ANALYSIS ON THE PICS' DRAFT TEXT OF PACIFIC EPA

This is a preliminary analysis of the Pacific Islands' draft text of the Pacific Economic Partnership Agreement (see http://www.bilaterals.org/article.php3?id_article=6111) and the EC's 'non-paper' on services and investment. Legal provisions are paraphrased and not all are covered. The paper does not include the Partnership Agreement on Trade in Goods that only some PICs will negotiate. This analysis is offered as a contribution to ongoing discussion on the EPA. Corrections and comments are welcome.

Key Features of the PICs Draft Text	Issues	Predicted EU Response
CHAPTER 1 GENERAL PROVISIONS		
1.1 Definitions: The term '**Partnership Agreements'** applies to separate agreements on goods and fisheries. These are distinct from the EPA text, which para 1.2 refers to as providing a 'framework' for trade cooperation, expanding trade in services, promoting investment, and providing and managing financial and technical assistance. 'LDCs': The definition of **LDC status** applies to any PIC that was designated as a LDC during the past 10 years.	The EPA text is structured so that all PICs are not automatically required to negotiate on trade in goods with the EU. Those that do will trigger an obligation to negotiate with Australia and NZ under PACER. Putting fisheries in a separate agreement would also create more flexibility, as some PICs already have bilateral fisheries agreements with the EU. The aim is to minimize the effect of changes in LDC status. Samoa is currently in line to 'graduate', although it is arguing at the UN to retain LDC status. Conversely, the UN has recommended that PNG should have LDC status, which that government is resisting.	The EU has not agreed to this architecture. Even though it has limited interest in trade with the Pacific Islands, its overriding concern will be the precedents that might be created for its negotiations with other countries. That view is confirmed in its 'non-paper' on services and related investments, which is designed to serve the EU's offensive and defensive priorities with no concessions to development objectives or vulnerability. The EU may not be prepared to let the PICs have it both ways with LDC status, because of the precedent.
1.2 Objectives The **overall objective** of the EPA is to promote sustainable development, poverty eradication and gradual integration of the PICs into the global economy.	The Pacific Islands Forum has used this rhetoric since 1997. The idea that poverty eradication and sustainable development can be achieved through global markets is the standard line of the World Bank, ADB and donor governments. Associated language that seeks flexibility and recognition of small vulnerable economies attempts to bypass the core problem that the global market model is inappropriate for Pacific Islands economies.	This rhetoric is straight from the Cotonou text.

Specific **purposes** of the EPA reflect the PICs preferred structure and focus:	These reflect a potentially dangerous combination of uncritical free trade rules and creative subversion.	The EU will seek to minimise the creative development dimensions and maximize the free trade rules.
- a 'framework' for economic and trade cooperation on goods, with no reference to liberalization of goods.	- a 'framework' for 'cooperation' would allow goods liberalization to be addressed in a separate agreement.	- the EU is expected to insist that goods is a core element of a reciprocal EPA
- expand trade in services and strengthen Pacific capacity	- inclusion of services goes beyond what is required in Article 41 of Cotonou (see below)	- the EU wants this, as some other ACP regions have been resisting negotiations on services
- investment 'promotion' to support sustainable development, with no reference to 'protection' of foreign investments	- chapter 8 covers both investment promotion and protection, but does not create the right to establish investments	- the EU wants investment in the EPA, including pre-establishment rights, but is using services related investment as a backstop.
- provide funding for implementation, especially the costs of adjustment and trade development.	- the Pacific proposal is unworkable if the EU declines to provide significant new funding. The either means no Pacific EPA, removal of some chapters, or substantial concessions to the EU's bare bones approach.	- the EU has consistently rejected calls from the ACP for additional funding, saying the PICs will need to rely primarily on the EDF10.
Article 1.3 Guiding Principles The EPA is to:		
- recognise the 'intrinsic linkage' and mutual reinforcement of all parts of the agreement	- presumably this means (a) everything must have a development dimension and (b) substantive commitments depend on the EU providing funding	- the EU has consistently sought to dictate the terms of any deal, in the name of development. There are progressive parts of this text that challenge them to deliver on their rhetoric. Other parts take a pure free trade approach that the EU will be very happy with.
- not undermine the Pacific's own integration arrangements	- as implementation of both PICTA and the MSG trade agreement are already behind schedule for goods, and don't currently include services, this would justify very extended time frames for an EPA	- The whole EPA process is premised on regional integration in the Pacific, which itself contradicts the idea of diversity. The EU has not shown any sensitivity to the realities of existing regional agreements in the Pacific or elsewhere in the ACP.
- be an instrument for development that recognises diversity, the needs of LDCs, and the appropriate level of integration into the international economy given the circumstances of each PIC.	- this aims to keep as much flexibility as possible, especially for small islands.	- The EU's approach is driven by its overall trade strategy and the creation of precedents – hence its aggressive demands on services and related investment that are *identical* for the Caribbean and the Pacific.

1.4 'Actors of the partnership' The PICs shall determine the development principles, strategies and models for their economies and societies 'in all sovereignty'.	The whole purpose of agreements like the EPA is to tie future governments of every PIC to the global market model so they *cannot* determine their own economic development strategies 'in all sovereignty'. The market model of regionalism excludes any other approaches to regionalism and severely restricts national autonomy. Although the EPA provides for the development of national and regional strategies for agricultural development, services, tourism and trade facilitation, these have to conform to the same economic model, and would be subject to approval by a joint body of Pacific trade and EU officials.	The EU will not see any contradiction between the sovereign autonomy of developing countries and enforceable obligations to pursue a regional integration approach to the global economy.
Existing Pacific regional organization and programmes will be used to implement the agreement, where appropriate. This means the Forum Secretariat, but also the South Pacific Tourism Organisation and the South Pacific Regional Fisheries Management Organisation.	Many PICs are hostile to the growing centralization of power in the Forum Secretariat and its too close relationship to Australia and NZ. There is a fear that the same would happen with the EU under an EPA. The EU has insisted the EPA negotiations are run through the Forum Sec and has channeled the regional funding through it. This wording means the Forum Sec should not control all the regional processes under an EPA; but it would remain dominant because other regional organizations have varying competencies and the relationship among them is often dysfunctional.	The EU will want regional activities under the EPA to operate from one core agency with which it can develop a (too) close relationship.
The 'complementary' role and potential contribution of non-state actors (NSAs) to 'the development process' is 'recognised'.	NSAs don't appear anywhere else in the text. This wording links their contribution to the 'development process', not to participation in any specific activities in the EPA. The proposed structures to approve and oversee national and regional strategies are likely to make it more difficult for national and regional NSAs, as well as MPs and voters, to influence important decisions affecting their countries and communities.	

CHAPTER 2: SCOPE & DEVELOPMENT OF PARTNERSHIP		
Article 2.1 Partnership Agreements This spells out the distinction between the EPA text, as a 'framework' agreement on goods to which all PICs would be party, and the separate Partnership Agreements on goods and fisheries, which only some PICs would sign. Others could join those specific agreements later.	This structure is intended to avoid triggering negotiations with Australia and NZ under PACER. That occurs when a PIC formally begins negotiations for a free trade agreement in goods with the EU. By having a separate Partnership Agreement on goods, PACER would only be triggered by those PICs that are a party to negotiations on that agreement. Countries that have indicated they are likely to participate in such negotiations – and therefore will face pressure to begin negotiations with Australia and New Zealand - are Fiji, PNG, Solomon Islands, Vanuatu, Samoa, Tonga, possibly the Cook Islands. In some ways this approach is similar to PACER. That was described as a 'framework' agreement where the PICs promised to negotiate a separate free trade agreement and A/NZ agreed to fund a regional trade facilitation programme (RTFP). However, the EPA proposal goes further than PACER, because the 'framework' approach only applies to goods: it would also include binding commitments to liberalisation of services and an enforcement mechanism for disputes.	The EU has understood, but to date not accepted, the argument that it should accommodate this legal structure so the Pacific Islands can avoid triggering their obligations to Australia and NZ under PACER as a bloc. Obviously, the EC will not want to subordinate its self-interest to this consideration - even though it denies that it has any self-interest in the Pacific, it is keenly concerned about the precedent value of this EPA. It may try to justify its rejection of this structure by arguing that 'trade-driven development' will be good for the PICs and they will benefit by opening their markets to competition from as many countries as possible, including Australia and NZ. This would accord with the World Bank/ADB strategy for market-driven economic development in the Pacific.
Article 2.2 The Framework EPA would incorporate **elements of the Cotonou Agreement** that are favourable to the PICs and terminate unfavourable provisions (such as the ability of the EU to use emergency safeguard provisions to suspend its obligations temporarily).	This is an understandable and unrealistic attempt by the PICs to keep the good parts of the Cotonou Agreement and shed the bad.	Why would the EU even contemplate this?

