

**Technical Assistance to the Integration to the Multilateral Trading  
System and Support to the Integrated Framework  
Ref: 9 ACP RPR 140-039/11**

**Establishment of health and safety standards for the  
production and export of kava-based products**

***“Validation Workshop – Overall Strategy”***

**14 March 2012 – Port Vila, Vanuatu**

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## Establishment of health and safety standards for the production and export of kava and kava-based products

### Introduction

The following strategy has been developed during the four-day Validation Workshop held in Port Vila, Vanuatu within the framework of the project on the “*Establishment of health and safety standards for the production and export of kava-based products*” implemented by *FratiniVergano – European Lawyers* within the EU-funded facility of Technical Assistance to the Integration to the Multilateral Trading System and Support to the Integrated Framework (Ref: 9 ACP RPR 140-039/11).

The overall strategy is meant to consolidate the results of the thorough discussions held during the Validation Workshop among all participants and all Pacific kava-producing country delegations. It stems from the Study prepared by the experts under the consultancy and it builds on the presentations that were given during the first day of presentations, in line with the requirements under the ToRs of the project.

The drivers of this overall strategy have been endorsed by the participants and are meant to be the basis to move forward the kava dossier on the three broad lines of action that have been defined: 1) Scientific; 2) FAO/WHO Codex Standardization; and 3) Trade.

### Part 1

#### Road Map for Scientific Actions

#### 1. Subject

- **What science is needed?**

The Workshop participants agree that scientific assessments are needed with respect to each cultivar in order to have a full and exhaustive scientific review of all kava cultivars and to then use this scientific evidence to define the appropriate FAO/WHO Codex standard. Scientific analytical data must be added to the traditional ethno-botanical knowledge that has informed safe production and consumption of kava in the Pacific for millennia.

- **Which varieties should be tested?**

The Workshop participants agree that all varieties must be scientifically tested. The ultimate objective is to build credible scientific data and analyses in order to provide FAO/WHO Codex with the scientific evidence needed to develop a standard on the basis of the list of varieties indicated in the proposal that has been put forward the Regional FAO/WHO Codex Coordinating Committee for North America and South West Pacific. These tests must be conducted on the basis of sampling methods and scientific testing that have been applied in the pilot tests conducted during the ACP MTS project.

## 2. Actors

- **Who will drive the process?**

The Workshop participants agree that the Regional and National FAO/WHO Codex Focal Points will coordinate this efforts and interface will the scientists that will be selected to collect the actual samples and conduct the scientific testing.

- **Who should organize the scientific activity?**

A tentative agreement among the Workshop participants is that Dr. Vincent Lebot and Dr. Mathias Schmidt will be retained and will organize the scientific activity supervising the analytical sampling and the consolidation of the scientific evidence for purposes of submission to FAO/WHO Codex.

- **Who can do the testing?**

The Workshop participants agree that the analytical scientific testing be conducted in the same German laboratory that was used to carry-out the pilot tests that were conducted under the ACP MTS project (i.e., Phytos Labor fuer Analytik von Arzneimitteln GmbH & Co. KG in Neu-Ulm, Germany).

## 3. Actions

- **Sample collection**

The Workshop participants agree that the Regional and National FAO/WHO Codex Focal Points will coordinate the sample collection and the retained scientists will collect them for the analytical testing to be conducted. The sample collection must be done on the basis of scientifically-accepted criteria of selection, classification, storage and handling. The retained scientific experts will direct and be responsible for this process.

- **Analytical testing**

The Workshop participants agree that the samples should be analysed for *kavalactones* and *flavokavins*, which means that adequate testing facilities and expertise should be used. This facilities and expertise are currently available to a limited extent in the Pacific. The scope of the analytical testing should be oriented at the outcomes of the ACP MTS project (i.e., separate testing of roots, peeled chips, peeled basal stems and peelings).

- **Reporting scientific evidence for submission**

The Workshop participants agree that the results of the analytical screening of the varieties shall be presented to the national FAO/WHO Codex contact points by the retained scientists and their Pacific collaborators in a report suitable for submission to the regional FAO/WHO Codex coordinating committee (CCNASWP) in light of the scientific evidence needed for kava standardization.

#### 4. Timeframe

- **What are the relevant deadlines?**

The Workshop participants agree that, by the 28 March 2012 deadline, comments on the list of varieties that are to be scientifically assessed will be submitted to the CCNASWP through the national FAO/WHO Codex contact points. An attempt will then be made (provided that the funding for the project is mobilized in time) to submit the scientific evidence reported by the retained scientific experts during the 17-20 September 2012 regional meeting of the FAO/WHO Codex CCNASWP in Madang, Papua New Guinea.

