



PACER Plus **Chapter Summary 2021**

Chapter 2: Goods



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Introduction

What is this summary about and who is it for?

This summary describes the obligations in PACER Plus that apply to trade in goods. It is intended for anyone who wants an overview of the PACER Plus obligations.

What does the PACER Plus Goods Chapter do?

The Goods Chapter has the following objectives:

- To avoid unnecessary barriers to trade
- Facilitate and liberalise trade
- Promote economic integration in PACER Plus countries.

The obligations

The obligations in the Goods Chapter fall into the following 7 categories:



How does the Goods Chapter fit with other Chapters?

The Goods Chapter is the Chapter that sets out obligations to provide preferential tariff treatment to goods from PACER Plus countries. It also deals with some other matters relating to how imported goods are to be treated (e.g. In a non-discriminatory manner), licensed, and so on (see section above – 'The obligations').

The other key Chapters in PACER Plus that deal with goods trade are:

- **Rules of Origin** – has rules about which goods are eligible for preferential tariff treatment
- **Customs** – has rules about customs procedures to ensure the smooth flow of goods across borders

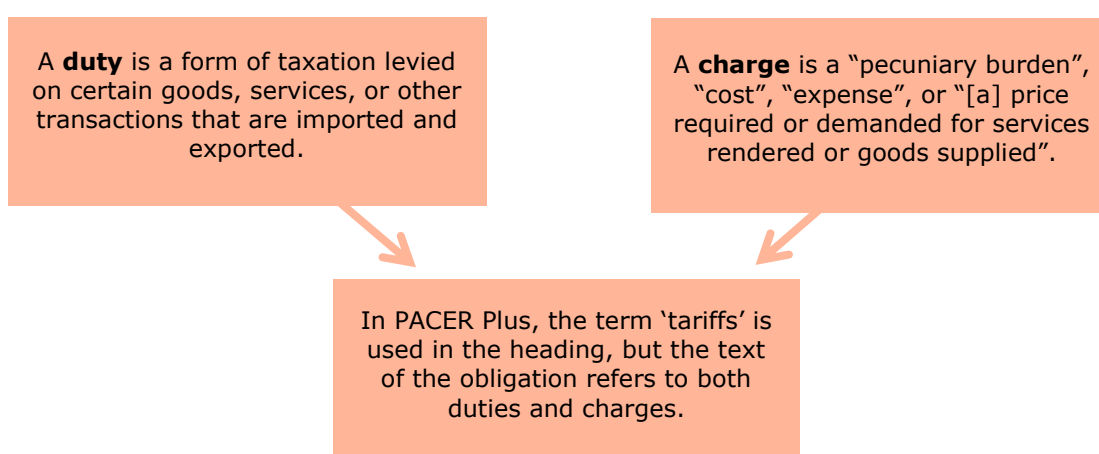


Obligations at the border

Commitments on tariffs

PACER Plus countries must not apply the following on goods from other PACER Plus countries:

- Customs **duties** that are either not specified or are higher than the tariff levels set out in Part 1 of its Schedule; or
- Duties or **charges** on or in connection with the import (other than ordinary customs duties), internal taxes or other charges, anti-dumping or countervailing duties or fees, or other charges for services that are not specified, or are not in conformity with Part II (Commitments on Other Duties or Charges) of its Schedule.



What do these commitments mean for countries’ flexibility to impose duties or charges at the border?

- PACER Plus countries **can** impose tariffs below those set out in the Schedule.
- PACER Plus countries **cannot** impose any tariffs, duties or charges in connection with the importation of goods that don’t conform with Part II of its Schedule (i.e. Tariffs can’t be higher than set out in a country’s Schedule).

Most favoured nation (MFN)

Each country has agreed that it will grant tariff preferences to goods from other PACER Plus countries on a non-discriminatory basis in accordance with the most favoured nation obligation (**MFN**).