Any PICs that do not enter into a Partnership Agreement on goods would have the same access to EU markets that they are currently entitled to through the General System of Preferences (GSP) and as LDCs under 'Everything But Arms'. The EU would create a special scheme for PICs that are small vulnerable economies (SVEs) but not LDCs and would have worse access under the GSP than they enjoy at present. Alternatively, the EU would pay compensation to such SVEs.	The first part of this provision is redundant as with or without an EPA the PICs could access the existing GSP and EBA. This is essentially an attempt to design a special scheme to overcome the problem of PICs that could end up worse off than they are at present, contrary to what is promised in the Cotonou agreement. A special scheme for SVEs is consistent with what the PICs have been seeking in other negotiating forums, notably the WTO.	The EU has generally supported recognition of SVEs as a subcategory that has special needs, but not as a separate category that would attract differential treatment in the WTO. It might be prepared to incorporate an SVE category into the GSP, if that can be made to appear general enough to avoid objections that it is just the old Lomé preferences in disguise.
Article 2.3 The EU would give the goods and services from those PICs that are not WTO members the best treatment they would get if they were WTO members (known as most-favoured nation or MFN treatment).	In theory, this could provide benefits to the majority of PICs who are not WTO members. In practice they would gain little, if anything. In return, it would be very difficult for non-WTO PICs to continue arguing that they should not have to comply with rules that are designed to ensure WTO compatibility.	The EU would probably agree to this because it costs it nothing and would reinforce the argument that non-WTO PICs should comply with WTO compatible rules.
CHAPTER 3. INSTITUTIONAL FRAMEWORK		
This chapter provides the administrative machinery for the EPA. **Article 3.1 and 3.2** The **political leadership would come from the Partnership Council** made up of European Council and Commission members and *trade* ministers from the PICs. They would meet two yearly to consider major issues and supervise implementation. Decisions would require consensus. There is no specific role for parliamentarians, beyond the existing whole-of-ACP/EU parliamentary structure.	These institutional bodies and processes are created specifically to implement an agreement that is based on the economic model of global markets. Other considerations will only be relevant to the extent they are incorporated in the text. The key participants from the Pacific will be *trade* ministers and officials, which means they will exercise authority over many issues that have important non-trade dimensions.	The proposed institutional structure would be new for the EU, and is likely to be rejected because it does not fit the way the EU operates. The relationships and demarcation between the EU Commission, EU Council, Member states and different directorates are complicated and sensitive. It is not clear who would represent the European side in the Partnership Council and Committees. The Pacific's proposed structure would also dilute the role of the European Commission (which would be a good thing). EC negotiators are expected to resist.

Article 3.3 The **real implementation and coordination of the EPA would rest with the Partnership Committee**, comprised of EU Council and Commission representatives, and Pacific governments' senior officials. They would meet at least once a year and make decisions by consensus.	These various bodies would potentially exercise powers and responsibilities that properly belong to national parliaments. Special committees of EU and PIC representatives are empowered to approve and review development strategies for agricultural development, services, tourism and trade facilitation.	
Article 3.4 Separate Special Committees would carry out those responsibilities for tourism, services and agricultural development. The separate Partnership Agreements (on goods and fish) would also have Special Committees that comprised only the parties to those agreements. Again decisions would be made by consensus.	Judging by the track record of Forum meetings and these negotiations many of their meetings, documents, reports and decisions would be 'confidential'. That could remove many important decisions from effective scrutiny of MPs, citizens and non-state actors, at least until after the decisions have been made. The requirement for consensus would give either side a veto. This could ensure the PICs don't lose control. Equally it could produce a stalemate or result in behind the scenes pressure on some PICs to support the EU.	The EC seems unlikely to support and largely fund a potentially expensive raft of committees operating out of the Pacific.
Article 3.5 The **Forum Secretariat** would provide documentation, administrative support to reviews and negotiations, finance and technical assistance and liaison.	The Forum Sec would increase its de facto power within the region, despite concerns of a number of PICs that it is already usurping their national roles.	
Article 3.6 This process would be **funded** through assessed contributions, based on the total GDP of each party and separate from funding specified in chapter 9.	Australia and NZ will object to being cut out of part of the Forum's activities. They largely fund the Forum Secretariat and cannot be expected to subsidize activities from which they are excluded. This will strengthen arguments for negotiations under PACER that mirror or exceed the EPA. It would then be efficient for the Forum Sec to administer the two similar agreements in an integrated way.	The EU will want to minimize any additional expenditure on administering the EPA. It may argue that this structure, with a large number of special committees, is too complex and expensive. However the EU has supported a more integrated and 'efficient' administration of trade agreements, and its new Pacific strategy promotes more active coordination with Australia and NZ at a Pacific regional level.

CHAPTER 4. TRADE FACILITATION & TRADE PROMOTION		
Article 4.1 This chapter aims to improve the ability of PICs to meet international standards, modernize their **customs** systems and promote products in overseas markets. The priority is on agriculture and fisheries and any other products of 'particular export interest' to the PICS that are listed in an annex. There is a special focus on biosecurity regulations and practices.	Trade facilitation is presented as a centerpiece of the EPA. The PICs have long argued that they cannot engage effectively in international trade unless they receive funding to improve their ability to meet international standards, modernize their customs systems and promote products in overseas markets. Funding from Australia and NZ for a front-loaded Regional Trade and Facilitation Programme (RTFP) was the price for the PICs to agree to PACER, and there have been major arguments since 2002 about how much was actually promised.	Similar disputes with the EU over the extent and funding of these programmes seem bound to occur, especially as the EPA and PACER programmes would overlap.
Article 4.2 Funding would be additional to any other technical or financial assistance the PICs receive (from anyone). The parties would attempt to coordinate their various trade facilitation and trade promotion programmes to minimize duplication.	Avoiding duplication makes sense. But the PICs have always tried to squeeze as much as possible from every source. They are also wary that donor countries and agencies working together could exercise a dominant influence over their programmes.	The EU will resist any double dipping with the PACER RTFP and various WTO and other international trade facilitation funds. Indeed, a key plank of the EU's new 'strategic relationship' with the Pacific in May 2006 was stronger coordination among donors.
Article 4.3 The Partnership Committee (of senior officials) would develop a **detailed trade facilitation programme** for each PIC. It would be financed from the funding pool created in chapter 9.	This is an example of a programme that could encroach on national responsibilities. Yet, in reality, many individual PICs have very limited capacity. The key would lie in the extent of openness and genuine participatory planning that occurred at national level.	This is contingent on the EU agreeing to the funding package in chapter 9.
Article 4.6 on **health, biosafety and biosecurity** measures would enable a PIC to challenge the exclusion of an export by the EU on spurious grounds, through a	This was prompted by the devastating ban the EU imposed on imports of kava from Vanuatu, Fiji and other PICs. Although Fiji was a WTO member it was	The EU would be very cautious about the precedent this would create. However, the position taken by the European Commission on similar issues has shifted in

cheaper and more tailor-made dispute process than the WTO. It would also require the EU to pay compensation to individual Pacific exporters for losses they suffered where there was no scientific proof to support a ban on their product.	too expensive to bring a case against European powers (and others) in the WTO. Even if they had done so and won, there would have been no compensation for the losses they had incurred. The strict approach suggested here is a two-edged sword. International environmental law supports a 'precautionary' principle, whereby governments can impose restrictions on products that threaten serious or irreversible damage to people's health or the environment, but there is not yet clear scientific certainty about its effects. The PICs may themselves wish to adopt such measures where there is inadequate scientific evidence on whether an imported product will cause harm. A common example is GM food.	recent years. Most notably it raised only limited defences when the US and others challenged the lack of scientific evidence to support the EU's GMO moratorium in the WTO. Some think the Commission is using such challenges to push through changes to Europe's environmental and social regulations and use of the precautionary principle. An additional consideration is that the Pacific proposal would breach the WTO's rules on non-discrimination, because it would give Pacific countries more favourable treatment than other WTO members.
In situations where the EU proposed to restrict or prohibit the import of products that were listed as being of export interest to the Pacific, it would first have to consult the countries that might be affected and conduct a joint study of the scientific evidence to support the measure.	Similar proposals to require consultation with foreign interests before introducing domestic regulations have been strongly criticized in the EU and elsewhere. They give priority to the interests of foreign firms and better access to decision making than national citizens and business enjoy.	
A contact point would be established for the exchange of information on such measures.		The EU is likely to prefer just to establish a contact point to promote dialogue on such disputes.
Article 4.11 The criteria for acceptable **consultants** and experts would include consultants from other countries (especially Australia/NZ) that 'have a familiarity or close links with Pacific Parties'.	This ensures that the Forum Secretariat can keep employing its standard team of consultants.	There is no obvious reason for the EU to object.

CHAPTER 5 AGRICULTURAL DEVELOPMENT		
This chapter refers to 'agricultural development', not to liberalization of trade in agriculture (which may or may not be dealt with in the separate Partnership Agreement on goods). **Article 5.1** The key objectives are to promote **sustainable development of agriculture** through increased production, productivity, processing and trade, especially in higher value products.	This would permanently embed an industrial and trade-driven approach to agricultural development for all PICs that sign the EPA. That model centres on cash cropping through larger scale industrial production, growing crops for export and importing other foods. Food security becomes notoriously difficult when the limited resources of small countries are focused on producing a small number of export cash crops and they depend on imports and foreign exchange for other essential food items.	The EU could be expected to endorse the trade-driven approach to agriculture and development of strategies to promote this. However, agriculture is sensitive for some countries within the EU. They have apparently suggested that agriculture could be relegated to a more flexible annex. That is not because the Europeans feel threatened by a potential influx of Pacific agricultural products, but because of the precedent value of that approach.
Article 5.1.2(d) sets another objective: to 'assist in the **reform of laws, including laws relating to land tenure** and government policies and programmes' that will facilitate increased agricultural production, productivity and trade. **Article 5.4.2** 'Enabling policies' require every PIC to 'endeavour to strengthen local institutions and enact policies and legislation that provide for equitable and **secure access to ownership and control of natural resources, particularly land**.'	An explicit goal of the EPA is promote changes to land laws and ownership of natural resources in each PIC. There is no assurance that the people would be actively involved in framing these reforms, no mention of protections for land rights in many of the Islands' constitutions, and no recognition of competing social, cultural, spiritual and environmental considerations. It is clear from the reference to 'agricultural production, productivity and trade' that such reforms would be designed to promote larger-scale industrial agriculture. This needs to be read alongside Art 5.4.2. Although it could intend greater security over land for ordinary people, it is more likely to mean security of larger-scale holdings for individuals and companies from the Pacific and offshore.	The EU is a strong advocate of secure private property rights for foreign investors, including over land. EC officials have insisted that they have no interest in pressing for reforms to Pacific land laws. But during the WTO negotiations on trade in services in 2002 the EU asked PNG and the Solomon Islands to remove their restrictions on foreign investment in land.