#### 5. Funding

- **Origin of funding**

The Workshop participants agree that various options for funding will be explored, including the request for technical assistance from the ACP funding facilities (i.e., the ACP MTS facility) and the SPC.

- **Costs of analyses**

The Workshop participants recognize that a rough figure of 1,200 EURO per cultivar (i.e., four samples per cultivar analysed: roots, peeled chips, peeled stems and peelings) would be needed to conduct the scientific sampling and testing. On the basis of an indicative figure of roughly 145 cultivars to be tested, the total analytical cost including freight costs to be funded would be around 180 - 185,000 EURO.

- **Costs for expert report**

The Workshop participants agree that the services of the retained scientific experts must also be recognized and budgeted based on appropriate Terms of Reference. The estimation by Dr. Vincent Lebot and Dr. Mathias Schmidt is that the sample preparation and the scientific reporting would require approximately 100 Working Days for each retained scientific expert. On the assumption of two scientific experts being retained and a total of 200 Working Days at 1,000 EURO per Working Day, the total budget to be funded would stand at roughly 200,000 EURO.

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## Part 2

### Road Map for FAO/WHO Codex Actions

#### 1. Subject

- **What standards are needed?**

The Workshop participants agree that the focus of the standardization efforts should be on kava as a product used in food, first standardized at a regional level. Individual countries will also work on defining, in parallel to the FAO/WHO Codex regional standard, national standards that would regulate domestic law and regional trade.

- **Which varieties should be standardized?**

The Workshop participants agree that only the varieties that have been proposed as “*noble kava*” to the CCNASWP for regional FAO/WHO Codex standardization will be the object of regional and national standardization. The science collected for all varieties under Part 1 of the overall strategy will play a role in the provision of scientific evidence to FAO/WHO Codex, but it will only be used for the “*noble kava*” varieties (i.e., only roots, peeled chips, and peeled basal stems).

#### 2. Actors

- **Who will drive the process?**

The Workshop participants agree that the National FAO/WHO Codex contact points will drive the process with a good and effective degree of coordination in order to provide a united front within CCNASWP.

- **Who should organize the standardization activities?**

The Workshop participants agree that it will be again the National FAO/WHO Codex contact points that will organize the standardization with a good and effective degree of coordination in order to provide a united front within CCNASWP.

### 3. Actions

- **Submission of proposal**

The Workshop participants agree that Tonga first and then Papua New Guinea will put forward the proposal within the CCNASWP and in light of the FAO/WHO Codex standardization procedures. The National FAO/WHO Codex contact points will remain involved and coordinate the efforts.

The workshop revised and edited the Codex kava standard proposal with the latest scientific findings as the basis for the safety of kava as a food. The amended proposal is also recommended for adoption as the regional kava standard. It will also be submitted to the 12<sup>th</sup> session of the FAO/WHO Codex coordinating committee for North America and South West Pacific in Papua New Guinea, 17-20 September 2012. The regional standard can subsequently become the basis for national standards.

- **Provision of scientific evidence**

The Workshop participants agree that the relevant science that is to be assembled by the retained scientific experts, within the framework of the scientific work agreed under Part 1 of this overall strategy, will be packaged for purposes of submission to CCNASWP and in relation to the “*noble kava*” varieties that have been listed in the proposal for a kava standard to FAO/WHO Codex. If testing proves additional discovery of a kava cultivars that fit the “*noble kava*” criteria, then this kava should be included as a new noble kava by name. The same would apply if a known noble kava is recognized as not fulfilling the criteria for noble kava. In such a case it must be removed from the list. If time constraints do not allow the scientific results of the work done under Part 1 of this overall strategy to be used in time for purposes of the 17-20 September 2012 meeting in Madang, reference should be initially made to the abundant peer-reviewed scientific literature that is already publicly available and to the upcoming additional scientific evidence.

- **Monitoring of discussions and standard-definition**

The Workshop participants agree that an Expert Group within FAO/WHO Codex should be requested and set-up for purposes of reviewing in greater detail the scientific evidence being gathered.