MFN requires that each PACER Plus country provide the tariff preferences set out in its Schedule of Commitments to all ‘like’ goods originating in the territories of all other PACER Plus countries.

e.g. if Samoa reduces tariffs by 5% on frozen chicken and sets this out in its Schedule of Commitments, it must make the same reduction for frozen chicken regardless of which PACER Plus country it originates in.



There are some exceptions to the MFN rule, including for a preference granted pursuant to a regional trade agreement exclusively involving Pacific Island countries and territories, such as the PICTA Agreement.

Fees and charges

PACER Plus countries are required to ensure that if they put a fee or charge on an import or export, that those fees or charges:

- Are limited in amount to the appropriate cost of services rendered
- Do not represent an indirect protection to domestic products or a taxation on imports or exports for fiscal purposes, and
- Are otherwise in conformity with World Trade Organization (**WTO**) rules.

This requirement does not apply to import and export duties, charges equivalent to an internal tax, or anti-dumping and countervailing duties.

Duty free entry

PACER Plus countries cannot apply a customs duty in the following situations:

- A good that has been temporarily exported to another PACER Plus country for **repair or alteration** and then brought back into the same country
E.g. A boat that is sent from Samoa to Tonga for repair, and then once repaired, is sent back to Samoa. In this situation, Samoa can charge a duty on the cost of repair or alteration, but it cannot exceed the customs duty which would be payable if the boat had been imported for the first time.
- A good from another PACER Plus country that is coming to another PACER Plus country temporarily for **repair or alteration**
E.g. Where a boat is sent from Samoa to Tonga for repair, Tonga cannot impose an import duty on the boat, as it is just coming temporarily for repair.
- Commercial samples of “very little” value from another PACER Plus country
E.g. If Niue sends a commercial honey sample to the Cook Islands. There is no threshold for what counts as “very little value”, so common sense has to be applied.
- Printed advertising materials from another PACER Plus country

Repair or alteration does not include an operation or process that creates a new or commercially different good.

e.g. lumber is commercially different than a table. If lumber is exported from Solomon Islands to Samoa in order to manufacture a table, this is a new or commercially different good. Samoa can impose duties (in accordance with its Schedule of Commitments) on the lumber, and if the table is exported back to Solomon Islands, duties can be imposed on the table.



