



The University of the South Pacific

Emalus Campus

Supplementary  
Examinations

Semester 2 2005

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**SCHOOL OF LAW**

COURSE NAME: **EU Law affecting the South Pacific**

COURSE NO: **LA 324**

TIME ALLOWED: **THREE (3) HOURS**

READING TIME: **TEN (10) MINUTES**

NUMBER OF PAGES: **ELEVEN (11) (including cover page)**

NUMBER OF QUESTIONS ON PAPER: **TWELVE (12)**

NUMBER OF QUESTIONS TO BE ANSWERED: **SEVEN (7)**

MARK ALLOCATED FOR EACH QUESTION:

PART A: All students must answer this question which is worth 20 marks.

PART B: Students must answer FIVE questions from this part. Each question is worth 3 marks, making a total of 15 marks for the part

PART C: Students must choose ONE question from this part to answer. Each question is worth 15 marks.

TOTAL MARKS: **FIFTY (50) MARKS**

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MATERIALS PERMITTED IN EXAMINATION ROOM:

**Not annotated Copy of the EC Treaty (Treaty of Nice 2003).**

**PART A**

**This question is COMPULSORY. It is worth 20 marks. You will need to refer to relevant Articles of the EC Treaty and ECJ case-law.**

**Question 1**

Imagine it is Monday, 17 February 1988 and you just came to your office. You are one of the famous EU lawyers from *Boland & Partner's City Law Firm* in London and your secretary presents to you a file of a client of yours, Mr. Bennett from the UK, whom you will meet shortly. Apparently the client would like to ask your advice on several legal issues regarding his case.

Mr. Bennett's Case

Mr. Bennett owns a London based import and export company ("Beerexim UK"), which focuses mainly on the beer market. Half a year ago, Mr. Bennett decided to export traditional British beer, the famous Pale Ale from Burton-On-Trent in the English Midlands, to Denmark. Pale Ale is being made out of water, hops, yeast and malted barley and is world-famous for its specific ale style. Knowing that Pale Ale is very trendy and therefore high in demand in British pubs, Mr. Bennett thought of a similar success for Pale Ale in Danish clubs and pubs. He has visited Denmark several times before and is convinced that with the introduction of the British Pale Ale, he can generate enormous gains for Beerexim.

Mr. Bennett found out that since the Danish import authorities are required by Danish law to collect information on all goods to be introduced to the Danish foodstuffs market, he would have to apply for an import certificate for Pale Ale. In order to comply with this legal requirement, Mr. Bennett applied for an import certificate with the Danish Foodstuffs Authority. Unfortunately, he was told that he could not be granted a certificate for Pale Ale. The reason for this was the Danish Beer Purity Law No. 178/84, which stated in Article 2:

"The marketing of beer is conditional upon it being manufactured in a way which ensures purity of the product. The purity is ensured if beer contains nothing else but water, yeast and hops. All other additives shall preclude the free marketing of beer in Denmark."

Mr. Bennett was very disappointed with this new development stopping him from introducing Pale Ale in Denmark but he did not want to give up. He truly believes in the success story of the European Single Market and thinks that there are gains to be achieved for his company. Therefore, Mr. Bennett decided to sue the Danish Foodstuffs

Authority. His case went before the Civil Bench of the Danish Supreme Court which then halted the case in order to ask a question of the European Court of Justice (ECJ).

However, Mr. Bennett is a little confused with the way in which the Danish Supreme Court proceeds and since he does not fully trust his Danish lawyer (whom he barely understands due to this very bad Danish accent), he asks you the following:

- (a) Why was it necessary for the Danish Supreme Court to halt his case in order to pose a question to the ECJ and are there any exceptions to this procedure? (in your answer you must refer to legislative provisions and case law) (5 marks)

Furthermore, Mr. Bennett does not really understand how European Law can help him win his case and he would like to know the following:

- (b) How is it possible that the ECJ has a say in helping to determine whether the Danish Beer Purity Law No. 178/84 is contrary to the EC Treaty? (in your answer you must refer to legislative provisions and case law) (5 marks)
- (c) Which criteria will the ECJ apply in determining whether the Danish Beer Purity Law No. 178/84 is contrary to the EC Treaty and what is the likely outcome of this deliberation for his case? (in your answer you must refer to legislative provisions and case law) (5 marks)

