

The Samoa Agreement:

A continued economic relationship that benefits the EU



What is the Samoa Agreement about?

The Samoa Agreement establishes the relationship between the European Union (EU) on one side and the African, Caribbean and Pacific countries (ACP) on the other. This agreement is the latest in a set of agreements that determines the relationship between the EU and the ACP, agreeing on the terms of their engagement and development assistance. These agreements are some recognition of the impact that colonial European states have had on the ACP and as such agreeing to provide support for their development. This historical aspect is important as often the agreements lack development and can in fact be to Europe's advantage.

These agreements, named for where they were signed (Lome, Cotonou and soon to be 'Samoa'), usually last for 20 years and cover an incredibly wide range of issues from development to human rights to environmental conservation to culture and beyond. This paper will look at some of the issues that deal with trade, investment and development.

What is the status of the Agreement?

Currently the agreement has been initialed but is awaiting final signature and adoption by countries. This is currently scheduled to take place around June 2023. There has been some uncertainty on the ratification with some EU members raising concerns around readmission of migrants as well as some African nations worried about some of the human rights commitments.

Why do these Agreements matter?

These agreements are important as not only are they incredibly broad in scope but also contain legally binding, enforceable commitments. This will leave many Pacific Island Countries left to enforce the agreement or face disciplinary action from the EU. The binding nature of these commitments means that the Samoa Agreement is going to shape the developmental prospects for all ACP states, often limiting the very actions by government that the EU states used to develop and nurture their economies, industries and societies.



*This briefing paper is produced by
the Pacific Network on Globalisation*

Ten things you need to know about the Samoa Agreement and Economic Development:

1) Unbalanced nature of the relationship means that commitments are asymmetrical

The very nature of the relationship between the EU and the ACP countries is part of the reason why these negotiations have had to take place – that is development assistance from Europe in acknowledgement of the developmental differences. These differences however also impact the way that any commitments on reforms and market access are enacted. While all parties are undertaking commitments in reality it is the economic systems of the Pacific that will be reformed in the interests of attracting EU investment as few Pacific investors have the capacity to invest in Europe. This creates an asymmetrical agreement with the developing countries taking the burden of reforms and meeting EU standards, this creates a further imbalance in the benefits and advantages for businesses in the Pacific compared with those in Europe.

2) Reform of ACP economies to prioritise business interests

Much of the sustainable development components of the agreement are aimed at reforming Pacific economies to be better suited to business and investor needs. The text commits PIC governments to “create a conducive investment environment” through “transparent, predictable and efficient regulatory administrative and policy frameworks”. What a conducive investment climate includes isn’t specified but is often associated in free trade agreements and bilateral investment treaties with reducing the regulatory space of governments and prioritising the needs of investors over all labour conditions, environmental and social protections, and Indigenous rights.

The text also commits the Pacific to facilitate investment through “legislation, regulations and policies aimed at reducing regulatory and administrative barriers” - It is crucial to note that what some investors may see as a

barrier (like customary land control systems) are seen by communities and governments as integral parts of their society and economy. It is critical to understand who it is that is determining what is and isn’t a barrier, given the asymmetry in the investment relationship (despite references to domestic investment), it will be European investors who determine the barriers, not Pacific communities.

3) Binding commitments without any detail

The Samoa Agreement contains many legally binding commitments on Pacific Island Countries. When similar language is adopted in other binding agreements like free trade treaties they often come with a description of exactly what is being committed to and what isn’t. Unfortunately under the economic sections of the agreement there are a range of undefined, generalised and broad commitments that impact how PIC governments must treat investors, provide market access (even for sensitive sectors) for EU exporters and reform their economies. The commitments often incorporate general terms like “sound”, “appropriate”, “legitimate”, and “unnecessary” leaving them open to interpretation which unfortunately will uphold previous pro-corporate definitions.

4) Undermining the ability to regulate

There are numerous references to the right of governments to regulate within the Samoa agreement text, however, these are accompanied by qualifiers or other commitments that render them redundant. As is common in trade agreements governments are allowed to regulate provided that it doesn’t undermine any commitments made in the agreement – the is a false guarantee as it places the commitments of the agreement above the ability of a government to regulate, undermining any promises otherwise.

As mentioned above the requirements to implement “transparent, predictable and efficient regulatory administrative and policy frameworks” undermines regulatory processes. ‘Transparency’ often involves allowing investors to comment on any legislation or regulation that may impact their interests. ‘Predictable’ is problematic as often this term is interpreted to mean that the regulations and policies in Pacific governments don’t change an investors legitimate expectations even if governments find that they need to make changes in response to external factors or domestic impacts. Both of these combine to give European investors greater power and influence over the ability of Pacific Island governments to regulate.