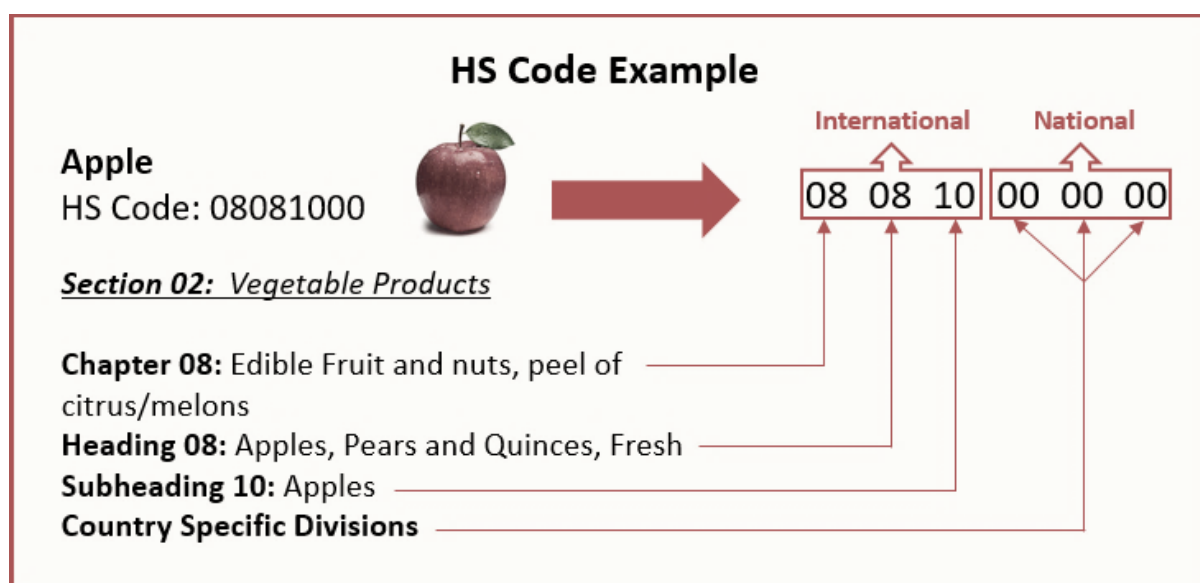
Keeping tariff schedules up to date

Countries' commitments on tariffs are based on the 'Harmonized System'.

The **Harmonized System** is an international system for the classification of traded goods. It allows participating countries to classify traded goods on a common basis for customs and statistical purposes. At the international level, the Harmonized System for classifying goods is a six-digit code system.

Every so often the Harmonized System is amended. When this happens, PACER Plus countries will have to prepare technical revisions to their tariff schedules to implement the revised version of the Harmonized System.

The Goods Chapter requires that revisions to tariff schedules be made on a neutral basis. This means that market access conditions must not be impaired by the process or the outcomes of the technical revision.





Obligations once goods have entered the country

Internal taxation and regulation

PACER Plus countries must treat goods from other PACER Plus countries no less favourably than its own goods with respect to:

- Internal taxes, other internal charges and laws
 - E.g. A 25% sales tax is placed on imported tinned tuna, but only a 10% sales tax on domestic tinned tuna
- Regulations and requirements affecting the goods' internal sale, offering for sale, purchase, transportation, distribution or use
 - E.g. A regulation provides that imported tinned tuna is only allowed to be sold in one supermarket, but domestic tinned tuna can be sold anywhere – this would put the imported tuna at a competitive disadvantage compared to the domestic tuna

Non-tariff measures

Non-tariff measures are policy measures (e.g. Laws, regulations) other than tariffs that can have an economic effect on trade in goods. Exporters or importers might experience these as 'red tape', 'roadblocks' or might even just consider them to be part of the 'cost of doing business'. Examples include:

- Regulations to protect health and safety, such as product safety standards
- Labelling requirements
- Non automatic licensing, quotas, prohibitions and quantity-control measures
- Distribution restrictions, and
- Pre-shipment inspections and other formalities.

When non-tariff measures make it difficult or costly for imported products to compete in a market, then they can become **non-tariff barrier**.



Obligations on non-tariff measures

Some non-tariff measures are discussed separately (see internal regulations above, and import licensing below). The Goods Chapter also has a provision that deals with non-tariff measures that are not covered elsewhere. This says that PACER Plus countries must not do any of the following:

- Adopt or maintain a measure that is a prohibition or restriction (other than duties, taxes or other charges) on imports or exports whether made effective through quotas, import or export licences or other measures (Art XI of GATT 1994)
- Do anything that denies freedom of transit through its territory via the routes most convenient for international transit, for traffic in transit to or from other parties, including subjecting traffic to unnecessary delays or restrictions, customs duties, transit duties or other charges in respect of transit.
- Apply any measure prohibited under Art 4.2 of the WTO Agreement on Agriculture or Art 11.1(b) of the WTO Agreement on Safeguards, being any of:
 - Voluntary export restraints
 - Orderly marketing arrangements
 - Quantitative import restrictions
 - Variable import levies
 - Minimum import prices
 - Discretionary import licensing, or
 - Non-tariff measures maintained through state-trading enterprises.





Import licensing

PACER Plus countries must ensure that administrative procedures used to implement import licensing regimes conform with Articles 1 to 3 of the *WTO Agreement on Import Licensing Procedures*.