Article 5.3 The mechanisms for achieving these objectives would be set out in **Agricultural Development Strategies** drawn up by individual PICs and regionally. Each strategy would include a statement of objectives, expected outcomes, plan of action, timetable and budget. It would also contain recommendations on improving agricultural production, competitiveness, processing, sales and improving export opportunities, and addressing weaknesses. The strategies would also consider and make recommendations on food security and 'support for grassroots development activities, rural cooperatives, initiatives of subsistence farmers' and providing rural credit.	Every PIC that signed this EPA would effectively become locked into the model of export-based cash cropping. This would be reflected in its national agricultural development strategy and reinforced at the regional level. Non-market subcategories would be exceptions within that dominant model. There is no guarantee that local people whose lives were most directly affected would have the right to participate in this process, and their choices would be circumscribed in advance by this agreement. There is no guarantee of a balance between subsistence food production and industrial agriculture, nor that subsistence farmers would be protected from the negative impact of duty free imports.	The EU might well support the development of strategies that are based on industrial agriculture, but also recognise the 'multidimensional' roles that agriculture plays. It has been arguing a very similar position in the WTO negotiations on agriculture. Support for subsistence farmers and grass roots development could easily be reduced to a line in the EU's aid budgets, using existing funding.
Article 5.2 says each PIC would '**retain full control** over its development strategy'. Yet **Article 5.3** says each national strategy and the Pacific regional strategy would be '**submitted to the Partnership Committee** [of senior officials] for its adoption'. Under **Article 5.7** the Committee would review the strategy every 2 years and the PIC would then decide what revisions it considered necessary or desirable.	It is difficult to reconcile assurances that every PIC retains control over its agricultural development strategy and the 'adoption' of that strategy by a Committee of EC/Pacific senior officials. If the Committee is simply a rubber stamp for each country's strategy, why are strategies submitted to it for adoption? Moreover, the Committee would take the lead in proposing changes to a development strategy. While each PIC could choose to ignore those suggestions that could become very difficult or divisive in practice, especially if funding was involved. The Committee's role would be especially volatile where a national strategy included – or failed to include - land reforms.	It is hard to predict how these dynamics would work out and what role the EU would want to play in relation to the plans.

Article 5.5 recognises the **right of parties to restrict imports** so as to protect human animal and plant life or health, consistent with the rules referred to in chapter 4. The EU would set up short-term income support and longer-term adjustment assistance to help farmers who were adversely affected.	This reinforces the provisions in Chapter 4 on quarantine measures, import bans etc and aims to reduce the huge impact of those measures on small countries that export a limited number of commodities (Vanuatu and Kava again).	This would create an unacceptable precedent for the EU, which would point to the short term adjustment funding provided for the EPA as a whole.
Article 5.6 The **costs of implementing** the strategy, short-term income support to farmers, and funding of projects would be financed from chapter 9 mechanisms.	The entire chapter on agricultural development depends on the provision of separate funding from the EU. Presumably, no funding, no deal?	The EU might be prepared to endorse the goals and process of this chapter, but they would hardly agree to pay for it when they gain nothing in return.
Article 5.8 Sugar is covered in a separate Article that aims to provide long-term security for the benefits and value that PICs (basically Fiji) get from the Sugar Protocol. An explicit aspect of the Agricultural Development Strategy would be measures to enhance the productivity of the sugar industry and support the development of higher-value sugar products and diversification into other crops.	The reason for locating article this article in the agriculture development chapter is to take sugar out of the Partnership Agreement on Goods, for sound technical reasons. The goods agreement needs to satisfy the WTO's requirement that it covers 'substantially all trade' in goods between the parties. Sugar is the major Pacific export into Europe. If sugar was defined as a 'good', it would be necessary to include it in that agreement and it would be impossible to include the kind of long-term income support arrangements that are suggested here. These arrangements aim to address Fiji's problem that the value of ACP preferences into Europe is being eroded as other sugar producing countries gain access to EU markets. Initiatives to maintain the benefits of the sugar protocol and support new forms of processing would be additional to the package the EU has offered ACP producers in response to the successful WTO case brought by Brazil, Australia and others against the EU's sugar regime. The aim is understandable but unrealistic.	The EU has been involved in negotiations with various ACP sugar producers to phase out their sugar preferences since it lost the dispute in the WTO. It has argued that the needs of ACP sugar producers are being addressed through that process. It has been reluctant to address the added problem of preference erosion, let alone on the generous and precedent-setting terms suggested here.

Article 5.9 The PICs propose an insurance mechanism to absorb price volatilities.		The EU has been reluctant to develop an ACP-wide replacement for previous stabilizing mechanisms, and would not consider one specifically for the Pacific ACP.
CHAPTER 6: SERVICES		
The draft chapter on services is almost directly out of the WTO General Agreement on Trade in Services (GATS). It aims to provide guarantees for EU services firms to set up in the Pacific and get equal treatment to local services providers. Which service sectors were covered by these guarantees would be listed in each PICs schedule. Services firms from the Pacific wanting to compete in the European market could also gain improved access and treatment. There are separate provisions for skilled individuals to provide services in each other's services market.	This chapter of the EPA abandons all the development objectives and follows a free market liberalisation agenda. In stark contrast to the later chapter on investment, it does not seek to impose any obligations on EU services firms that would gain improved treatment in the Pacific and imposes minimal protections. The limited flexibilities proposed do not adequately mitigate the risks. There is nothing for the PICs can realistically expect to gain from this chapter. There is also absolutely no need nor justification for including a chapter on services in the EPA. The Cotonou Agreement says the PICs should include services after they have some experience of applying the non-discrimination rule under the GATS. But a majority of PICs are not WTO members and have zero experience with services commitments. Vanuatu and Tonga put off joining the WTO partly because of concerns that they have agreed to excessive services commitments that they can't deliver on. Even the 3 PICs who are WTO members have made very few GATS commitments.	The EU is very aggressive in promoting services liberalisation. Several other ACP regions have been resisting including of services in the EPAs. The PICs have provided a precedent that will be used in an exercise of divide and rule. The EU has submitted its own draft text on services and related investments to the PICs. It is a 'non-paper' because it has not yet been signed off by EU members. Presuming that it was written after they saw the Pacific EPA draft text, it makes a mockery of EU claims that - *the EPA texts would be tailored for each region* – an identical text was presented to the Caribbean and the Pacific negotiators; - *the EPAs are about development* – the EU non-paper is its latest model text that aims to create high-quality precedents for its firms; - *it is sensitive to non-WTO members and LDCs* - the EU text aims to tie PICs, including those who are not WTO members, into rules that go beyond the GATS. It also wants any services commitments the PICs make with any non-PIC country to be extended to the EU.
Article 6.1 aims to **reduce restrictions** on four ways of delivering services internationally, through	This follows the standard GATS approach. These four activities do not take place on a level playing field:	The EU has proposed a new approach that splits the international delivery of services into three, with

- foreign investment (establishing a commercial presence) - remote delivery across borders, eg internet, call centres - consumers travelling abroad to use a service, eg tourists and foreign students - people moving abroad to deliver a service, eg professionals or company executives	- few, if any Pacific firms could compete in Europe; the reason EU firms don't flood into the Pacific has nothing to do with trade in services rules. - the Pacific has a limited capacity to provide call centre or other internet services to Europe, especially in competition with other low-cost countries that are specializing on those activities. - the EU doesn't impose restrictions on tourists or students from Europe traveling to the Pacific. - the main potential gain is by 'exporting' services workers to the EU; yet the proposals centre on skilled workers who are already leaving the PICs, not the unskilled workers who can't find jobs at home.	different chapters and schedules on each: - foreign investment in services - delivery 'across borders' by remote delivery or consumers traveling abroad; and - movement of key personnel, managers, etc. It also proposes special chapters for sectors of domestic sensitivity or where it wants better quality rules such as computer services, telecommunications, postal and courier, international maritime, financial and audio-visual services. The effect is to create an *incredibly* complex structure of schedules, rules and commitments that no PIC could be confident that it understood.
These rules would apply to **all government measures** relating to services, including laws, regulation, policies, administrative decisions, at central and local government levels.	Deciding the kind of policies and regulations that should be applied to services is a matter for parliament and local authorities. When their options are limited or removed by commitments made in trade agreements, the legality of their domestic policies would ultimately be decided by trade experts that rule on disputes.	The EU text follows the standard formula used by the Pacific.
There is an attempt in para 6 to exclude **public services** from coverage of the agreement, defining them as 'activities forming part of a system of social security or public retirement plans or the public provision of health, education or water services'.	This wording is a response to criticism about the risks these agreements pose to public services and has already been identified as something that can be negotiated away. In fact, the wording does not protect public services. Many public services are not 'publicly provided' any more; instead, they are provided by private firms under contract to governments. The more appropriate wording would be 'the provision of health,	The EU's non-paper maintains the standard (largely meaningless) exclusion for 'services supplied in the exercise of governmental authority' that are neither commercial nor provided in competition with another supplier. Almost nothing today fits that description.