- **Good agricultural practices**

The Workshop participants agree that good agricultural practices (i.e., harvesting and post-harvesting methods, drying methods, use of pesticides, crop husbandry guidelines, selection of varieties, hygienic conditions, etc.) should be factored-in and discussed, formulated and possibly harmonized at the regional level inasmuch as they may be relevant to the ultimate quality of kava, its trade potential and the definition of a regional FAO/WHO Codex standard. The Workshop participants also agree and recommend that adequate support (i.e., capacity building initiatives) be given to national and regional laboratories to achieve international accreditation status for kava testing, to all the stakeholders within the entire value-chain of the kava industry for them to be better equipped, better trained and better staffed. A harmonized testing and conformity assessment regime could be developed within the region in a manner that will improve quality and ultimately facilitate trade.

The participants noted the paper entitled “*The case for EU support to solve outstanding issues on kava*”, which was approved by PACP trade ministers on 9 August 2011 on the occasion of the PACP trade ministers meeting. The participants agree that the paper represents a suitable roadmap to seek funding for a comprehensive program for capacity building for the Pacific kava trade.

#### 4. Timeframe

- **What are the relevant deadlines?**

The Workshop participants agree that the two immediate deadlines of 28 March 2012 (for comments to be provided to CCNASWP) and 17-20 September 2012 (for the CCNASWP meeting in Madang, Papua New Guinea) must be met and that due reference should be made in those contexts of the new scientific evidence that is being assembled to support the request for the definition of a regional kava standard for the selected varieties of “*noble kava*”.

#### 5. Funding

- **Origin of funding**

The Workshop participants agree that various options for funding will be explored, including the request for technical and financial assistance from the ACP funding facilities under various European Development Funds (including the ACP-EU MTS facility, EDES program), other EU development cooperation instruments, the SPC and the FAO/WHO itself, given that all Pacific kava-producing countries are FAO/WHO Members.

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## Part 3

### Road Map for Trade Actions

#### 1. Subject

- **What strategy is needed?**

The Workshop participants agree that a strategy must be developed along the lines of the three available trade avenues: 1) Multilateral (i.e., WTO); 2) Regional/Plurilateral (i.e., EU/Pacific EPAs); and 3) Bilateral (i.e., bilateral trade negotiations) in order to highlight kava restrictions as a contentious trade issue.

#### 2. Actors

- **Who will drive the process?**

The Workshop participants agree that serious and urgent consideration must be given to find the way to identify the countries and individuals (i.e., the “*Command and Control*”) that will play the role of driving this process forward and directing the necessary actions, particularly bearing in mind the current WTO Membership from the Pacific (i.e., Fiji, Tonga, Solomon Islands and Papua New Guinea).

The recommendation is made that a Coordinating Committee be established in Brussels where most Pacific Countries are represented and the where most of their Missions are also charged with WTO responsibilities. This Coordinating Committee will include Fiji, Samoa, Tonga, Vanuatu, Solomon Islands and Papua New Guinea and should meet regularly (i.e., at least once every three months) to decide on the actions to be taken in all relevant trade *fora*.

- **Who should coordinate the trade strategy?**

The Workshop participants agree that the trade strategy should be always approved by the respective Pacific capitals, but it should then be the Pacific ACP Regional Coordinator in Brussels that ultimately coordinates all efforts, the timeframe of execution, and the specific actions and initiatives to be taken in the various trade *fora*. The office of the Pacific ACP Regional Coordinator could outsource some of the legal and monitoring services to independent trade experts if the required funding is secured.

The Workshop participants agree that the Forum Secretariat (PIFS) shall play a pivotal role in securing funding of the capacity building program for kava, in close coordination with the Pacific ACP Regional Coordinator.



### 3. Actions

- **WTO Committee/Council level discussions**

The Workshop participants agree that this line of action is the most immediate instrument that could be activated at the WTO, particularly in light of kava falling within the scope of action of the SPS Committee, the Committee on Agriculture and the Council for Trade in Goods. The current full WTO Members that have an interest in kava trade (i.e., Fiji, Tonga, Solomon Islands and Papua New Guinea) supported by the Pacific Observer Members (i.e., Vanuatu and Samoa) and Observer Organisations (i.e., ACP Group), under guidance by the Coordinating Committee, must systematically insert the kava issue on the agenda of these WTO Committees as a “*specific trade concern*” (STC) or other issue for discussion. Vanuatu and Samoa must also be actively involved given their pivotal roles in Brussels and their immediate WTO accession. PIFS’ office in Geneva and the Pacific countries’ WTO Missions in Geneva, Brussels and London must coordinate all actions. Legal and administrative assistance by WTO experts to prepare the systematic submissions to be tabled at the WTO should be pursued immediately.