These Articles require that:

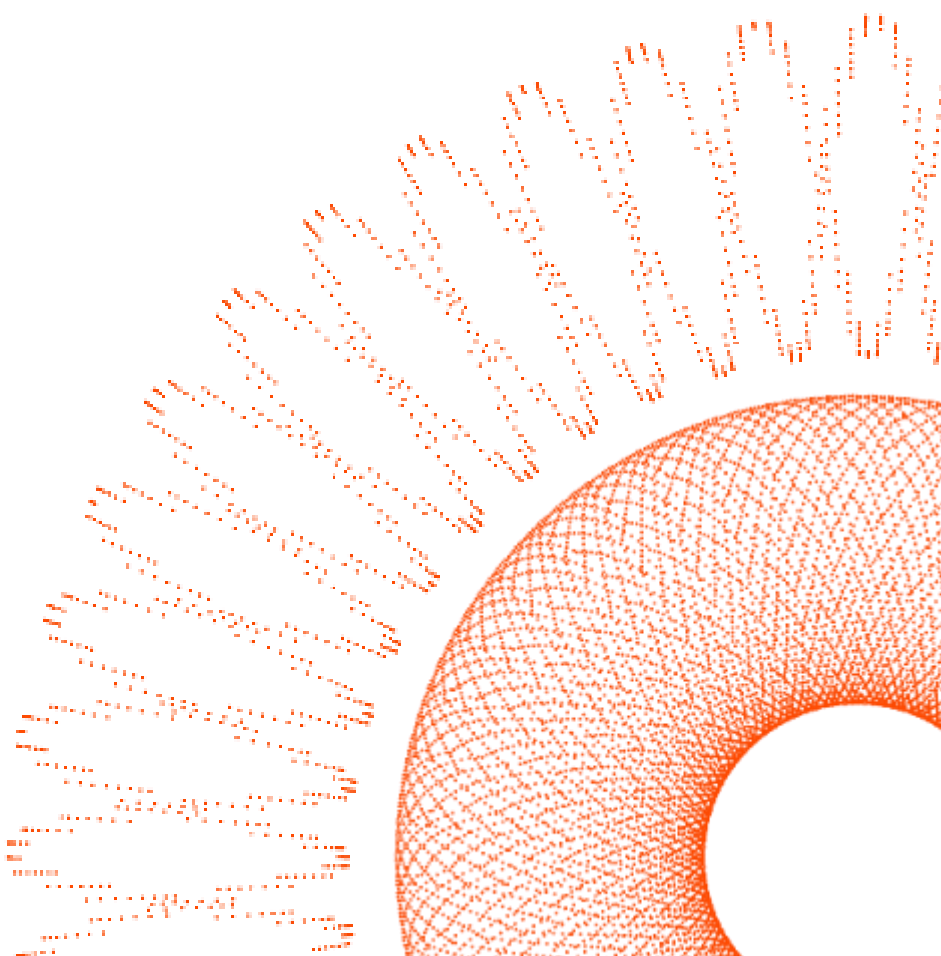
- The administrative procedures used to implement import licensing regimes comply with the relevant provisions of GATT 1994, including its annexes and protocols; and
- The rules for import licensing procedures are neutral in application and administered in a fair and equitable manner.

Publication and notification of information related to import licensing

PACER Plus requires that information related to import licensing be **published promptly**. Promptly means as soon as possible after the measures are finalised.

The information should be published online. If this is not possible, other forms of publication can suffice, but publishing online is preferred.

Each PACER Plus country is required to **notify** Contact Points of the other PACER Plus countries about where the information is to be found.





Trade remedies

When applying trade remedies, PACER Plus countries must comply with WTO rules, regardless of whether or not they are a Member.

What are trade remedies?

There are three categories of trade remedies: anti-dumping duties, countervailing measures, and global safeguards.

Anti-dumping duties are imposed on imported goods that are priced below the fair market value of similar goods in the domestic market.

Countervailing measures are measures (usually duties) on imports imposed where imported goods are subsidised, and as a result of the subsidies, the imports are causing injury to a domestic industry.

Global safeguards refers to a safeguard measure imposed under Article XIX of GATT 1994 and the *WTO Agreement on Safeguard Measures*.