	education or water services to the public'. Further, key aspects of public services are omitted from this list, such as media, cultural services (eg museums), sanitation, telecommunications or electricity.	
The agreement does not require the **privatization** of public services or utilities or prevent governments from providing them.	This wording is designed to give 'comfort' to governments and deflect criticism about the risks of a service agreement. The provision is technically redundant, as these agreements never *oblige* governments to privatize; governments voluntary make those commitments. The exception is where countries seeking to join the WTO are pressured to promise privatizations.	Article 21 of the Cotonou Agreement explicitly refers to privatization and enterprise reform as the kind of cooperation that the EU would support. But pressuring developing countries to privatise is politically sensitive. The EU would probably prefer to say nothing about it.
Article 6.3 The EU and PICs promise to give each other's services firms **access to their 'markets'** and not to impose certain kinds of restrictions. The services sectors this applies to would be listed in their schedules, along with any limitations. Commitments in a particular sector could prohibit restrictions on the number of firms that provide that service, the size of a firm's service operations, or the number of people it could employ. It could also stop PICs using an 'economic needs tests' that only allows foreign firms to operate if there are no appropriate local providers. Likewise it could sign away the right to insist that foreign firms operate through joint ventures with locals or to limit the percentage of foreign ownership in services firms.	This is the standard GATS rule on market access. Many of the restrictions it aims to prohibit have been used by PICs and other developing countries to ensure that foreign players do not hollow out their domestic services and cherry pick the more lucrative parts of the market. The security of service supply is especially at risk if domestic firms collapse in the face of competition from foreign firms and that firm then leaves. The requirement for joint ventures or a minimum level of local ownership has been a partial protection against that risk.	The EU's non-paper requires separate schedules for foreign investment and supplying services across the border. Each would have separate market access commitments and limitations. Market access commitments on foreign investment would remove restrictions on foreign investors that require joint ventures etc, limit their shareholding or impose an economic needs test. Market access commitments on cross border supply would prohibit limits on the number of operators or transactions they allow in the particular service.
Article 6.4 and 6.5 The EU and PICs promise **not to discriminate** against each other's firms by giving	These are standard GATS provisions on 'national treatment' and additional commitments. If a PIC made a	Again the EU wants the PICs to make separate non-discrimination commitments for foreign investors and

preference to local firms that provide similar services. Again, the schedules of each PIC and the EU would set out the sectors to which this applies and they could reserve the right to use specific kinds of discrimination in relation to those services. These schedules can also cover other commitments, such as recognising qualifications, standards and licensing, which relate to a particular sector.	promise of non-discrimination in a particular service sector it would give away the right to give preferential treatment to its local providers of that service and require them to compete on equal terms with the foreign firm. The problem is that few PIC firms can survive in those circumstances. In practice, 'national treatment' commitments are often an agreement to foreign control of services that are of interest to foreign transnationals. Because these schedules and rules are very technical there are major risks of error and no government has the foresight to protect against unknown future developments.	delivery of services across the border. Any market access commitments that are made in a particular service sector would automatically extend to national treatment rules, unless the country's schedule said otherwise.
Article 6.6 These rules only apply to the service sectors or subsectors that each PIC and the EU lists in its **country's schedule**. They can also list limitations on the extent that those particular service sectors are subject to the rules.	Each PIC could limit the extent of its exposure even within each service. But schedules are incredibly complex. In the PIC text they would cover potentially almost 140 service sub-sectors, in each of 4 different 'modes' of supplying services, with separate commitments and limitations in market access and national treatment. In theory, the PICs could put nothing in their schedules. But the WTO's rules on regional trade agreements, set out in Article V of the GATS, requires agreements like the EPA to have 'substantial sectoral coverage' with implementation to be achieved within a 'reasonable' time. Although there is some leeway for developing countries, this is so far untested. As noted above, the PICs have almost no experience with services schedules. The lesson from Tonga and Vanuatu in their WTO accessions is that officials can agree to excessive commitments that are almost impossible to change. Even the US was found by the	As noted above, the EU wants an even more complex array of scheduled commitments on - foreign investment - cross border access - movement of key services providers. The EU's 'non-paper' proposes a higher standard of rules than already exists in the WTO. There is nothing to suggest it would try to defend an agreement that fell short of the Article V requirements. It is totally unreasonable to expect most PIC governments to understand the implications of one schedule, let alone three. The risks of making a mistake are even greater than with the PICs proposal, especially as the EU doesn't offer a realistic escape route.

	WTO court to have breached its commitment to open internet gambling to foreign firms, despite it insistence that it didn't mean to do so. The risk is even higher because these schedules are drawn up secretly. There are VERY worrying rumours that Tonga has been advised by Forum Sec's consultants to offer the EU what it recklessly offered on services at the WTO. If this is true, it is outrageous and makes it even more critical to know what other PICs are being advised to do. The risks are enormous, especially when there is no need for the PICs even to be negotiating on services.	
Under **Article 6.17** each PIC could **amend or withdraw a commitment** in its schedule at the time of the first review of the EPA where implementing that commitment had caused unexpected difficulty. In addition, each PIC could amend its schedule at the time of the first review, irrespective of whether those commitments had caused difficulty. This would be subject to approval by the Partnership Committee (senior officials). They could not reject the amendment if doing so would hinder the development of the PIC. In any case the PIC would be allowed to reduce one commitment if it substituted another commitment of equal value.	This is one of the few safeguards in the services chapter. Amendments to services schedules usually require compensatory liberalisation in another sector of comparable value. This is an inventive response to the complexity of the schedules and the risks involved. But it would only provide a backstop after the mistakes have been made. The problem may not be apparent by the time of the first review. Even if it had, PICs could come under heavy pressure not to change their schedules. The only safe way to avoid these risks is not to make services commitments in the first place. If the EPA does contain a services chapter and schedules, PIC governments should make no or very few commitments (as the 3 Pacific WTO members did in the GATS). Whatever, they should open their proposed schedules to scrutiny at the earliest possible stage of negotiations to minimize the risks.	Given the EU's aggressive demands for more extensive binding services commitments in the WTO it would never accept such a precedent-setting provision.

Article 6.1.7 and **6.7** give an assurance that the PICs and EU retain the **right to regulate** their services and introduce new regulations to meet their national policy objectives. It recognizes that developing countries have a particular need to exercise this right. The agreement shall not be construed 'in any way' to prevent the parties from regulating.	Except for the last sentence this is standard wording and relatively meaningless. Assurances of the right to regulate are misleading – the whole purpose of trade in services agreements is to restrict the ways in which governments can regulate their services. Saying 'not in any way preventing the right to regulate' is different from 'not preventing the right to regulate *in any way the party sees fit'*. The problem is not whether a government has the right to regulate, but whether it can regulate in the way that national parliaments consider to be most desirable, even if that breaches the agreement's rules or imposes more restrictions on foreign firms than other approaches would. If PICs are found to have regulated in ways that breach their commitments in this EPA, they could be required to change those regulations or suffer trade sanctions until they did so.	The EU non-paper reasserts the right of governments to regulate – *within* the rules of the agreement. Moreover, that right is to pursue 'legitimate policy objectives'. What that means and who has the right to define 'legitimate' objectives has been a major point of dispute in the stalled GATS negotiations.
The parties agree to develop any 'necessary' **regulatory disciplines** to ensure that professional qualifications, technical standards and licensing do not act as barriers to foreign services providers.	Again, this is standard wording, except that it has excluded a phrase that also requires governments to choose the regulatory approach that puts the least burden on foreign firms. The standard interpretation of 'necessary' would apply that requirement anyway. Disciplines on domestic regulation could make it difficult for PIC governments to introduce new regulations that affect foreign firms, such as recruitment agencies, tertiary education companies or marina operators. However, attempts to develop similar disciplines in the WTO have made little progress, so this may never happen - unless the PICs are prepared to accept what the EU proposes.	The EC non-paper does not include a general article on regulatory disciplines. Instead it proposes very complicated rules for specific sectors, such as telecommunications, financial services, computer services and electronic commerce. Some of those requirements would be far beyond the capacity of individual PICs to deliver.

Article 6.8 and 6.9 make provision for the EU to agree to **recognise education or experience, licenses and certifications** granted in the PICs and vice versa. These could be based on international standards. Each party would notify the other about its existing recognition arrangements and give prompt notice of any changes.	Such arrangements could make movement of service professionals much easier. But mutual recognition understandings can be negotiated outside a trade in services agreement. Notification requirements would impose an additional administrative burden on the PICs.	The EU suggests a very weak mutual recognition provision that 'encourages' professional bodies to recommend mutual recognition to the Joint Committee of the EU/PICs, which may endorse negotiations. This assumes a capacity that most of the professional bodies in the PICs don't have (and is an area where regional initiatives could be fruitful).
Article 6.9 Both the PICs and the EU would agree to facilitate the **temporary entry of the other's people** to supply services, provided they meet immigration requirements. A reason would be provided if entry were refused. Processing fees would reflect actual costs. Quotas could still be applied to the total number of entrants from other parties. Entry would only cover skilled and semi-skilled workers, such as professionals, technicians, executives. The actual categories of workers covered would be specified in an annex. Entry would be for up to 3 years. There would be a separate Annex that lists the service sectors in which PICs could supply personnel to the EU – or to other countries.	Securing rights of temporary access for service workers is the prize used to justify negotiating on trade in services. Yet there would be very few, if any, gains for the PICs, even assuming the EU accepted this draft text. It would only apply to skilled and semi-skilled services workers, who have relatively little difficulty finding work offshore. Any increase in those numbers as a result of this agreement would be minimal, although they might face less red tape.	The EU has been locked in a battle with India and other developing countries about temporary entry for their skilled and unskilled workers. This is reflected in the EU's non-paper, which has a very precise chapter headed 'business natural persons'. It applies to very narrow categories of 'key personnel' (basically company executives, managers, specialists and graduate trainees), professionals and contract service suppliers. The chapter is designed to meet the needs of EU firms, professionals and contractors and has little relevance to the Pacific. Rights of entry for 'business natural persons' would exist for those sectors a country listed in its schedule for foreign investment and cross border supply of services. Limitations on this would be listed in a separate annex.
Each of these areas would have a programme for capacity building and training that would set out objectives, outcomes and a budget. These programmes would be funded from the chapter 9 facilities. They could be reviewed and revised periodically by the Partnership Committee (senior officials).	Such programmes could significantly aid the training capacity of the PICs. However, there are risks that such programmes would focus on training workers for export without proper consideration of the implications for the sustainability of domestic services, and the social, cultural and developmental consequences of deeper dependence on remittances.	The EU is not going to pay for the training of Pacific people to provide services in Europe, let alone in other countries! This would be seen as an appropriate use for (existing) aid funding.