Mr. Bennett now tells you that his Danish lawyer has found out that the Danish government was under an obligation to implement a European Directive, the EU Directive 67/86 on purity standards for foodstuffs within the European Community. The implementation deadline given in Article 17 of EU Directive 67/86 was 01 January 1988. According to Article 5 of EU Directive 67/86,

“...all national prescription of purity standards for foodstuffs shall be such as not to hinder internal Community trade in these foodstuffs. According to the principle of mutual recognition, there shall be no discrimination in law and in practice between foodstuffs originating in different Member States.”

Mr. Bennett wants to know the following:

- (d) Can this new information help him in his case? If yes, how and why? If not, why not? (in your answer you must refer to legislative provisions and case law) (5 marks)

**Please remember to use the EC Treaty in answering questions a) – d) and state the relevant case-law of the ECJ.**

## **PART B**

**You must answer FIVE questions from this part. Each question is worth 3 marks, making a total of 15 marks.**

### **Question two**

Explain the circumstances and reasons for forming the European Economic Community. (3 marks)

### **Question three**

Discuss how the European Court of Justice has contributed to European integration. Give at least two examples. (3 marks)

### **Question four**

Discuss whether the European Parliament has become more important in EU politics in recent years. (3 marks)

### **Question five**

Discuss internal and external forces which are said to have made a change in the EU-ACP relationship inevitable? (3 marks)

### **Question six**

Give at least 5 reasons for the bad performance of Pacific ACP Countries between 1975 and today, despite the generous concessions granted by the EU in all Lomé Agreements. (3 marks)

### **Question seven**

Discuss the advantages and disadvantages of the EBA initiative (Everything but Arms) for the Pacific ACP states? (3 marks)

### **Question eight**

Why did the EU for decades defend non-reciprocity in its ACP trade relations and why did it suddenly decide to change its trade policy towards reciprocity in all agreements with ACP countries? Explain. (3 marks)

### **Question nine**

Explain the difference between direct applicability and direct effect in EU law? (3 marks)

### **Question ten**

Discuss what major changes will the EU Constitution bring about once it has been ratified by all 25 Member States of the EU. (3 marks)

## **PART C**

**You must answer ONE question from this part. Each question is worth 15 marks.**

### **Question eleven**

Discuss the following quotation:

*“PICs are faced with restricted negotiation options for a trade regime under the EPAs with the EU and even more so under the PICTA/PACER Agreements.”*

You should consider:

- (a) What objectives do the EPAs have and what is at stake for PIS?
- (b) What objectives do PICTA / PACER have and what is at stake for PIS?
- (c) What negotiation options are there under PACER and PICTA / EPAs?
- (d) What would be a reasonable (long-term) solution for PICs in your opinion?

(15 marks)

### **Question twelve**

Discuss regional integration in the South Pacific at its present stage by comparing it to the regional integration in the Caribbean region as it currently stands (Caribbean Community and Common Market, CARICOM and CARICOM Single Market Economy, CSME). What are common factors / similar developments and what are the differences? (15 marks)

**N.B. It might be useful to also have a look at European integration and see whether the South Pacific and the Caribbean follow any of the European steps towards integration.**

## **Additional Legislation**

### **Cotonou Agreement**

#### **TITLE II ECONOMIC AND TRADE COOPERATION CHAPTER 1 OBJECTIVES AND PRINCIPLES**

##### **ARTICLE 34**

###### Objectives

1. Economic and trade cooperation shall aim at fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries.
2. The ultimate objective of economic and trade cooperation is to enable the ACP States to play a full part in international trade. In this context, particular regard shall be had to the need for the ACP States to participate actively in multilateral trade negotiations. Given the current level of development of the ACP countries, economic and trade cooperation shall be directed at enabling the ACP States to manage the challenges of globalisation and to adapt progressively to new conditions of international trade thereby facilitating their transition to the liberalised global economy.
3. To this end economic and trade cooperation shall aim at enhancing the production, supply and trading capacity of the ACP countries as well as their capacity to attract investment. It shall further aim at creating a new trading dynamic between the Parties, at strengthening the ACP countries trade and investment policies and at improving the ACP countries' capacity to handle all issues related to trade.
4. Economic and trade cooperation shall be implemented in full conformity with the provisions of the WTO, including special and differential treatment, taking account of the Parties' mutual interests and their respective levels of development.