A **safeguard** is a measure (usually a duty) imposed to prevent or remedy serious injury to an industry that has been caused by an unforeseen increase in imports, due to a tariff concession having been made.

Any of these trade remedies can only be imposed after an investigation by domestic authorities. They must be imposed consistently with WTO rules, and the Goods Chapter of PACER Plus.

Before imposing a trade remedy on goods from another PACER Plus country, the imposing country should consider whether that country is a developed or developing country. If so, other constructive remedies may be effective, such as agreeing to a timeline of commitments.



Notification obligations on trade remedies

Each PACER Plus country that has legislation containing anti-dumping provisions, countervailing measures or global safeguards must notify the other PACER Plus Countries' Contacts Points of:

- Its laws, regulations and administrative procedures relating to anti-dumping or countervailing measures, and global safeguard measures
- Which of its authorities are competent to initiate and conduct investigations, and
- In respect of anti-dumping and countervailing measures, its domestic procedures governing the initiation and conduct of such investigations.

If a country does **not** have legislation containing provisions on anti-dumping, countervailing measures, or global safeguards, it must notify the other Parties that this is the case.

Any changes to or adoption of anti-dumping, countervailing duty laws, and global safeguards must be notified to the other Parties through Contact Points.

Transitional safeguard measures

A transitional safeguard measure is a measure imposed to prevent or remedy serious injury to an industry for a period of time.

e.g. if New Zealand pumpkins are imported into Tonga in such quantities as to seriously injure, or threaten to seriously injure, Tonga's domestic pumpkin industry, then Tonga can take action by imposing a transitional safeguard measure.

Overview

PACER Plus sets out detailed requirements for imposition of transitional safeguard measures.

The main points to be aware of are that:

- Transitional safeguard measures may only be imposed by a **developing country** and only **during the transition period**,
- There are criteria for imposing a transitional safeguard that must be met before taking any action,
- Transitional safeguard measures can only be imposed for a limited period of time,
- Compensation must be given to the country against which safeguard measures are imposed,
- A country imposing transitional safeguard measures must notify other PACER Plus countries that they are doing so,
- A country imposing transitional safeguard measures must first undertake an investigation in accordance with the *WTO Agreement on Safeguards*, and must make the investigation report public.



Transitional safeguard measures may be imposed in two different situations

1. Harm caused by imports from one PACER Plus country

Transitional safeguard measures may be imposed where there is an increase in import quantities, that causes or threatens to cause, **serious injury** or **threat of serious injury** to the domestic industry producing like or directly competitive products.

E.g. If Australia exports tuna in a large quantity to Solomon Islands such that it causes serious injury to Solomon Islands' citrus fruit industry, then – following an investigation – Solomon Islands can impose duties on Australian tuna for a period of time until Solomon Islands' tuna industry stabilises.

Serious injury: means a significant overall impairment in the position of a domestic industry

Threat of serious injury: serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility is clearly imminent

2. Harm caused by imports coming from two or more PACER Plus countries

Transitional safeguard measures may be imposed if goods are imported from two or more PACER Plus countries, and together, the goods cause, or threaten to cause serious damage to the domestic industry.

E.g., if New Zealand and Australia export coconut oil (which combined is a large quantity) to Kiribati that causes serious injury to Kiribati's coconut oil industry, then Kiribati can put tariffs on coconut oil coming from New Zealand and Australia.