There is no reference to entry for low-skilled services workers, although the draft text does not explicitly exclude them.	The primary goal for most PICs was to secure temporary offshore work for their unskilled workers. They hoped to use the EPA to establish a precedent on this for their future negotiations with Australia and NZ. This was always unduly optimistic. Australia and NZ countries already take nurses, teachers and other professionals from the Pacific and will base their policies on temporary migration of unskilled workers on domestic politics, not EU precedents.	The Annex to the GATS that deals with movement of natural persons makes it clear that all categories of people providing services are potentially covered. But the EU and other richer countries have rejected all such demands. The EU non-paper makes it clear that they are not going to change that position for the Pacific. The EU has left it to individual EU states (eg UK) to make any specific deals with PICs on low skilled categories of workers.
Article 6.10 allows the EU or PICs to **deny the benefits** of the EPA to third parties that establish shell companies to take advantage of concessions in the EPA. They could also deny benefits under the EPA to firms whose home countries they don't recognise diplomatically, such as Taiwan.	There are suggestions that the PICs might seek a weaker test that would allow third countries to use them as a platform, provided they gained some benefits from this. Such provisions would be difficult to draft and police effectively.	The EU non-paper has adopted a strict approach to the standard wording on denial of benefits.
Article 6.11 recognises that some **service sectors might be threatened** by liberalisation that occurs under the EPA. In such situations PICs would be allowed to use or maintain measures that they had promised to abandon. However, any such measures could not be discriminatory against the EU, must be the least that is necessary to achieve their goal, and be temporary.	These safeguards are absolutely essential, but the technical conditions under which they can be adopted mean they may not be adequate.	The EU has blocked the development of similar safeguards in the GATS negotiations at the WTO. There is no reference to them in its 'non-paper'.
There is additional flexibility for those PICs that haven't established an appropriate regime for regulating the services they are promising to liberalise. This would give them time to do so, provided they take reasonable steps and not just foot-dragging.	This applies some realism to the situation facing the PICs, although many of them may *never* be in a position to comply with services commitments they make.	Some EU states may recognise the reality of this situation, but others would be opposed. The EC is likely to view the provision as an eternal loophole that would allow the PICs to keep saying 'they aren't ready yet'.

Where a PIC received financial and technical assistance to put such a regime it place, it would have to implement its commitments within 3 years of the start of that programme.	If a PIC received Euro5000 and a 6-month internship for an official with a European government it could be required to implement complex commitments, even if it had no effective regulatory regime in place.	
6.12 and 6.14 Exceptions are allowed for a number of specific reasons, including protecting public morals, maintaining public order, protecting human, animal and plant life or health, and essential security interests. However, they cannot be seen to involve arbitrary or unjustified discrimination. Nor can they be a disguised protection for domestic services. Some of them also have to satisfy the WTO's 'necessity' test, which generally means scientific proof that they are necessary and that no less burdensome alternative is available.	These are the standard GATS provisions. Their practical effect is quite limited, as governments must consider all other options that would interfere less with foreign services providers. This could seriously restrict the options of a PIC whose government had made commitments on environmental services and allowed a EU company to build a hazardous waste incinerator and then sought to shut it down.	The EU has proposed the standard GATS exceptions provision.
	The exceptions also leave out key areas of concern for the Pacific such as culture and indigenous rights – both of which are the subject of more detailed exceptions in the free trade agreements that New Zealand has negotiated.	The EU has carved out from coverage of its non-paper audio-visual services, social security systems and activities 'which are connected, even occasionally, with the exercise of official authority' - whatever that might mean.
A party can also impose restrictions that are contrary to its services commitments where it faces **balance of payments** difficulties. Based on the GATS provisions these must be non-discriminatory, limited in scope, temporary, not used for protectionist reasons, and comply with IMF rules.		There is no specific exception for balance of payments difficulties in the EU non-paper, even though this is standard in agreements on trade in services.
Article 6.13 Subsidies 'that affect' trade in services are not covered, although the parties agree to consult if one believes the subsidies of another are impairing the benefits they expected to enjoy from the EPA.	Not all subsidies 'affect' *trade* in services. In the GATS, subsidies for services are subject to the non-discrimination rule. A national treatment commitment in a country's schedule would entitle foreign service providers to the same public subsidies as local firms, unless that was expressly reserved.	The EU simply says subsidies are not covered by the Agreement.

	This is a different matter from 'trade-distorting' subsidies. They are seen as a particular category of subsidy that should be subject to special disciplines. It is not clear whether the wording here is meant to provide a blanket exception for subsidies, or refers to this more limited form of subsidies. Much clearer wording exists in other agreements that exclude all subsidies relating to services from coverage.	
Article 6.14 Government procurement of services by the PICs is excluded from the chapter, whether it is by central or local government or state enterprises.	This exclusion only applies to government procurement by the PICs, which means procurement by the EU would be covered. However, the EU's very complex rules on government procurement would make PIC participation in European procurement almost impossible.	The EU has been pushing to include government procurement in the WTO and in the GATS. However, the non-paper says that PICs are not obliged to make commitments on government procurement – although they could do so 'voluntarily'.
CHAPTER 7. TOURISM		
Article 7.1 Objectives: This chapter aims to develop a **regional approach to tourism** that would maximize the potential for economic growth, job creation and government revenues – in ways that are environmentally sustainable and culturally appropriate. There is an emphasis on alliances between public, private and community, on tourism training, and community based tourism. **Article 7.2** The **guiding principles** are culturally and development focused: respect for integrity, interests of local communities and cultural heritage; facilitating training and community awareness; environmental protection; and regional cooperation.	The wording of the objectives and principles is very community, culturally and development focused, in line with Article 24 of the Cotonou Agreement. This is contradicted in later articles that promote a model of market-driven liberalization. Experience with foreign and larger scale tourism operations in the Pacific Islands shows that small players become increasingly marginalized and culture can be prostituted to meet tourists' demands. When governments become dependent on tourism revenue, they can be reluctant to regulate in ways that the major tourist operators don't like.	The wording of Articles 7.1 and 7.2 is based on the Agreement on Trade, Development and Cooperation between the EU and South Africa. This may make it difficult for the EU to reject. However, the EU has made it clear that it wants tourism dealt with as part of the trade in services chapter.

Article 7.3 The nub of this chapter is the development of a **Regional Tourism Plan** by the South Pacific Tourism Organisation. Like the Agriculture Development Plan this would set out objectives, outcomes, plan of action, timeframe and budget. It would include recommendations on planning, marketing, training, funding, infrastructure and more.	This Plan would be purely regional. There is no parallel to the national level agriculture development strategies and no assertion that countries retain full control. Presumably, this is because there is already a practice of developing a Regional Tourism Strategy. However, the obligations relating to liberalization of services and investment in this chapter make the EPA Tourism Plan a very different exercise.	
This plan would be submitted to the **Tourism Partnership Committee** of EC and Pacific officials for 'consideration'; they would 'decide whether to adopt the plan as submitted or in a modified form'. It would review and if necessary revise the Plan every two years. However, there would be no binding enforcement of the commitments in this chapter or the Tourism Plan. The PICs would continue implementing current regional tourism strategy for 2003-2013 while the first plan was being prepared.	The power given to the Partnership Committee of EC and Pacific officials over the Tourism Plan is more directive than for the agricultural development strategy. The saving grace is that there is no enforcement mechanism.	It is unclear how active a role the EC would want to play in this process. As decisions would be made by consensus it would be able to block developments it did not like or stall initiatives being promoted by the PICs.
Article 7.4 Enabling policies to promote tourism include promoting foreign and domestic investment 'consistent with local economic and social objectives' and helping local operators access global web systems. **Article 7.3 and 7.5** Where the Regional Tourism Plan recommends further **liberalisation of trade in services**, the PICs or EU shall endeavour to implement these during future reviews of the services chapter. This may include eliminating restrictions on services and investment, including improved access for European tourism operators. It might also mean better access to	The 'enabling strategies' for tourism do not directly mention land, as they did with agricultural development. However, land reform for agricultural purposes could also open land for tourism operations. This would be an obvious policy issues in a Tourism Plan that aimed to promote foreign and domestic investment. The proposed Tourism plans raise the same issues as the Agriculture Development Strategies. Liberalisation of trade in services aims to promote larger scale tourism operations that are usually integrated within global	The EU non-paper excluded selling and marketing of air transport services and computer reservation system services from the services and investment chapter. As noted above, the EU's requests in the WTO services negotiations included the removal of restrictions on foreign investment of land in PNG and the Solomon Islands.

