

Proactive Release

Date: 28 April 2022

The following Cabinet minutes and Cabinet paper have been proactively released by the Minister of State for Trade and Export Growth

Title	Reference
PACER Plus: Approval of Tuvalu's ratification	CAB-22-MIN-0067 Revised LEG-22-MIN-0026



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Legislation Committee: Period Ended 11 March 2022

On 14 March 2022, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 11 March 2022:

LEG-22-MIN-0026 **PACER Plus: Approval of Tuvalu's Ratification** CONFIRMED
Portfolio: Trade and Export Growth

Michael Webster
Secretary of the Cabinet

Proactively released by the Minister of State for Trade and Export Growth



Cabinet Legislation Committee

Minute of Decision

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PACER Plus: Approval of Tuvalu's Ratification

Portfolio Trade and Export Growth

On 10 March 2022, the Cabinet Legislation Committee:

- 1 **noted** that following Tuvalu's ratification of the Pacific Agreement on Closer Economic Relations (PACER Plus), New Zealand is required to confer to Tuvalu, from 3 April 2022, the tariff preferences negotiated under the Agreement;
- 2 **agreed** to amend the Tariff (Specified PACER Plus Parties) Order 2020 to include Tuvalu as a specified party;
- 3 **noted** that a waiver of the 28-day rule is required, as early commencement of the order is necessary to comply with international obligations;
- 4 **agreed** to waive the 28-day rule so that the Tariff (Specified PACER Plus Parties—Tuvalu) Amendment Order 2022 can come into force on 3 April 2022;
- 5 **authorised** the submission to the Executive Council of the Tariff (Specified PACER Plus Parties—Tuvalu) Amendment Order 2022 [PCO 24597/2.0];
- 6 **authorised** relevant portfolio Ministers to submit further Specified PACER Plus Parties amendment orders and regulations directly to the Executive Council, without recourse to Cabinet, following the ratifications of the remaining PACER Plus signatories (Vanuatu and Nauru).

Rebecca Davies
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Dr Megan Woods
Hon Carmel Sepuloni
Hon Andrew Little
Hon Poto Williams
Hon Michael Wood
Hon Kiri Allan
Hon Dr David Clark
Hon Meka Whaitiri
Hon Phil Twyford
Kieran McAnulty, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

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Office of the Minister of State for Trade and Export Growth

(LEG) Cabinet Legislation Committee

PACER Plus: Approval of Tuvalu's ratification

The Pacific Agreement on Closer Economic Relations (PACER Plus) was ratified by Tuvalu on 31 January. To bring the Agreement into force between New Zealand and Tuvalu, New Zealand is required to amend the implementing legislation in the Tariff (Specified PACER Plus Parties) Order 2020 to include Tuvalu from 3 April 2022.

1. I propose that Cabinet Legislation Committee approve the addition of Tuvalu as a specified party to the Pacific Agreement on Closer Economic Relations Plus (PACER Plus) in New Zealand's secondary legislation. Tuvalu participated in the negotiation process and is an original signatory to the Agreement. Tuvalu has made the necessary domestic changes to implement the Agreement and notified its ratification on 2 February 2022. New Zealand has 60 days from this date to add Tuvalu as a specified Party. This requires the amendment of the Tariff (Specified PACER Plus Parties) Order 2020 to reflect the addition of Tuvalu.
2. Approval is sought for a waiver to the 28-day rule for publication in the New Zealand Gazette. New Zealand legislative processes do not allow sufficient time to complete the normal process and publish the order in the Gazette for 28 days prior to the date of commencement on 3 April. As the order must take effect on 3 April to comply with our international obligations, this is a justifiable ground for a waiver.
3. Approval is also sought for relevant portfolio Ministers to submit further amendment orders and regulations directly to the Executive Council, without recourse to Cabinet, as and when the other remaining PACER Plus signatories (Nauru and Vanuatu) complete their respective legal procedures and provide formal notification of ratification of the Agreement.

Background

4. PACER Plus is a trade and development treaty negotiated between 14 of the members of the Pacific Islands Forum. The PACER Plus was signed on 14 June 2017 between New Zealand, Australia, Cook Islands, Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Following agreement from Cabinet [EGI-MIN-0121], New Zealand ratified the Agreement on 23 October 2018 and it came into force on 13 December 2018 between 11 of the above 14 signatories.
5. On 31 January 2022, Tuvalu ratified the agreement and this was communicated to the PACER Plus treaty depository Tonga on 2 February 2022. On 14 February, Tonga advised parties that it had received the instrument of ratification and noted that Tuvalu had completed the necessary domestic procedures. Under the terms agreed in PACER Plus, the Agreement will enter into force for Tuvalu on 3 April 2022. New Zealand will

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therefore need to update its secondary legislation to identify Tuvalu as a PACER Plus party from this date.