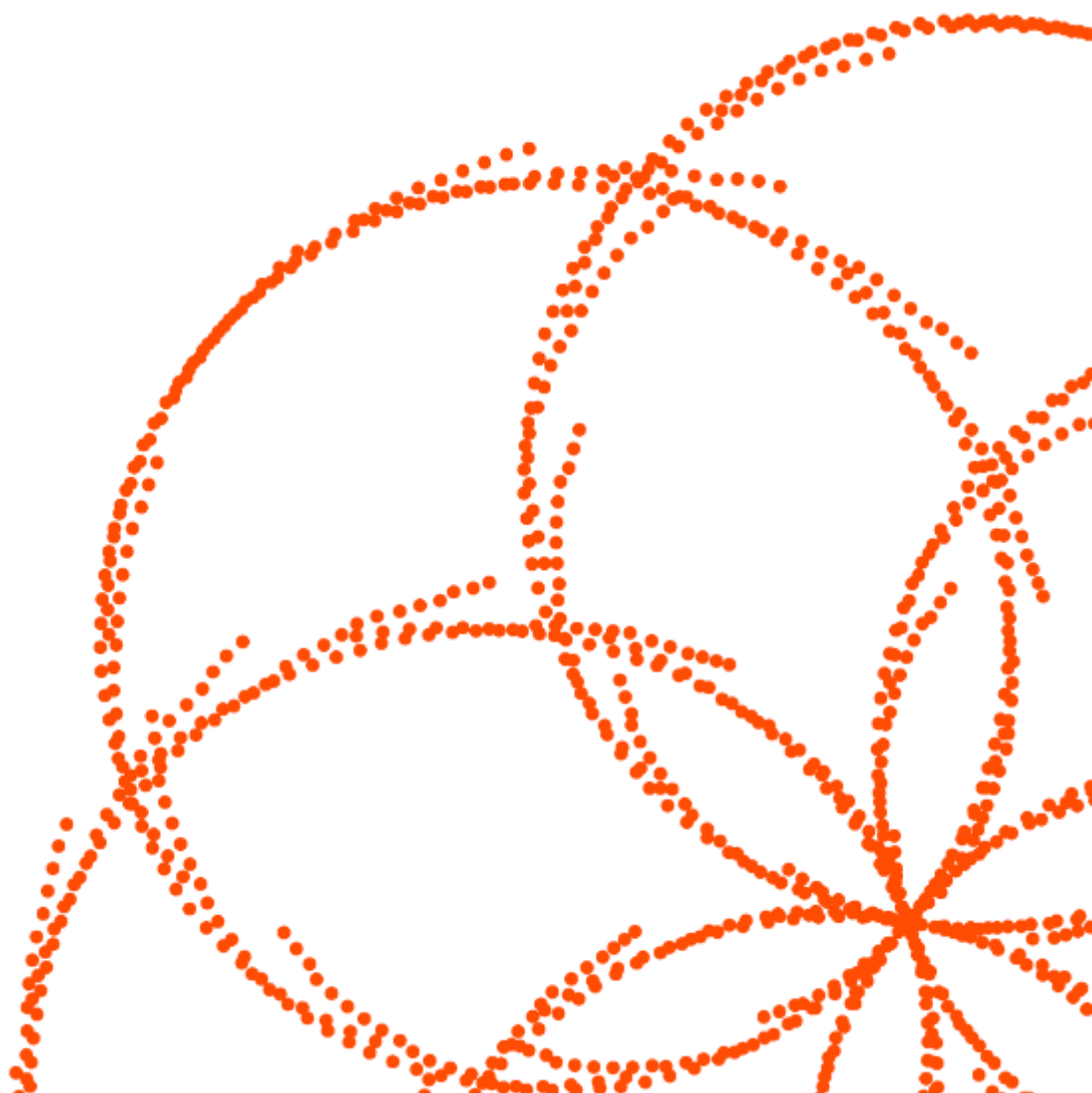


Industry development

The Joint Committee, which consists of representatives from each PACER Plus country, can approve a measure known as an Industry Development Measure. The aim of an Industry Development Measure is to help with industry development in a PACER Plus Country.

Reasons for supporting an industry might include:

- To establish a new industry or a new branch of production in an existing industry
- To substantially transform an existing industry
- For the substantial expansion of an existing industry supplying a small proportion of the domestic demand, or
- For an industry destroyed or substantially damaged as a result of hostilities or natural disaster.





