Agreement
EC	European Commission
EU	European Union
EPA	Economic Partnership Agreement
FTA	Free Trade Agreement
GSP	Generalised System of Preferences
I-EPA	Interim Economic Partnership Agreement
LDC	Least Developed Countries
MAR	Market Access Regulation
MFN	Most Favoured Nation
PACP	Pacific ACP
PNA	Parties to the Nauru Agreement
PNG	Papua New Guinea
SDT	Special and Differential Treatment
SIS	Small Island States
VDS	Vessel Day Scheme
WCPFC	Western and Central Pacific Fisheries Commission
WTO	World Trade Organisation

## **EXECUTIVE SUMMARY**

When Fiji and Papua New Guinea initialled the Pacific-EU interim Economic Partnership Agreement (EPA) in 2007, it was primarily to ensure the uninterrupted preferential market access of their sugar and fisheries exports to the EU, after the expiry of the trade provisions in the Cotonou Agreement on 31 December 2007. This was made possible through the successor unilateral EC Market Access Regulation (MAR) 1528/2007.

Seven years later, Fiji continues to negotiate with the Pacific region on a comprehensive EPA, deferring the ratification of the interim EPA which it signed with PNG and the EU in 2009. In October 2013, when Pacific-EU negotiations in Brussels bordered on the dilution of the unique global sourcing provisions on fisheries in the interim EPA, PNG opted out of the talks.

Fiji will hold its national election on 17 September 2014 and is optimistic that the EU will favourably consider lifting the sanctions on development cooperation under Article 96 of the Cotonou Agreement post-election. Australia and New Zealand have lifted all travel sanctions in April 2014, in light of the considerable progress Fiji has made in returning the country to democratic elections and the rule of law.

In light of these favourable political developments, Fiji could join PNG in benefiting from a closer trilateral agreement under the interim EPA with the EU. Why has Fiji not opted for the interim EPA ratification, but continued to strengthen regional diplomacy in the comprehensive EPA, when development cooperation is most likely to be reinstated post-election with or without a comprehensive EPA? This paper will explore the possible options that may be considered by the Fijian government as the 1 October deadline rapidly draws to a close.

## **CHAPTER ONE: INTRODUCTION**

### **Background**

In November 2007, when Fiji and Papua New Guinea (PNG) initialled the Pacific interim EPA with the European Union (EU), it was primarily to ensure that the preferential trade regime under the expired trade provisions in the Cotonou Agreement was allowed to continue undisrupted through the EC Market Access Regulation (MAR) 1528/2007, after the deadline of 31 December that same year. Both Fiji and PNG have major commodity exports of sugar and fisheries respectively, which they wanted to ensure their continued preferential duty-free-quota-free market access into the EU, come 1 January 2008 (EC, 2013).

In 2009, after further negotiations with the EU, both countries signed the interim EPA, but it was only PNG which moved onward to ratify the treaty with the EU in May 2011. The European Parliament had just barely managed to ratify the same treaty, four months earlier after much controversy. There was significant opposition against the perceived high risks posed by the provision accorded only to the Pacific region by the EU on fisheries rules of origin. This refers to the global sourcing of canned tuna in the Pacific interim EPA, a unique provision which enabled Pacific states to source their raw tuna from any flagged vessel in the world and export these duty-free-quota-free to the EU. The caveat provided for promoting socio-economic development in PACP states requires that these shall undergo substantial transformation inland in any of the Pacific states, if they are to qualify for the duty-free-quota-free preferential market access into the EU (EC, 2014).

Much of the controversy came from Spanish government and non-government stakeholders in the area of fisheries which raised concerns about possible flooding of the EU market with Pacific canned tuna. This may be exacerbated through trade diversion by third countries such as those in Asia who would invest in processing plants in PNG to take advantage of this unique global sourcing provision provided to the Pacific.

On Fiji's ratification of the interim EPA, it faced some pressure at home during the necessary national consultation processes both with the government and non-state actors. The outcome of the consultations generally opposed the treaty ratification due to serious concerns about the potential loss of policy space; huge tariff revenue losses which would greatly affect government's capacity to finance development-related projects and basic essential services; potential displacement of new and existing industries and businesses due to overwhelming external competition; as well as sovereignty issues (Ali, 2011).