5) EU offensive agenda on digital trade and resource access

The EU is using the Samoa agreement to further their areas of interest regardless of the developmental impacts on the ACP. The EU is aggressively pushing to liberalise digital trade, doing so in other forums like the World Trade Organization (WTO) with proposals that would undermine the ability of developing nations to regulate, support and ensure that the domestic digital economy serves people and communities and not just large tech corporations. The EU is also demanding ‘undistorted’ access to extractive resources of the Pacific, while what this means isn’t explicitly defined, it opens the door for the EU to challenge actions by Pacific states that can distort their ability to access any type of resources. Both these examples show the offensive agenda that the EU is pursuing through this so called development agreement.

6) Undermine Pacific positions in other fora like the WTO

The Samoa agreement includes language that will bind Pacific governments to agreements they aren’t negotiating. Within the text there are commitments that are being made that intersect with negotiations currently underway in bodies like the WTO that most Pacific Island Countries aren’t members of but whose rules will be incorporated into the agreement in the future. Issues like ‘Investment Facilitation’, ‘e-Commerce’ and the comprehensive ‘Fisheries Subsidies’ are being negotiated by a number of WTO members and contain offensive interests for the EU. The current language in this agreement would

see those outcomes applied to this agreement regardless of involvement in those other negotiations. This undermines the sovereignty of Pacific Island nations to determine for themselves if they want to be part of these outcomes.

7) Commitments unbound by technical and capacity support

The Samoa agreement is meant to be an agreement that supports ACP development yet there is little bound technical and capacity support for the commitments being undertaken by the Pacific and other ACP countries. There are extensive commitments that will need to be resourced from somewhere and placing a greater burden on Pacific governments won’t support their development, instead it will result in resources being diverted to upholding market access commitments for European investors as opposed to other more important national priorities. The commitments being undertaken by the Pacific should be conditional on technical and capacity support being provided by the EU.



8) EU as donor will shape implementation with funding

The agreement commits Pacific Island governments to undertaking many poorly defined commitments leaving them open to interpretation. The adoption of language like “shall encourage” can create a false sense of security as, while PACP governments are bound to ‘encourage’ the commitment, the fact that the EU is a donor can result in the EU using its development assistance to secure the outcome committed to. As a donor the EU has great interest in ensuring that ACP countries implement their commitments as this will facilitate the market access for European exports (as well as others).

The definitions of words like “necessary”, “appropriate” and “effectively” which are attached to economic reforms of regulatory measures are all left open which makes it unclear whom will determine when those levels of reform have been achieved.

9) Setting the stage for EPA expansion

The Economic Partnership Agreements (EPAs) are a free trade agreement that the EU negotiated across the ACP regions. The Pacific concluded the interim-EPA in 2007 which only applied to trade in goods that Fiji and PNG signed under duress to preserve their sugar and tuna industries, Samoa and the Solomon Islands have subsequently acceded with Tonga and Tuvalu expressing some interest. Negotiations for a comprehensive EPA (goods, services, investment) was meant to address the unfair issues of the iEPA but negotiations broke down when the EU demanded access to Pacific fisheries as part of the deal, something the Pacific rightfully refused.

Under this agreement, the EPAs are being centred as the future of the trade relationship between the countries and their expansion is being encouraged in the text. Only

4 Pacific Island countries are party to an EPA which makes such text problematic as it will pressure Pacific governments to accede to agreements that undermine their abilities to nurture local industries and shape their development.

The EU will also use the Samoa agreement to pressure Pacific Island Countries to negotiate the expansion of the iEPAs, bringing in highly controversial and complex areas like services, investment and the ability of governments to regulate.

10) In post-COVID19 world adopting old economic ideas

The COVID19 pandemic has exposed the many economic fault-lines and problems in the global economy, exacerbating the impacts on the already marginalised. The economic narrative that governments should get out of the way of private enterprise has been dismantled as many governments have had to undertake massive interventions to protect industries and build domestic capacities, often against the very free trade ethos that was promoted.

The financial and policy shock of COVID19 has upended the theory and practice of development and economic sovereignty. The extent of COVID19’s impact is ongoing and agreeing to reduced space to regulate, support local industries, opening up for greater EU imports for 20 years is dangerous. The world is changing but this agreement binds the Pacific to the old economic ways, ways that haven’t delivered for the Pacific.

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