the EU for Pacific tourism professionals and marketing agencies.	networks of transnational firms. The EU has sought to exclude access to the computer facilities that would facilitate PIC participation in such networks. It is unrealistic to believe that smaller local tourism providers, especially community-based initiatives, can thrive in this highly liberalized and competitive environment. Experience also shows how difficult it is to maintain environmental protections, cultural integrity and indigenous land rights, and ensure that profits are reinvested domestically rather than remitted abroad.	
Article 7.6 Costs of implementing the Regional Tourism Plan would come from the financial facility established in chapter 9.	Again this strategy depends on the EU providing funding.	Although Article 24 of the Cotonou Agreement makes specific commitments to cooperation programmes and projects to support tourism initiatives, the EU is unlikely to consider this as additional funding.
CHAPTER 8. INVESTMENT PROTECTION & PROMOTION		
The original text in this chapter was blank. The chapter on investment was produced in a separate document.	The idea of an IPPA+ (Investment Promotion and Protection Agreement + more) has been an integral part of the Pacific's strategy. These agreements usually provide guarantees to foreign investors of their rights to establish an investment and protections, including rights to compensation, should governments adopt policies or pass laws that erode the value of their investments. Such investment rules have been very controversial, and the Pacific WTO members were part of the ACP grouping that blocked their inclusion in the WTO. To a significant extent investment is already included in the chapters on services and tourism. There is very little evidence to suggest that these	The EU tried unsuccessfully for many years to secure rules that promote and protect foreign investment in the WTO. It will be very pleased to see a chapter on investment in the EPA, but not with its content. The EU is taking a multi-pronged approach to secure as extensive coverage of investment as it can. As noted earlier, it included investments related to services, with a separate schedule of commitments, as a separate part of its proposed services chapter.

	agreements make any difference to foreign investment decisions. However, they do impose significant constraints on parties' abilities to regulate. One consultant's report on investment was quite positive about the value of such an arrangement for the Pacific; a second was more sceptical about the benefits. This draft has attempted to mitigate those limits and maximize the potential benefits. Nevertheless, even if the EU accepted this, which there is not a remote chance of happening) there are still some quite serious risks. Indeed, the approach taken in this chapter is so unorthodox and provocative that it clearly suggests the PICs do not intend negotiating an agreement of the kind the EU would find acceptable.	
Article 8.2 Investment is defined quite broadly. It includes companies; shares, bonds and debentures; contractual rights, including construction and management contracts; real property; leases and mortgages; licenses and permits; and more. An investment must have a 'significant presence' in the host country, so it can't just be a shell company or sales office. For an investor to claim one of the parties to the EPA as its home state it must also have substantial business activities in that territory.	This definition would include mining licenses, logging permits, leases over land and seabed, construction contracts, build own and operate contracts, privatizations, private monopoly-run utilities, and other investments that have multiple social, environmental, cultural and economic dimensions.	EU agreements usually have broader definitions of investment, including intellectual property rights. The EU non-paper on services and investment required a company to have a 'real and continuous link with the economy' of the state it claimed as home.
Article 8.3 spells out the **coverage** of the investment rules. They apply to all measures (policies, laws, decisions etc) taken by governments at national and sub-national levels.	These rules tie the hands of future governments where they are elected with a different policy mandate or where existing foreign investment policies have failed or caused serious problems.	

There are exceptions. The rules do not apply retrospectively to existing investments and they have 12 months to come into compliance.	These exceptions sound quite extensive. The flipside is that every aspect of foreign investment that is not listed in these annexes is covered by the rules and subject to extra-territorial enforcement under international arbitration. Again, this intrudes into core responsibilities of national governments by restricting the ability of a PIC to choose how to regulate foreign investment in the future.	
Importantly the chapter does not establish 'pre-establishment rights' – that is, rights to establish or acquire an investment in a party – unless either a PIC or the EU choose to list in an annex those sectors in which it has removed its barriers to foreign investors. It can also list any residual conditions or limitations. Governments who do this can amend their Annex in relation to future investments, but not in relation to existing investments.		The EU will be very unhappy that pre-investment rights are not included. They see this as an essential part of any investment agreement.
Two other annexes limit the application of the rules. The first lists any economic sectors (including services) that are excluded from the rules. The second lists measures that PICs currently use that are inconsistent with the rules. This enables them to continue using either them or equivalent measures that do not impose greater restrictions on foreign investors/ments. All local government measures are automatically included in the annex.	As with services, these annexes require PIC governments to have incredible skill and foresight. For the first annex they have to identify all current and future potential areas of investment that they might want to exclude from coverage of the rules. For the second, they have to identify every regulation, law and policy that they might want to protect. However, this annex only protects the existing level of restriction (known as a standstill provision). It would not be possible for national or local governments to increase the level of regulation in the future.	These annexes are currently the standard way of making investment commitments.
Article 8.4 A party can **deny the benefits** of the investment rules to an enterprise that is controlled by a non-party state with which it does not maintain		This would allow the EU to refuse to deal with Taiwanese investment.

diplomatic relations or is prohibited by its law from dealing with.		
Article 8.5 The PICs guarantee to give foreign investors/ments from the EU **'national treatment'**, which means at least as good treatment as it gives its local investors/ments 'in like circumstances'. This relates to managing, operating, expanding or selling the investment. This applies at all levels of government. It doesn't apply to government procurement of goods and services.	These rules are often described as a bill of rights for transnational companies. It is very difficult for most local investors in poor and small countries to compete on equal terms with TNCs because there is not a level playing field.	National treatment is an essential provision in any investment agreement for the EU.
For the purposes of comparison, 'like circumstances' should include the effects on third persons and the local community, impacts on the environment, the sector involved, the aim of the government measure that is of concern, the regulatory process applied in such matters and other relevant factors.	This is a novel provision that largely negates national treatment, because a strict interpretation would mean that foreign investors would never be in a like position to locals after these factors are taken into account. Would the PIC negotiators continue with an investment agreement if the EU rejected such a provision?	There is no way the EU would accept such an open-ended and blatant loophole.
Article 8.6 MFN provision extends to each party to the EPA the benefits it gives the others or third states in investment agreements. This only applies to the post-investment provisions. It excludes international tax arrangements and investors whose home state is not party to such agreements.	A number of PICs have investment treaties with non-EU states. PNG for example has a bilateral investment treaty with Australia. This would require it to give the EU and the rest of the PICs the same benefits it gives to Australian investors under that agreement.	
Article 8.8 A government can only nationalize or **expropriate** an investment covered by this agreement if it is for a public purpose, is non-discriminatory, follows due process of law and appropriate compensation is paid, calculated on a fair market value.	This provision applies to all foreign investments, irrespective of the annexes. Sometimes governments have little choice but to resume control of key infrastructure or operations, because of market failure or reckless corporate behaviour. This is especially the case where privatizations have failed or corrupt or	The EU routinely expects strong rules on expropriation, including takings.

	incompetent governments have made very bad decisions in relation to foreign investors. These investors are often morally, but not legally, culpable. Yet they can be entitled to full compensation.	
This includes '**indirect expropriation'**. However states retain the right to adopt bona fide and non-discriminatory regulatory measures that aim to promote and protect public welfare objectives, such as public health, safety and the environment.	This seeks to address the most controversial aspect of these agreements known as 'creeping expropriation' or the 'takings rule'. Governments in various parts of the world have been taken to court by transnational companies for adopting regulations that reduced the value or profitability of the foreign investment. This wording would address part of that problem.	
Article 8.7 promises non-discriminatory treatment for losses suffered during **armed conflict or civil strife.**	This is obviously an issue for potential foreign investors in the PICs.	
Article 8.9 An investment cannot be required to **appoint senior managers** of a particular nationality, but it can be required to ensure a majority of the **board of directors** is resident in the host country, so long as that does not materially impair its ability to control the investment.	Unfortunately having local directors is no guarantee of accountability or ethical behaviour. But there is more prospect of holding them to account. The requirement for directors of foreign investors to be locally resident in small countries can be a practical difficulty.	
Article 8.10 The agreement guarantees foreign investors the right to take all their investment, profits, royalties, capital gains, proceeds of sale etc out of the country in **freely convertible currency**. There are exceptions for bankruptcy, criminal offending or outstanding judgments.	The unrestricted outflow of profits and failure to reinvest in the local economy is one of the biggest costs of foreign investment. This provision eliminates the ability to require some degree of reinvestment and there is no provision that would allow the PICs to impose restrictions where it faces a balance of payments emergency.	This is standard for most investment agreements, but they also routinely have a balance of payments provision. It is interesting that the EU's non-paper on services and investment does not include a provision for freedom of capital movements.

Articles 8.11-8.18 set out an innovative set of **obligations and duties for foreign investors** and investments. These are matched by parallel **obligations and rights of host states** in **Articles 8.19-8.28** and of **home states** of investors in **Articles 8.29-8.34**. For investors/ments these cover: - before investment, complying with national **environmental screening criteria** of either the host or home state, whichever is stronger, pending the adoption of environmental screening standards at the first meeting of the Partnership Council (of ministers) - before investment, conducting a **social impact assessment** using standards adopted by the Partnership Council at its first meeting - adopting the **precautionary principle** for environmental impact assessments and decisions - not offering **bribes** or other advantages to public officials, business associates or families to influence decisions and being denied access to the investor dispute mechanism where they breached this article.; - maintaining an **environmental management system**, with higher standards for large companies and those involved in resource exploitation or high-risk industrial enterprises - upholding **human rights** in the workplace and not being complicit in human rights violations, including during civil strife - acting in accord with **ILO core labour standards**	This is an imaginative and laudable attempt to ensure that foreign investors and investments maintain high social, labour, environmental and developmental standards that are enforceable. However, none of this appears in the chapter on services liberalisation and tourism that also promote foreign investment. Some of the obligations would be very difficult to perform in a legal sense, but ethically they are very valid. Ironically, the standards and practices being proposed far exceed those that currently apply in most PICs. Their governments' endorsement of this list provides an important lobbying tool for local communities, trade unions, churches and NGOs who are seeking to raise those standards.	For all Europe's talk of corporate social responsibility, just imagine the outcry from the Confederation of European Business (UNICE) and Europe's major TNCs such as Unilever, BP and Shell, Suez, Lloyds Bank, Bertelsmann, Deutsche Telekom, Siemens, Nestle and Carrefour if the European Commission seriously considered setting this kind of precedent! There are some elements the EU could probably live with, but not as a package.