## **An Update on Developments**

Seven years after the signing of the interim EPA in 2007, Fiji is once again at the crossroads, facing a possible derogation of its preferential market access, from the duty-free-quota-free MAR 1528/2007 to the more stringent rules of origin of the Generalised System of Preferences (GSP). Incidentally, the GSP was under reform and has also been amended on 1 January 2014. Fiji also faces the removal of sugar production quotas in 2017. Against these whirlwind of events, there are summarily a number of key issues that have simultaneously come to the fore in 2014 which are of great importance to Fiji's national interests.

These are, inter alia:

- (i) the amendment of the MAR 1528/2007 on 1 October 2014;
- (ii) the implementation of the amended EU GSP on 1 January 2014 which will be Fiji's next best alternative or fall back position, should it become ineligible on 1 October 2014 to benefit from the MAR 1528/2007;
- (iii) Fiji's first ever democratic election, using a one person-one vote criterion since its political event in 2006, which will be held on 17 September 2014. This places politically-sensitive issues such as the ratification of the interim EPA under the microscope by its electorate.;
- (iv) PNG opted out of the comprehensive EPA negotiations on 14 October 2013, due to perceived threats on the possible erosion of the global sourcing provision on canned tuna in the interim EPA, from conditions played out in the comprehensive EPA negotiations (Sayed-Khaiyum, 2013);
- (v) Following PNG's departure, Fiji voiced its deep concerns in December 2013 that it was temporarily opting out of the comprehensive EPA negotiations, as a matter of principle. This was due to alleged interference by the Forum Secretariat in the ministerial mandate of October 2013 (ibid, 2013);
- (vi) Pacific Trade Ministers aim to conclude the negotiations on the comprehensive EPA by June 2014; and
- (vii) Removal of sugar production quotas by the EU in 2017.

These issues will be elaborated in greater detail in the subsequent chapters.

## **CHAPTER TWO: A CLOSE UP ANALYSIS OF THE NEGOTIATIONS IN THE PACIFIC ACP REGION**

### **Introduction**

In the Pacific region, the only countries that have a major interest in concluding a trade in goods EPA with the EU are Fiji and PNG. Or at least, that was the initial position of the Pacific-ACP (PACP) group until the realisation that the unique global sourcing provisions in the interim EPA could be used as a development policy tool to promote south-south cooperation and regional integration in the region between these two major players and the other smaller PACP members. To achieve these development objectives, the global sourcing provision will need to be amended to cover not just canned tuna but also the semi-processed, cooked tuna loins which will extend the benefits that PNG is currently enjoying to countries such as Kiribati, Tuvalu and other smaller island states (Ministry of Industry and Trade, 2013). Notwithstanding the position adopted by PNG to sign and ratify the interim EPA with the EU in 2009 and 2011 respectively, Fiji has held back on its ratification process to date.

### **Fisheries**

Fisheries are no doubt an offensive interest of the EU in their negotiations with the Pacific. Within the Pacific region is a powerful and influential sub regional grouping called the Parties to the Nauru Agreement (PNA). The PNA consists of the eight members of PNG, Solomon Islands, Tuvalu, Kiribati, Palau, Micronesia, Marshall Islands and Nauru which lie in the migratory path of tuna across the equatorial belt (PNA 2013). By virtue of their geography, they are the owners of the highly demanded tuna resources which are fished by countries such as; inter alia, the EU, US, Thailand, Indonesia, Japan, China, South Korea and the Russian Federation. Aside from the EPA negotiations with the EU at the regional level, some of the Pacific countries are also negotiating Fisheries Partnership Agreements (FPAs) with the EU at the bilateral level (PNA, 2013).

While the area of fisheries has been the greatest beneficiary of the interim EPA negotiations, it has also contributed a lot of controversy in the comprehensive EPA negotiations. The EU had demanded a guaranteed 5% share of the fisheries resources which the PNA had objected to. According to the PNA, the 5% share would violate the PNA Vessel Day Scheme (VDS) which limited the number of days a vessel (not country) could fish in the PNA waters, in the interest of the conservation and sustainable management of the PNA tuna fishery. These vessel days are purchased at lucrative market rates (approximately US \$6,000 per fishing day) which provide for an important source of income for these countries, most of them being LDCs (ibid, 2013).

In one of the negotiating sessions with the EC in 2012, the PNA representative delivered a powerful presentation which argued for the need to effectively implement the VDS which will limit the amount of tuna resources fished from their territorial waters benefitting the resource owners through an increase in price



due to limited stocks, while at the same time promoting its environmental and sustainable development objectives. The EU, a highly respected and internationally acclaimed champion of sustainably managed natural resources was oddly unsupportive of these ambitious conservationist measures which have already been implemented by the Pacific region during this negotiating session.