- **WTO multilateral negotiations**

The Workshop participants agree that this front of trade engagement must be monitored and used, as and when appropriate, in order to ensure that kava is given the right exposure and recognition as an issue of critical importance to the Pacific (as being successfully done by a number of African countries with cotton trade and by some Pacific and African countries for bananas and sugar trade). Assistance by WTO experts to prepare the systematic submissions to be tabled by Pacific countries at the WTO within the DDA negotiating context could be requested when and if needed.

- **WTO dispute settlement**

The Workshop participants agree that this option must be considered and highlighted in the discussions with the EU, Australia, and any other country restricting kava trade, noting the options available to the Pacific WTO Members under WTO dispute settlement mechanisms. The progressive WTO escalation should start with the discussions before the relevant Committees, but consideration should then be given to request for consultations under the WTO Dispute Settlement System once Samoa and Vanuatu have also become full WTO Members. This step would take kava to a high level and would focus minds on the gravity that the German (EU) ban has in terms of trade and economic development for the Pacific. Dedicated legal assistance could be received by either independent lawyers or by the Advisory Centre on WTO Law (ACWL) in Geneva.

- **EU/Pacific EPA negotiations**

The Workshop participants agree to recommend to Pacific ACP states that they should continue requesting the EU to discuss kava within this trade context. Kava is recommended to be an offensive interest, and any EPA between the EU and Pacific countries should deal with kava. The regional focal points and the country leaders must be continuously involved and provide the necessary guidance and coordination. Due consideration must be given to the role that can be played by joint parliamentarians meetings that could support the cause of kava trade. Steps should also be taken to ensure that support from EU and Pacific civil society (i.e., NGOs, consumers’ associations, industry, academia, etc.) and especially the media be mobilized as and when appropriate. Assistance by trade experts to prepare the negotiating submissions and “*non-papers*” to be tabled within the EPA negotiating context should be mobilized when and if needed.

- **Bilateral or regional trade negotiations**

The Workshop participants agree that kava must continue to be placed at the centrestage of these negotiations within the framework of the ongoing regional (i.e., the PACER+) or any upcoming bilateral trade consultations with Australia. For instance, kava must remain an offensive interest and a key issue for discussion.

- **Actions on other (non-EU) markets of relevance**

The Workshop participants agree that the necessary focus be placed on other markets of relevance (i.e., China, India, African countries, emerging markets, etc.) in order to enhance and/or protect kava’s market access to those countries. It is critical that the regulations in those jurisdictions (i.e., the relevant notifications at the WTO) be monitored and that swift and appropriate actions be taken if steps are taken that could affect trade in kava.

#### 4. Timeframe

- **What are the relevant deadlines?**

The Workshop participants agree that a schedule of upcoming trade-related events at WTO, EU and Pacific level, where kava could be systematically flagged and addressed as a trade issue, should be drafted and then used in order to continuously put kava at the centrestage of all positions taken by Pacific countries. On the basis of this schedule, roles could then be assigned to individual Pacific countries in order for them to take the floor or table position papers, briefs, specific trade concerns, negotiating offers or requests, etc. This is of critical importance if kava is to become a trade issue, remain on the “*radar screen*” of negotiators and trade delegates at the WTO and EU level.

## 5. Funding

- **Origin of funding**

The Workshop participants agree that various options for funding will be explored, including the request for technical assistance from the ACP-EU funding facilities (i.e., the ACP-EU MTS program), the SPC, the WTO STDF facility and other relevant international donor agencies (i.e., World Bank, ABD, EIB, CDE, USAID, UK’s DfID, Commonwealth Secretariat, etc.). For purposes of a possible future WTO dispute settlement procedure, the ACWL should be considered for possible direct legal assistance or for purposes of securing the services of a law firm at capped fees.

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## **Final considerations**

The Workshop participants resolved that a follow-up regional kava conference will take place in 12 months in order to review and stocktake on the progress of the strategies adopted in this workshop.

The Workshop participants also agreed that IKEC and the Pacific Island kava-producing countries need to cooperate in fundraising for this follow-up regional kava conference.

## **Annexes**

- Codex Alimentarius Commission E: Discussion paper on the development of a standard for kava (July 2010)
- List of Participants of the Workshop held in Port Vila, Vanuatu, 12-15 March 2012