#### **CHAPTER 2 NEW TRADING ARRANGEMENTS**

##### **ARTICLE 36**

###### Modalities

1. In view of the objectives and principles set out above, the Parties agree to conclude new World Trade Organisation (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade.
2. The Parties agree that the new trading arrangements shall be introduced gradually and recognize the need, therefore, for a preparatory period.
3. In order to facilitate the transition to the new trading arrangements, the non-reciprocal trade preferences applied under the Fourth ACP-EC Convention shall be maintained during the preparatory period for all ACP countries, under the conditions defined in Annex V to this Agreement.
4. In this context, the Parties reaffirm the importance of the commodity protocols, attached to Annex V of this Agreement. ~~They agree on the need to review them in the~~

context of the new trading arrangements, in particular as regards their compatibility with WTO rules, with a view to safeguarding the benefits derived therefrom, bearing in mind the special legal status of the Sugar Protocol.

## ARTICLE 37

### Procedures

1. Economic partnership agreements shall be negotiated during the preparatory period which shall end by 31 December 2007 at the latest. Formal negotiations of the new trading arrangements shall start in September 2002 and the new trading arrangements shall enter into force by 1 January 2008, unless earlier dates are agreed between the Parties.
2. All the necessary measures shall be taken so as to ensure that the negotiations are successfully concluded within the preparatory period. To this end, the period up to the start of the formal negotiations of the new trading arrangements shall be actively used to make initial preparations for these negotiations.
3. The preparatory period shall also be used for capacity-building in the public and private sectors of ACP countries, including measures to enhance competitiveness, for strengthening of regional organisations and for support to regional trade integration initiatives, where appropriate with assistance to budgetary adjustment and fiscal reform, as well as for infrastructure upgrading and development, and for investment promotion.
4. The Parties will regularly review the progress of the preparations and negotiations and, will in 2006 carry out a formal and comprehensive review of the arrangements planned for all countries to ensure that no further time is needed for preparations or negotiations.
5. Negotiations of the economic partnership agreements will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, taking into account regional integration process within the ACP.
6. In 2004, the Community will assess the situation of the non-LDC which, after consultations with the Community decide that they are not in a position to enter into economic partnership agreements and will examine all alternative possibilities, in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules.
7. Negotiations of the economic partnership agreements shall aim notably at establishing the timetable for the progressive removal of barriers to trade between the Parties, in accordance with the relevant WTO rules. On the Community side trade liberalisation shall build on the *acquis* and shall aim at improving current market access for the ACP countries through *inter alia*, a review of the rules of origin. Negotiations shall take account of the level of development and the socio-economic impact of trade measures on ACP countries, and their capacity to adapt and adjust their economies to the liberalisation process. Negotiations will therefore be as flexible as possible in establishing the duration of a sufficient transitional period, the final product coverage, taking into account sensitive sectors, and the degree of asymmetry in terms of timetable for tariff dismantlement, while remaining in conformity with WTO rules then prevailing.
8. The Parties shall closely cooperate and collaborate in the WTO with a view to defending the arrangements reached, in particular with regard to the degree of flexibility available.
9. The Community will start by the year 2000, a process which by the end of multilateral trade negotiations and at the latest 2005 will allow duty free access for essentially all products from all LDC building on the level of the existing trade provisions of the Fourth ACP-EC Convention and which will simplify and review the rules of origin, including cumulation provisions, that apply to their exports.

## **Pacific Island Countries Trade Agreement (PICTA)**

### **Article 3**

#### ***Free Trade Area***

- 1 The Parties shall gradually establish a free trade area in accordance with the provisions of this Agreement, with the understanding that Least Developed Countries and Small Island States may be integrated in accordance with different structures and by different time frames than other Parties. The Area shall consist of the territories of the Parties to this Agreement.