### **Global Sourcing Rules of Origin Controversy**

The EU should however be commended for supporting the ring-fencing of the global sourcing provision to benefit the Pacific region alone, in recognition of their unique and special circumstances, compared to any other region in the world. These marginal preferences should be seen however as only temporary, as they continue to be eroded when the EU negotiates other FTAs with third countries. Or in the event of the accession of other countries to the GSP Plus scheme, making them eligible for trade preferences similar to the global sourcing provision in the Pacific interim EPA.

In the comprehensive EPA, recent talks between the EU and the Pacific in October 2013 attempted to link the global sourcing provisions to the bilateral Fisheries Partnership Agreements that would mostly involve the PNA countries. The Pacific has always held the view that the two agreements should be delinked, including fisheries management issues coming under the purview of the Western and Central Pacific Fisheries Commission (WCPFC) (ibid, 2013). The EU appears to be deliberately stirring up the sensitivities in this area to rattle the Pacific side and coerce them to agree to sign the comprehensive EPA. There was also an attempt to water down the existing global sourcing provisions that will be transposed to the comprehensive Agreement; a development which was vehemently opposed by Papua New Guinea.

### **Papua New Guinea Opts Out of Negotiations**

On 14 October 2013 in Brussels, PNG informed the EC that it can no longer be part of the comprehensive EPA negotiations due to the potential watering down of the global sourcing provision that will be transposed from the interim to the comprehensive EPA. On this account, the EC suspended the negotiations forthwith until such time PNG's position has been amicably addressed. The PACP Ministers agreed to meet in Fiji in February 2014 to sort out the issue with PNG's self-exclusion from the comprehensive EPA negotiations and to chart out a definitive way forward towards a conclusion of the negotiation in June 2014. The Ministers directed the Forum Secretariat to provide the necessary technical and secretariat work in the interim period.

However in December, the Forum Secretariat, allegedly at the behest of the EU, disregarded the PACP Ministerial mandate in October and hurriedly arranged an informal meeting between the EC Trade Commissioner, H.E Karel de Gucht and PACP Ministers in the Solomon Islands in December 2013 (Sayed-Khaiyum, 2013). This meeting was not attended by PNG and some other PACP countries due to the insufficient notice to the Trade Ministers. Fiji's Attorney General and Minister for Trade attended the meeting only to voice Fiji's disappointment with the Forum Secretariat's blatant disregard for the PACP Ministerial mandate in Brussels to convene a ministerial meeting that will not be held over two days as in the Solomon Islands, but over a longer period that will facilitate a more comprehensive coverage of the outstanding issues, in particular, the PNG issue. Fiji informed the ministers that it would also be temporarily opting out of that meeting in protest, as a matter of principle (Sayed-Khaiyum, 2013).

Notwithstanding this temporary stand during the December meeting, Fiji's hard-line position is for the PACP to keep negotiating as a region and present a unified and consolidated range of offensive and defensive positions to the EC on the Pacific basket of priority issues. These would include the MFN clause, Export Taxes, Infant Industry clause, Non-execution clause, Agriculture (Kava Ban in the EU), Circulation of Goods, Good governance in taxation and fisheries. (Tabureguci, 2013) The subsequent meeting of the PACP meetings was hosted by Fiji from 7 – 11 April 2014.

## **CHAPTER THREE: THE CASE FOR FIJI – WHERE TO FROM HERE?**

### **Introduction**

A comprehensive understanding and genuine appreciation of the background, objectives and spirit of the Cotonou Agreement by all parties negotiating the Economic Partnership Agreements (EPA) is critically important in arriving at mutually beneficial EPAs that will replace the WTO-incompatible trade provisions of the Cotonou Agreement. On the one hand, the EU appears to have permanently put on the back burner the development-related aspirations espoused in the Economic and Trade Cooperation chapter of the Cotonou Agreement which mandates that,

#### **“ARTICLE 34**

##### Objectives

1. Economic and trade cooperation shall aim at fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries.” (EC, 2010).

For Fiji in particular, the legal basis for its eligibility for the European Development Fund (EDF) was sealed when it signed and ratified the revised 2010 Cotonou Agreement in 2012. The EPAs will replace the economic and trade cooperation provisions (Part III, Title II), not the development strategies (Part III, Title I) and political provisions (Part I, Title II) in the Cotonou Agreement, the latter of which will expire in 2020.