- not managing enterprises in ways that circumvent the **international environmental, labour and human rights obligations** of the host state - meeting or exceeding national and internationally accepted standards of **corporate governance,** appropriate to the size and nature of the investment, and making public their contracts with host governments, subject to commercial confidentiality. - 'striving to make the **maximum feasible contribution to sustainable development'** with reference to a range of documents that include an indicative list of key social responsibilities - applying the ILO Declaration on MNEs and OECD **Guidelines for MNCs**. - being subject to **civil action in their home country** where they cause significant damage, injury or loss of life in the host country. F**ailure to comply** with pre-establishment obligations would be considered as mitigating or offsetting government action in disputes brought by an investor. Home or host states could bring proceedings to revoke the rights of an investor that **persistently breached** or failed to comply with key post-establishment and governance obligations. Where domestic law allowed, the **host state or a private person or organization could initiate a suit** against an investor for damages arising from a breach of this chapter.		

The obligations on **host states** include to: - act with **procedural fairness** in administrative, legislative and judicial processes, recognizing that different systems reflect different levels of development - ensure effective **anti-corruption** laws and enforcement - make **contracts** with foreign investors **publicly available** , subject to commercial confidentiality - ensure its laws and regulations provide **high levels of environmental protection, and high labour and human rights** protection appropriate to its economic and social situation, plus domestic laws for environmental and social impact assessments that meet minimum standards - ensure domestic law and policies are consistent with **ILO core labour standards.** The **rights of host states** include the right to pursue their own **development objectives** and priorities, and adopt consistent regulatory and other measures, in ways that balance the rights and obligations of investors and host states. Bona fide measures to **comply with international obligations** shall not breach the investment chapter. This agreement may be **fully incorporated into domestic law** to make the provisions enforceable in the domestic courts. Subject to the obligations of WTO members under the investment measures agreement (TRIMS), host states		

can impose performance requirements to promote their development (in some circumstances), including local processing, local content, limits on imported inputs, etc.		
The **rights and obligations of home states** include: - assist PICs to **facilitate and promote investment**, especially from the EU, consistent with the PICs development goals eg. technology transfer, capacity building, support for environmental and social impact assessments of potential investments, trade missions. - ensure their legal rules **allow court actions** to be brought against their investors for acts done or decisions made in the PICs. - ensure that **bribery** by their investors in the PICs is a criminal act in the home state and make every effort to prosecute.		
Article 8.20 and 8.24 Pending development of a legally binding Protocol, the host state agrees **not to lower their domestic labour, public health, safety or environmental standards** for the purposes of attracting investors or competing through subsidies, including tax relief.	There is a widespread concern that the quest for foreign investment promotes a 'race to the bottom', where governments compete by weakening their environmental, labour and tax laws. This is partly addressed by 'not lowering standards' provisions. The proposed version is relatively weak, as the reference point is existing domestic measures that are not strong in many PICs. It also does not make it clear that cooperation is a preferable approach to secure compliance, before any attempt at enforcement.	The EU is drafting its own 'no lowering of standards' clause in its new policy papers on investment in FTAs. Other negotiations suggest it might support stronger wording.
Article 8.33 This agreement would supersede existing international investment agreements involving EU	These provisions refer to the whole agreement, not just the investment chapter. That would broaden its scope to	

states and individual PICs. **Investment agreements with non-parties** should be negotiated to accord with this agreement, and all future agreements should be fully consistent with this agreement, especially the balance of rights and obligations. **Article 8.34** Other trade agreements and this agreement would be interpreted in a mutually supportive manner.	include the development dimensions. If those were to be read consistent with agreements that lack such dimensions, these provisions could be weakened rather than strengthen the other text. The implication that the EC would be the enforcing party raises some technical complications.	
A **Dispute Settlement Body** is provided for in **Article 8.39**. The Body itself would be a Council of the Parties. It would have a separate secretariat and Director. There would be two levels to the dispute process: a panel and an appellate body. Panels would be drawn from a standing body of 25 panelists, whose qualifications are not stated. An Appellate Division would be composed of 9 individuals. All would have recognised expertise on matters covered by the EPA.		
Section 8 provides an **institutional framework for investment** rules. Each party would establish a National Authority as a Contact Point (usually a Finance Ministry official). The Partnership Council (of Ministers) would be the governing body to monitor and report on the effectiveness of the Investment Chapter and adopt any formal interpretations of the meaning of the text. A Special Committee on Technical Assistance for Investment would provide expert advice and assistance		

on implementation of the chapter, manage a special fund for assistance and promote transfer of technology through appropriate foreign investments. A Legal Aid Assistance Centre would assist PICs, especially LDCs, in responding to claims by an investor or in initiating investment disputes. It would also assist in capacity building on related legal issues. The Centre would be funded through Chapter 9. Funding for a financing mechanism to support the development of institutions and the capacity of PICs to promote and benefit from foreign investment would be provided through Chapter 9.		
CHAPTER 9. FINANCIAL MECHANISMS		
Article 9.1 The **objective** is for the EU to provide additional funding to 'ensure' full implementation of the EPA and achievement of the Pacific's development goals. That funding is referred to as 'adjustment and trade development assistance'.	Almost the entire EPA, with multiple sectoral strategies and committees, depends on new EU funding. On top of that is the cost of addressing the economic and social impacts of liberalization, especially in agriculture, services and tourism.	The EU is unlikely to accept a responsibility to 'ensure' these outcomes, rather than support or contribute to them – and then only to the limited extent it has already indicated.
Article 9.2 Assistance would be based on and consistent with the PICs' own development objectives, strategies, policies and priorities and the **principles** referred to Article 1.3. Cooperation between the EU and PICs would be flexible, appropriate, predictable, efficient, consistent, highly concessional and promote local ownership [it is not clear of what]. Decisions on allocating assistance would be taken jointly by a body located in the Pacific.	There is a tension between the autonomy of the PICs' own development strategies and the function of the joint Partnership Committees to 'adopt' the sectoral strategies from which particular projects and activities will be chosen for funding. If the PICs are genuinely in control, it is not clear what 'adoption' by these joint committees involves; if the committees do have teeth, then the PICs do not genuinely have control over their own development.	This wording is largely drawn from the Cotonou Agreement.

Article 9.3 Various kinds of **funding** could include grants, budget support, loans, guarantees, shareholdings. Funds could be used to support a wide range of projects and programmes covering structural adjustment and diversification of agriculture, sectoral policies and reforms, capacity building, stabilization of export earnings, budgets and balance of payments, infrastructure, enhancing production and competitiveness, private sector expansion and job creation, and more. A wide range of local and national government, private sector, NGO and community organizations would be eligible to receive funding. So would financial institutions, and regional and international organization and institutions.	All these areas are potentially affected by the EPA, but it would be very difficult to isolate its effects from other impacts such as domestic liberalization, ADB and donor programmes, dysfunctional economic and social conditions, etc. The available funding would be spread exceedingly thin. Judging by past experiences the bulk of it may end up in the hands of a few public bodies, organizations and institutions that have little public or political accountability. A lot of support would be needed for local communities, private sector and NGOs even to apply for a meaningful share. A suggestion to reserve 10% of funds for micro-enterprise financing and 15% for SMEs is in square brackets, which indicates disagreement among the PICs.	The EU will be aiming to minimize its expenditure across the ACP. The Pacific is a low priority and the number of projects that are funded will fall well short of the PICs' wish list.
Article 9.6 lists 11 **specific 'facilities'** to be established for the implementation of adjustment and trade development assistance, relating to different aspects of the EPA: trade facilitation and promotion; agriculture; service provider training; services regulatory adjustment assistance; tourism; SME financing; micro-financing; legal assistance; fiscal adjustment; structural adjustment; fisheries.	If the EU sticks to its guns and there is very little funding to cover implementation of all these aspects, would the PIC negotiators remove some of these proposals from the text? Or would commitments be adopted that the PICs could not afford to implement? Or would the PICs tell the EU that this is their only proposal and if the money is not there, there will be no EPA?	
Article 9.5 The goal of **additionality** is to ensure the EU and Member States provide additional money, rather redistributing what they already provide. The amounts of current funding and the first 5 years of additional funding would be explicitly stated in the text,	Because the EPA has an indefinite life, it is argued that the funding should also continue indefinitely, although it would be distributed to different projects according to changing needs in different periods. The goal is both obvious and totally unrealistic.	The EU is not interested in putting more money into the Pacific. A major motive for the Cotonou negotiations and separate EPAs was to downgrade its obligations to the Pacific and Caribbean and refocus on Africa and outside the ACP. In all the EPA negotiations it has