6. Accordingly, officials have prepared the following Tariff (Specified PACER Plus Parties—Tuvalu) Amendment Order 2022 (to declare Tuvalu a specified PACER Plus party) for Cabinet Legislation Committee's approval.
7. Further ratifications by the remaining signatories – Vanuatu and Nauru – will also require amendment of New Zealand's implementing legislation. To avoid returning to Cabinet in such instances, approval is sought for relevant portfolio Ministers (the Minister of State for Trade and Export Growth, acting under delegated authority of the Minister for Trade and Export Growth, and the Minister of Commerce and Consumer Affairs) to submit further amendment orders and regulations directly to the Executive Council, as and when Vanuatu and Nauru notify that they have completed their respective legal procedures for the entry into force of the Agreement.

Comment

8. The effect of this order is to entitle Tuvalu to preferential tariffs set under the Tariff Act 1988 in accordance with PACER Plus. As Tuvalu already benefits from tariff-free access to the New Zealand market, this will not have an economic impact on New Zealand. No further changes are required to other PACER Plus secondary legislation.
9. Customs will undertake a process to update its Working Tariff Documents to include reference to Tuvalu.

Financial implications

10. Any financial implications will be managed from agencies existing baselines.

Impact analysis

11. An extended National Interest Analysis (NIA) incorporating Regulatory Impact Analysis (RIA) elements was prepared and submitted at the time that Cabinet approval of the PACER Plus outcome and legislative implementation was sought [CAB Min (EGI-17-MIN-0121) refers]. The NIA sets out the legislative, including regulatory, changes required to implement PACER Plus.

Publicity

12. The PACER Plus page on the MFAT website (<https://mfat.govt.nz/pacer>) remains up to date. It is proposed that the Minister of State for Trade and Export Growth acknowledge the entry into force on 3 April 2022 on Twitter.

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13. This paper will be proactively released.

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Consultation

14. The Ministry of Business, Innovation and Employment, which administers the Tariff Act 1988, and the New Zealand Customs Service, which administers the Customs and Excise Act 2018, have been consulted and concur with the recommendations of this paper. The Parliamentary Counsel Office has also been consulted in the preparation of this paper.

Recommendations

15. We recommend that the Cabinet Legislation Committee:

- 1 **Note** that following Tuvalu's ratification of PACER Plus New Zealand is required to confer to Tuvalu, from 3 April 2022, the tariff preferences negotiated under the Agreement.
- 2 **Authorise** amendment of the Tariff (Specified PACER Plus Parties—Tuvalu) Amendment Order 2022 to include Tuvalu as a specified party.
- 3 **Authorise** a waiver to the 28-day rule, as early commencement of the order is necessary to comply with international obligations and this is an appropriate reason to seek a waiver.
- 4 **Authorise** relevant portfolio Ministers to submit further amendment orders and regulations directly to the Executive Council, without recourse to Cabinet, following the ratifications of the remaining PACER Plus signatories (Vanuatu and Nauru).

Authorised for lodgement

Hon Phil Twyford
Minister of State for Trade and Export Growth

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**Tariff (Specified PACER Plus Parties—Tuvalu)
Amendment Order 2022**

Governor-General

Order in Council

At Wellington this day of 2022

Present:
in Council

This order is made under section 7A(1)(bb) of the Tariff Act 1988 on the advice and with the consent of the Executive Council.

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Order

- 1 Title**
This order is the Tariff (Specified PACER Plus Parties—Tuvalu) Amendment Order 2022.
- 2 Commencement**
This order comes into force on 3 April 2022.

**Tariff (Specified PACER Plus Parties—Tuvalu)
Amendment Order 2022**

cl 3

3 Principal order

This order amends the Tariff (Specified PACER Plus Parties) Order 2020.

4 Clause 3 amended (Specified PACER Plus parties)

After clause 3(g), insert:

(h) Tuvalu.

Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 3 April 2022, amends the Tariff (Specified PACER Plus Parties) Order 2020 (the **principal order**). It declares Tuvalu to be a specified party to the Pacific Agreement on Closer Economic Relations Plus (**PACER Plus**) for the purposes of the Tariff Act 1988. PACER Plus is a free trade agreement, done at Nuku'alofa, Tonga, on 14 June 2017.

The effect of this order is to entitle Tuvalu to preferential tariffs set under the Tariff Act 1988 in accordance with PACER Plus. For a full list of countries entitled to those preferential tariffs under PACER Plus, *see* clause 3 of the principal order.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

This order is administered by the Ministry of Business, Innovation, and Employment.