Given the primary focus of EU-ACP relations on the EPA negotiations, a common misunderstanding for a lot of ACP countries appears to be that the EPAs will be the main legal framework that will also govern the other two pillars of (i) development cooperation and (ii) the political dimension, when these are already present and insulated in the overall revised Cotonou Agreement of 2010. There is the unfounded fear that an ACP state which does not sign a comprehensive EPA will be excluded as an EDF beneficiary by the EU. This is probably an area which needs to be clarified by the EU in all negotiations, instead of adopting a passive stance to use this misunderstanding to their advantage as a push factor for ACP governments to signing the EPAs.

### **PACP Senior Officials and PACP Ministerial Meeting: April 2014**

From 7 - 11 April 2014, Fiji and other Pacific senior officials held a preparatory meeting in Suva, Fiji to discuss the way forward towards an amicable conclusion to the negotiations of the comprehensive EPA with the EU. This was immediately followed by a Pacific ACP Ministerial meeting to provide the mandate on the outstanding issues, going forward. The contentious issues will need to be re-prioritized, re-strategized and resolved at the regional level, in order for the proposed negotiations in June with the EU to be fruitful leading to a comprehensive EPA to be signed between the parties. In particular, one of the main agenda items of the meeting will be the re-engagement of PNG in the comprehensive EPA negotiations after their withdrawal from the PACP group in October 2013. PNG has already indicated that it would attend the meeting in April as an observer; and will only become fully engaged in the proposed final negotiations in June, subject to the outcome of this regional consultation.

### **Recommendations:**

- (i) Fiji's positions in both the interim and comprehensive negotiations have been one of a balanced approach in the consideration of its national interests as well as consolidating the regional position by promoting group or regional diplomacy. Notwithstanding PNG's withdrawal, it should maintain this position and play the key role in bringing PNG back into the PACP fold before June 2014.
- (ii) In the face of a lack of progress in the comprehensive EPA negotiations, Fiji will need to realise that it would be feasible to cut its losses on the extension of the global sourcing provision to processed and cooked tuna loins and re-consider reverting to the immediate ratification of the interim EPA. In doing so, it will join PNG in reaping the benefits of the global sourcing provision through Public-Private-Partnerships (PPP) with third countries and PNA neighbours such as Tuvalu and Kiribati to replicate what PNG is doing in Madang on canned tuna exports to the EU. Any contentious issue in the interim EPA can be amicably resolved through the avenue of the Trade and Development Committee (TDC) in the interim EPA.

### **Amendment of MAR 1528/2007: October 2014**

The amendment of the EC Market Access Regulation (MAR) 1528/2007 on 1 October 2014 will effectively exclude Fiji and sixteen other non-LDC ACP countries from continuing to utilise the legal instrument of the unilateral MAR to export to the EU (ACP Secretariat, 2013). These seventeen countries have neither initialled nor signed an EPA at all with the EU; or have signed but not yet ratified these treaties. While the Least Developed Countries (LDCs) will have the EU Everything but Arms (EBA) preferential trade regime to fall back on, the other non-LDCs have the GSP, GSP Plus or the MFN (WTO) trade preferences. These other alternative trade regimes are less favourable given the relatively stringent rules of origin that exporting countries will need to meet in order to export to the EU.

### **Recommendations:**

- (iii) Subject to the conclusion of a mutually agreed comprehensive EPA negotiation with the EU in June which effectively addresses Fiji's national interests, Fiji may not need to ratify the interim EPA by 30 September 2014. The conclusion of the comprehensive EPA should qualify as having 'taken the necessary steps' towards the ratification of an EPA and will facilitate the inclusion of Fiji back into the amended Annex I list of eligible countries for the MAR 1528/2007 (EC, 2011).

## ***CHAPTER FOUR: CONCLUSION***

In the absence of a mutually agreed comprehensive EPA which effectively addresses Fiji's national interests, Fiji may need to ratify the interim EPA by 30 September 2014 and notify the EC accordingly. As in (ii) above, a TDC which comprises of only the three parties of the EU, PNG and Fiji will present better prospects of successfully resolving whatever contentious issues in the interim EPA that any of the parties may have at this forum. PNG is currently reaping the first mover advantages on the Pacific global sourcing provision, the only one in all of the ACP negotiations.

Fiji may need to seriously consider expediting the ratification process and supporting this with the necessary PPP consultations with third countries (investors) and PACP partners such as the LDCs of Kiribati and Tuvalu to arrive at win-win-win solutions for all parties. It is most important however that Fiji puts the development-related focus on increasing employment and poverty reduction strategies at the fore of its national strategies.

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