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### **Article 4**

#### ***Coverage of the Agreement***

This Agreement shall apply to trade in originating goods exported from one Party to another Party, in accordance with the terms of this Agreement.

### **Article 24**

#### ***Effect on other Agreements***

- 1 This Agreement shall not exempt any Party from its obligations, or abrogate the rights of any Party, under any existing international agreements to which it is Party.
- 2 Nothing in this Agreement shall prevent Parties from entering into any other agreements relating to the maintenance or establishment of customs unions, free trade areas or arrangements for frontier trade to the extent that those agreements are consistent with the terms and objectives of this Agreement.

## **Pacific Agreement on Closer Economic Relations (PACER)**

### **Article 2**

#### ***Objectives***

- 1 The Parties wish to establish a framework for the gradual trade and economic integration of the economies of the Forum members in a way that is fully supportive of sustainable development of the Forum Island Countries and to contribute to their gradual and progressive integration into the international economy.
- 2 The objectives of this Agreement include the following:
  - (a) to provide a framework for cooperation leading over time to the development of a single regional market;
  - (b) to foster increased economic opportunities and competitiveness through more effective regional trade arrangements;
  - (c) to minimise any disruptive effects and adjustment costs to the economies of the Forum Island Countries, including through the provision of assistance and support for the Forum Island Countries to undertake the necessary structural and economic adjustments for integration into the international economy;

- (d) to provide economic and technical assistance to the Forum Island Countries in order to assist them in implementing trade liberalisation and economic integration and in securing the benefits from liberalisation and integration; and
- (e) to be consistent with the obligations of any of the Parties under the Marrakesh Agreement Establishing the World Trade Organization.

### **Article 3**

#### ***Guiding Principles***

- 1 The objectives of sustainable development of the Forum Island Countries and gradual and progressive integration of the Forum Island Countries into the international economy shall guide all aspects of all stages of the development of the trade and economic partnership established under this Agreement.
- 2 The trade arrangements established in accordance with Part 2 of this Agreement are intended to provide “stepping stones” to allow the Forum Island Countries to gradually become part of a single regional market and integrate into the international economy.
- 3 The Parties recognise that the purpose of free trade areas should be to facilitate trade between the constituent parties and not to raise barriers to the trade of other Parties to this Agreement, and shall endeavour to act consistently with that purpose.
- 4 Nothing in this Agreement shall be construed as restricting the right of the Parties to undertake an arrangement between two or more of them to regulate trade and economic relations between them as they may agree, except when necessary to achieve the objectives of this Agreement.
- 5 The Parties shall use their best endeavours to follow international best practice in formulating the rules governing the trade relations between them, taking into account the development status, capacity and resource constraints of Forum Island Countries.
- 6 Consistent with the objectives set out in Paragraph 1, Least Developed Countries and Small Island States may be integrated in accordance with different structures and by different time frames than other Parties.
- 7 This Agreement is not intended to be:
  - (a) a customs union, an interim agreement leading to the formation of a customs union, a free trade area, or an interim agreement leading to the formation of a free trade area notifiable under Article XXIV of the General Agreement on Tariffs and Trade;
  - (b) an agreement notifiable under Article V of the General Agreement on Trade in Services; or
  - (c) in derogation of any pre-existing arrangements, obligations or treaties.

### **Article 4**

#### ***Arrangements among Forum Island Countries***

- 1 The Parties agree that it is desirable for the Forum Island Countries to commence trade liberalisation and economic integration among themselves first.
- 2 The Forum Island Countries may liberalise trade among themselves and integrate their economies at a different pace and with different priorities than those with ~~which they liberalise trade, and integrate their economies, with the economies of~~ Australia and New Zealand.

- 3 Any arrangements established in accordance with this Article shall:
- (a) be consistent with the objectives and guiding principles of this Agreement; and
  - (b) confer no rights or obligations on any Party not party to that arrangement.