Transparency

Publication of measures

PACER Plus requires that laws, regulations, judicial decisions and administrative rulings of general application (**measures**), relating to the matters set out below, are **published promptly** in such a manner as to enable governments and traders to become acquainted with them. Promptly means as soon as possible after the measures are finalised.

The types of measures that must be published are those relating to:

- The classification or the valuation of products for customs purposes
- Rates of duty, taxes or other charges
- Requirements, restrictions or prohibitions on imports or exports or on the transfer of payments,
- Anything affecting the sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use of imports or exports, and
- Agreements affecting international trade policy which are in force between the government or a governmental agency of a PACER Plus country and another country (whether or not a PACER Plus country).

Administration of measures

PACER Plus requires that all laws, regulations, decisions and rulings relating to trade in good are **administered** in a uniform, impartial and reasonable manner. This means that administration should be:

Uniform: “stays the same in different places or circumstances, or at different times”. This requirement relates to “uniformity of treatment in respect of persons similarly situated” and to the requirement that laws should be “applied consistently and predictably”.

Impartial: “not favouring one party or side more than another; unprejudiced, unbiased; fair”

Reasonable: “in accordance with reason”, “not irrational or absurd”, “proportionate”, “within the limits of reason, not greatly less or more than might be thought likely or appropriate”.



Some measures cannot be enforced if they have not been officially published

The following measures cannot be enforced if they have not been officially published first:

- A measure that puts in place an advance, in a rate of duty or other charge, on imports under an established and uniform practice, or
- A measure that imposes a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments for those purposes.

Information exchange

The free flow of information is key to trade in goods. The Goods Chapter requires each PACER Plus country to provide the following information to the other PACER Plus countries' Contact Points:

- Existing schedules of its non-preferential and preferential applied rates of customs duty
- A list of all existing fees and charges that it imposes on or in connection with importation or exportation, and
- Information on its new or modified import licensing procedures in the form of a completed response to the questionnaire at Annex 2-C of the Goods Chapter.

Once the information has been provided, countries must keep it up to date by letting others countries' Contact Points know of any changes.

To the extent of its capacity, each PACER Plus country must also publish this information online, such as on their Trade Portal.





Contact Points

PACER Plus sets up systems to ensure that officials from one country can easily contact their counterpart officials in other countries, and obtain information about other countries' practices. Each country has to name a Contact Point who will be responsible for answering enquiries on matters relating to trade in goods and keeping trade in goods information up to date.

Contact Points' responsibilities

The Contact Point is responsible for:

- Answering all reasonable questions and providing relevant documents regarding any goods measures adopted or proposed in the PACER Plus country
- Providing other countries with a description of its Competent Authorities and their division of responsibilities, and keeping this information up to date
- Letting the Contact Points from other PACER Plus countries know if there is a change to their Contact Point
- Providing notifications, information, and any other communications to the other PACER Plus countries' Contact Points as required under this Chapter, e.g.
 - The existing schedules of non-preferential and preferential applied rates of customs duties that the PACER Plus countries maintain
 - A list of all existing fees and charges that the PACER Plus country imposes on or in connection with importation or exportation
 - Information on its new or modified import licensing procedures
 - Transitional safeguard measures
 - Trade remedies
- Receiving, and responding to, requests for Technical Discussions under the Goods Chapter.



Technical discussions and meetings

Technical discussions

PACER Plus allows countries to request technical discussions with each other on measures affecting their trade in goods.

