



<b>Programme:</b>	<i>Technical Assistance to the Integration to the Multilateral Trading System and Support to the Integrated Framework</i>
<b>Country/Region:</b>	<b>ACP Pacific States</b>
<b>Project title:</b>	<b>Facilitating the Removal of the EU Trade Ban on Kava Exports</b>
<b>Source of Financing:</b>	<b>Third Programme Estimate - Activity n° 072-13</b>

## ANNEX II: TERMS OF REFERENCE

### 1. BACKGROUND INFORMATION

#### 1.1 Beneficiary

ACP Pacific Countries

#### 1.2 Contracting Authority

The Contracting Authority for this project is the Programme Management Unit (PMU) of the ACP MTS PROGRAMME on behalf of the Regional Authorising Officer for the European Development Project N°2013/318-040.

#### 1.3 Relevant Background Information

Kava is a herbal remedy produced from the Kava-kava (*Piper methysticum*) ("Kava") plant, which is a member of the pepper family native to many Pacific Ocean islands. The herb is mainly produced by small-scale rural dwellers in the South Pacific Island countries of Fiji, Vanuatu, Tonga, Solomon Islands and Samoa. In 1998, when exports from the South Pacific islands reached their peak level, kava was amongst the top-selling herbs in the U.S. and amongst the fastest-growing herbs achieving a growth rate of 473% between 1997 and 1998. In the South Pacific region the annual production of kava was estimated to be worth US \$200 million. The pharmaceutical kava market was centred on Germany with 1.3 million users estimated.

The issue of possible liver toxicity was initially raised in Europe in late 2000 following a cluster of cases in Switzerland. No regulatory action was taken by the EC as the number of reported cases was not considered to be sufficient to alter the favourable risk/benefit balance of kava. However, the increase in the number of reports of possible liver toxicity led individual EU Member States, namely, Germany, Austria and the UK, to impose bans on the sale, supply and imports of unlicensed medicines containing kava. Similar action was taken in relation to foods containing extracts of kava. The current kava restrictions have exacted severe economic damage to the producers and traders in the South Pacific Islands, particularly those situated in Fiji, Samoa, Tonga and Vanuatu. The loss in export revenue to the region currently stands at over US\$1.2billion. This is a considerable economic loss, more so given the level of the affected countries' level of economic development.

The ACP-EU Joint Parliamentary Assembly adopted a resolution in February 2004, and further raised the issue at the 2013 JPA Session calling on the concerned EU Member States to urgently review, on the basis of scientific



evidence, the ban and restriction on kava and kava-based products in the EU Members States<sup>1</sup>.

The International Kava Executive Council urged in its 2004 resolutions that the EU should adopt the same position as the US, and requires the industry to use cautionary labelling as an alternative to banning kava. It is recommended that precise technical specifications are developed and implemented as a high reference standard for kava raw material with stringent quality control measures in the producing country to ensure that only suitable kava varieties are grown and marketed. In 2013 technical assistance was provided by the ACP MTS Programme to establish scientific evidence to ensure that quality and safety standards of kava are met in order to comply with EU SPS requirements, and to encourage the countries of the Pacific region to establish a system of traceable origins.

### **Relevant background at the regional and multilateral levels**

Trade negotiations and agreements provide the opportunity to develop new trade strategies for the growth and competitiveness of economic sectors. A number of trade negotiations involving Pacific kava producing nations provide the opportunity to assess the existing trade ban on kava exports and to explore opportunities within these trade negotiations and agreements to facilitate a new approach towards the lifting of the ban taking into consideration previous actions. These on-going trade negotiations include DDA, EU-Pacific EPA and PACER Plus with regional trade partners, Australia and New Zealand.