#### **Article 5**

##### ***Future Negotiation of Forum-wide Trade Arrangements***

- 1 In accordance with the objectives of this Agreement, and notwithstanding the process for further integration established in the following Paragraph, eight years after the PICTA has entered into force, unless earlier agreed as part of the general review of this Agreement under Paragraph 2 of Article 16 or otherwise triggered by the provisions of Article 6, the Parties will enter into negotiations with a view to establishing reciprocal free trade arrangements between the Forum Island Countries and Australia and New Zealand.

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#### **Article 6**

##### ***Consultations between Forum Island Countries and Australia and New Zealand relating to the negotiation of free trade arrangements***

- 1 For the purposes of this Article:
- (a) “free trade arrangements” means at least one free trade area or customs union, or at least one agreement leading to the formation of such area or union, as defined in Article XXIV:8 of the General Agreement on Tariffs and Trade;
  - (b) “developed country” means any member of the Organisation for Economic Cooperation and Development as at 1 January 2001; and
  - (c) “least developed country” means any country that is for the time being designated as a least developed country by the United Nations.
- 2 If any Party enters into negotiations for a free trade arrangement with a non-Forum country, that Party shall notify the Forum Secretariat, which, in turn, shall notify all other Forum members.
- 3 Subject to Paragraph 10, if any Forum Island Country which is Party to this Agreement:
- (a) commences formal negotiations for free trade arrangements which would include one or more developed non-Forum country, then that Forum Island Country shall offer to undertake consultations as soon as practicable with Australia and New Zealand, whether individually or jointly, with a view to the commencement of negotiation of free trade arrangements; or
  - (b) concludes free trade arrangements which would not include any developed non-Forum country, then that Forum Island Country shall offer to undertake consultations with Australia and New Zealand as soon as practicable after such arrangements are concluded. In cases where such arrangements involve a country which has a higher per capita GDP than the lowest per capita GDP of a developed Forum member, then the Forum Island Country shall offer the opportunity for negotiation of free trade arrangements with Australia and New Zealand, whether individually or jointly, following the consultation.
- ~~4 Subject to Paragraph 10, if all the parties to the PICTA jointly commence negotiations for free trade arrangements which would include one or more non-~~

Forum country, they shall offer to undertake consultations, as soon as practicable, with Australia and New Zealand, whether individually or jointly, with a view to the commencement of negotiation of free trade arrangements.

5 Any Forum Island Country not party to the negotiations with a country referred to in Paragraph 3 may participate in any resulting consultations and negotiations with Australia or New Zealand.

6 If Australia or New Zealand commence formal negotiations for free trade arrangements with any non-Forum country, then Australia and New Zealand shall offer to undertake consultations, as soon as practicable, with each Forum Island Country with a view to the commencement of negotiations for improved market access.

7 In undertaking any negotiations under Paragraphs 3, 4 or 6, the relevant Parties shall endeavour to negotiate arrangements which are mutually beneficial, provide equal or better market access for the Parties, and are consistent with the relevant provisions of the Marrakesh Agreement Establishing the World Trade Organization.

8 Where more than one consultation or negotiation is required under this Article, the relevant Parties shall consider how best to coordinate their consultations and negotiations.

9 The obligation to consult under Paragraphs 3, 4 or 6 shall cease if the negotiation with a non-Forum country or countries is discontinued without producing an agreement.

10 The obligations in Paragraphs 3 and 4 do not apply to:

(a) the accession of any Pacific Island Country or Territory to the PICTA, provided that the PICTA rules of origin do not discriminate between Australia and New Zealand and other developed countries; or

(b) the negotiation of any bilateral or plurilateral free trade arrangements between or among countries each of which is a Forum Island Country, or a Pacific Island Country or Territory, or a least developed country, provided that the rules of origin of such bilateral or plurilateral free trade arrangements do not discriminate between Australia and New Zealand and other developed countries.

11 Nothing in this Article shall be construed so as to undermine or impede the ability of any Party to effectively and independently negotiate a free trade arrangement with a third country.

12 Trade negotiations under this Agreement should be independent of other aspects of the relationship between Parties, including the provision of aid or technical assistance, outside that provided under this Agreement.