with a commitment to provide successive 5-year funding cycles at the same real value.		clearly differentiated between one-off funding for structural adjustment and the ongoing funding that is provided through the EDF.
Articles 9.7 and 9.8 The **political decision over funding** priorities would be made by the Partnership Council of ministers that would conduct 5 yearly reviews. Allocation of funding to particular projects and programmes would be made by a new 'independent' agency, called the Authorising Authority, with its own CEO, secretariat and governing body of 12 development and experts in financing drawn from the EU and PICs. It would prepare multi-year plans, authorize co-financing with other funding bodies, and provide advice and assistance to eligible beneficiaries.	On one hand, it is sensible to remove decisions on allocation of funds from national governments, and the Forum Secretariat would be inappropriate for this. But the creation of another regional bureaucracy could compound existing problems of inefficiency, accountability, competence and organizational jealousies.	While it is difficult to see the EU wanting to fund a further layer of bureaucracy, it would also want to ensure quality decisions.
Article 9.14 Contracts for the programmes and projects would be reserved for people or companies from the PICs, unless there were special circumstances. Supplies should likewise originate from the PICs.	This would help to build capacity, provided appropriate technical support and training was available – which could be a chicken and egg problem. There are suggestions that this proposal could be weakened, for example giving first preference to Pacific contractors, second to EU, third to elsewhere. Or different tests might apply for goods and services. Alternatively, a 'best value' test could be used – which could see EU companies secure the bulk of the contracts.	This is essentially an 'economic needs' tests that gives priorities to PIC locals. The EU commonly opposes such tests that exclude its own contractors.
Articles 9.20-9.22 provide directives relating to separate investment and financing agencies and mechanisms that are specifically referred to in the Cotonou Agreement.		

The European Investment Bank (EIB) would set up a branch in a PIC (currently proposed for Sydney) and develop lending facilities that are geared towards SMEs that are unable to source such funding from elsewhere. The text also promotes an inter-ACP proposal for an Investment Guarantee and Insurance Agency, and assistance for PICs to use the proposed new mechanisms for micro-financing and SMEs.	There is a long running complaint that the EIB does not serve the needs of the PICs. It is not clear from this proposal what legal commitments the PICs would have to make in return for EIB investment. If this would require a formal IPPA with the standard provisions, discussed above, that would be very undesirable. Likewise, the global equivalent of the Investment Guarantee and Insurance Agency routinely requires countries that use its guarantees to enter into bilateral investment treaties with the home countries of the investors.	The European Economic and Financial Affairs Council (Ecofin) has recently decided not to renew the mandate of the EIB in relation to the ACP. So its role will be limited to what is provided in the Cotonou Agreement, across the whole ACP. The EC has been resisting location of an EIB branch in the Pacific for bureaucratic and political reasons. There is nothing to suggest it will change its mind.
CHAPTER 10. CONSULTATION & DISPUTE RESOLUTION		
The **basic principle** is to try to avoid disputes and settle those that do arise by mutually satisfactory solutions. Consultations and dispute settlement processes would reflect relevant Pacific cultural values and customary procedures for resolving disputes.	The reference to cultural values and procedures is a justified attempt to avoid the sterile and adversarial kind of litigation that is typical of trade disputes.	The EU may accept the general acknowledgement of the need for cultural sensitivity, but not if it affects the legal operation of the disputes mechanism.
Article 10.2 Some aspects of the EPA may be excluded from dispute settlement (in addition to alternative mechanisms in specific chapters, such as tourism). Where disputes could be pursued in the WTO or the EPA the choice of forum should recognize that some PICs are not WTO members, and the cost and convenience to Pacific parties. Three kinds of dispute resolution are provided for: bilateral consultations; consultations within the	It is important to exclude as many PIC obligations = as possible from the dispute process as their track record of compliance with agreements is very low and the potential risk of successful challenges is very high. It would be unconscionable for those PICs that are not members of the WTO to be caught up in the WTO's time consuming, costly and unsatisfactory dispute process.	There are precedent issues here. The EC may seek to exempt its own areas of priority and/or insist that safeguard measures and other flexibilities that it would want to use are maintained.

Partnership Committee; and arbitration.		
Article 10.3 Where one party wants to consult another about a measure or practice, it can seek **bilateral consultations**. That may occur where a difficult case has arisen, circumstances have changed that require an amendment (eg to a scheduled commitment) or one party has entered a new free trade agreement with an outside country. If consultations fail to solve the problem, the party can request arbitration. **Article 10.4** One Party can ask for **consultations within the Partnership Committee**. The matter would be put on the agenda for discussions at the next meeting. Where necessary, an early meeting could be called.	Bilateral and collective consultations are effectively a renegotiation and offer a sensible and cheap way of resolving problems.	
Article 10.5 Where one Party believes another is in breach of the EPA it can ask for the matter to be resolved by **arbitration**.		The process proposed is relatively uncontroversial.
Detailed procedures are set out for arbitration. There is also a Code of Conduct for arbitrators, who would be independent individuals chosen for their specialized knowledge or experience in law, international trade law or policy or other matters covered by the EPA.	The procedures attempt to adapt a costly and lengthy process to be more accessible and affordable for the PICs.	
Arbitrators could seek out information or technical advice from 'appropriate' persons or bodies.	This stops short of allowing third parties – eg NGOs, trade unions or business – to submit their own submissions. They have to be invited. The PICs would be concerned that opening the process would benefit Europe's better-resourced and powerful transnational companies and some of their NGOs more than it would	The EU has supported more use of amicus curiae briefs.

	Pacific NGOs and businesses. It also ensures that broader issues and perspectives are not raised. However, the PICs' investment chapter does provide for individuals to intervene n enforcing obligations on foreign investors.	
There is a presumption that documents will be published and hearings will be open to the public, subject to confidentiality requirements, unless the parties to the dispute decide on a closed process.	This is an important presumption, as disputes are often heard behind closed doors and the people don't even know that hearings have been held until they are concluded. Having a groundswell of popular support could work to the advantage of PICs in a dispute. Equally, they might not like their arguments and past decisions to be subject to that level of scrutiny.	The EU has consistently argued for greater public access to hearings, although its proposals for the settlement of investment disputes involve a closed process.
Article 10.12 A party found in breach of the EPA is required to inform the complainant and the Partnership Committee how will **comply**, within what reasonable timeframe. Where the EU is in breach it must also make a concrete proposal for temporary compensation until it fully implements the remedial measures. Where a Pacific state is in breach, the EU must take into account the difficulties in adopting or implementing remedial measures, and the need for longer time to comply.	The proposal for short-term compensation is a novelty that is designed to address the dilemma that remedies in a successful trade dispute do not include compensation for past losses. Those losses can be devastating for small and poor countries, especially where they depend on a single export. Conversely, the effect of taking rapid action to implement a finding could be devastating on a PIC.	As a precedent, this would have huge ramifications for the EU.
If there is an ongoing **failure to comply**, the successful complainant can seek permission to withdraw benefits that the breaching party enjoys under the EPA to the value of the loss they are suffering, for as long as the breach continues. Where the EU is in breach, it can be required to pay monetary compensation to the value of the breach instead of facing trade sanctions.	The standard trade sanction of withdrawing benefits for EU products or services is a pretty meaningless in the case of the PICs. Monetary compensation makes much more sense. But the PICs are also open to sanctions. If they sign up to this EPA and don't comply with their obligations, the EU could impose sanctions against their exports. That could really hurt, as Fiji and Vanuatu found when the EU blocked their kava exports.	

Article 10.13 In disputes where a PIC brings the case, the **legal and other costs** of the proceeding will be met from a special fund set up under Chapter 9. This applies even if they lose the case, so long as it isn't dismissed for being frivolous.	The costs of a dispute can sometimes be as much as the value of the losses, especially where the other party uses every possible legal avenue. Without legal aid any disputes mechanism would be useless for most PICs.	The EU is among the WTO members that have recognized the need for legal aid, but they may want more control over the process and the costs.
CHAPTER 11. IMPLEMENTATION		
Pacific ACP and EU parties have 12 months to decide whether to sign the EPA. That is subject to national approval or ratification processes. Amendments can be considered by the Partnership Council (politicians) or Partnership Committee (senior officials) but they require unanimous agreement. Parties can withdraw at 180 days notice. The Agreement runs indefinitely.	The ratification processes in each PIC are very important. Sometimes, ratification is decided solely by the Cabinet, so there is no public discussion, even in the parliament. The constitutions of some PICs set down more detailed requirements for becoming parties to international treaties. Given the implications of the EPA (and similar treaties), especially their potential to limit what future governments can do, they should be subject to the most extensive scrutiny and debate possible – whether or not the national law requires that to occur. Even if a detailed consideration occurs prior to ratification, it would come at the end of negotiations after the text has been finalized. Governments are notoriously unwilling to reopen what has been agreed. That is why it is ESSENTIAL to have open and informed debate on the EPA text at every stage in the negotiations. All future drafts must be made public (voluntarily) to allow informed scrutiny. Leaks will happen anyway. More public scrutiny and debate would work to the benefit of the PIC negotiators, as they could insist that they have to maintain a strong position because of public pressure. That kind of pressure and scrutiny	The EU has its own very complex internal processes for ratification of treaties. Any final agreement would be subject to intense scrutiny within Europe from various quarters: - the StopEPA campaign in Europe has been very strong and effective at a national and regional level - there is concern among members of the European Parliament and many national parliaments - corporate lobbies are seeking high quality agreements that maintain and enhance their benefits; Any Pacific EPA would also be viewed in the whole with the other regional EPAs. Coordination of analysis of the texts of those agreements is also underway, with analyses dissemination from the regions and from within Europe.

	would be even more valuable if this really is a matter of 'going through the motions', with the expectation that the PICs will end up relying on the alternatives of the GSP, GSP+ and Everything But Arms.	

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