The affected Pacific ACP States are desirous of using the multilateral negotiation front to ensure that kava is given its exposure and recognition as an issue of critical importance to the region. This strategic orientation is similar to the path blazed by the C-4 countries with respect to cotton and previously by the ACP with bananas and sugar. More specifically, the Pacific ACP States will seek to launch discussions at the WTO Committee on SPS. This mooted effort by Fiji, Tonga, Solomon Islands and Papua New Guinea, Samoa and Vanuatu hopes to benefit from supported of key WTO groupings such as ACP, African, LDCs and SVEs Groups.

The EU/Pacific EPA negotiations also provide another opportunity of addressing the kava issue with European partners by including kava in the negotiations. The Pacific has a profound interest in enumerating kava as an offensive interest with any EU-Pacific EPA resulting in a favourable treatment of the product. The regional industry and political leaders need to be continuously engaged in order to ultimately provide the necessary guidance and coordination for kava dossier. Due consideration should also be given to the role played by the Joint ACP-EU Parliamentary Assembly that could support the cause of kava trade. Support from the EU and Pacific civil society (i.e., NGOs, consumers' associations, industry, academia, etc.) and especially the media, are to be appropriately mobilized.

The issue of kava for ACP Pacific States has been benefited from a number of previous technical assistance efforts. The ACP MTS Programme has supported interventions aimed at overturning the EU import ban. This specific action will complement previous work undertaken while also benefitting from a sound legal and technical platform.

---

<sup>1</sup> OJ C 120/16 of 30 April 2004.



## 2. REQUEST

The Government of Vanuatu, through its Embassy in Belgium, and on behalf of the Pacific Islands Kava producing countries (i.e., Fiji, Samoa, Tonga, Vanuatu, Federated States of Micronesia, Papua New Guinea and Solomon Islands), has approached the ACP MTS Programme with a request designed to further advance the work that has been done previously on the subject and prepare for next year's meeting of Pacific Codex Alimentarius Committee.

The main result of the project will be the drafting of a technical brief detailing the current situation in the sector, reviewing the state of implementation made in previous technical studies and outlining clear deliverables to be undertaken in order for Pacific kava producers to meet EU trade *cum* market requirements.

This request aims to stock-take on the requirements that ACP Pacific Countries need to meet in order to produce kava in a way that should convince importing countries, especially in the EU, to remove the 'ban'. The action would build on the recommendations of the 2012 meetings in Port Vila and Madang. Such effort would also reflect the changing multilateral trade environment, on-going negotiations of both the EU-PACP EPA and PACER Plus while developing specific action plan towards to have the ban lifted.

This intervention will be complemented by drafting recommendations on kava for the meeting of Pacific Codex Alimentarius Committee to be held in Papua New Guinea in September 2014 and by preparing the specifications for the remaining work to be undertaken to scientifically sample and map all remaining cultivars. This action will be undertaken with the paramount objective to obtain a FAO Codex standard for kava, a requisite to lift the current EU ban.

## 3. EXPERTISE REQUIRED

The activity will require the services of a high-level trade expert with the following profile:

### Qualifications and skills

- Holds a university degree in Economics, Law or International Trade.
- Possesses strong drafting skills in English.

### General professional experience

- At least 10 years' professional experience on WTO and regional trade agreements;
- Experience in trade policy development, formulation and implementation, especially in small developing countries; and
- Experience in private sector development in ACP countries;

### Specific professional experience

- Deep understanding of WTO Agreements, especially, the Agreements on Agriculture and SPS;
- Strong experience on the implementation of SPS projects in ACP countries;
- Experience of working in the Pacific region.



#### **4. TIME FRAME**

The project will commence on signature of the contract, with delivery the latest on January 31<sup>st</sup>, 2014 (approximately 6 weeks' work).

#### **5. BUDGET**

The ACP MTS Programme will contract the selected expert with a fee-based contract of a total value of EUR 18.000 (direct agreement).

#### **6. DELIVERABLES**

The major delivery of this intervention will be the crafting of a comprehensive technical brief (15-20 pages) for relevant stakeholders to understand the action required to remove the current EU ban on kava.

The PMU will be responsible for approving the final report.