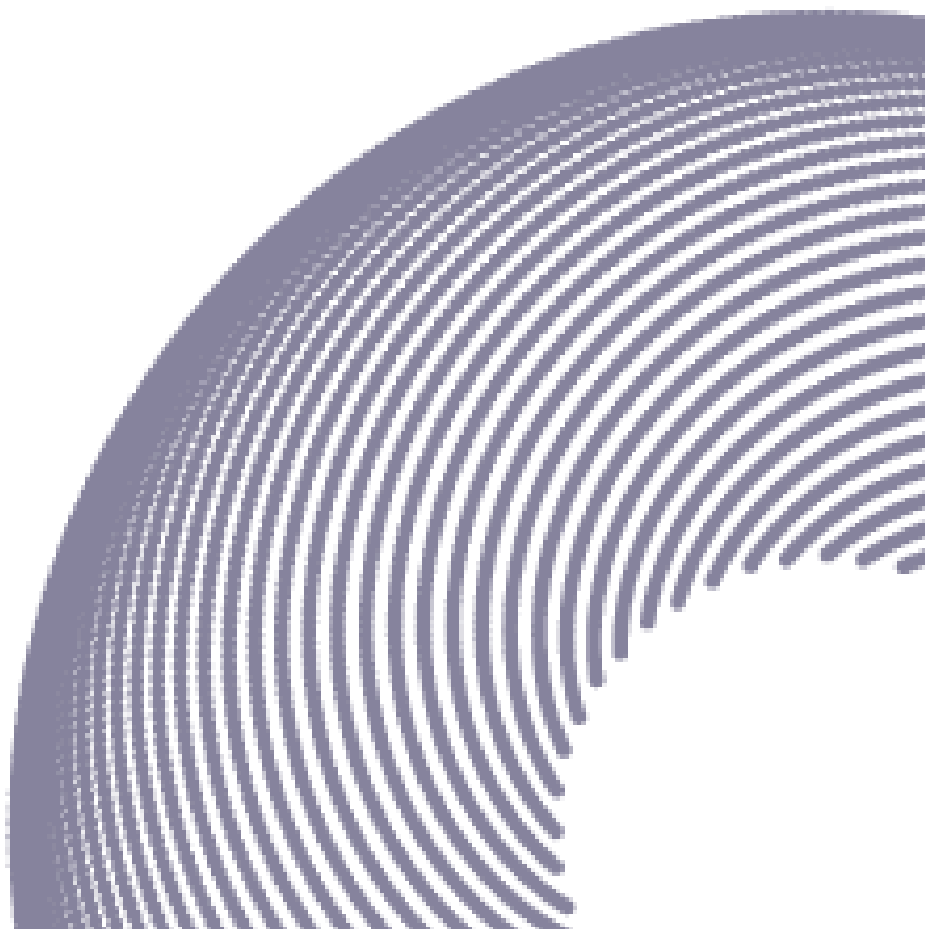
Countries engaged in discussions must try to clarify any measure at issue and, where there is any remaining difference of view, endeavour to find a mutually acceptable solution.

If a country receives a request for technical discussions, it must respond promptly. If a country wants to make a request for technical discussions with another PACER Plus country, it can expect that other country to respond promptly.

Meetings on trade in goods

Meetings between PACER Plus countries are important for ensuring that Parties understand their commitments under this Chapter.

Therefore, PACER Plus countries are required, through the Joint Committee, to consult regularly to consider the implementation of their commitments under the Goods Chapter.





Exceptions to obligations

Overview

PACER Plus has a number of exceptions that allow countries to justify actions that would otherwise be a breach of the obligations in the Goods Chapter. The exceptions are set out in Chapter 11 (General Provisions and Exceptions).

The description of the exceptions below is very general, and **advice should be sought on the application of the exceptions in any given situation.**

General exceptions

A number of exceptions (often referred to as the “general exceptions”) are copied over from WTO rules, and include measures:

- Necessary to protect **public morals**
- Necessary to protect **human, animal or plant life or health**
- Necessary to secure **compliance with laws or regulations** that themselves are consistent with the obligations, such as those relating to customs enforcement
- Related to the **conservation of exhaustible natural resources** (whether living or not)
- Imposed for the **protection of national treasures of artistic, historic or archaeological value** (including protection of “creative arts of national value” such as dance and music, indigenous traditional practice, and contemporary cultural expression)

For measures taken for these reasons, the exception can only be relied upon so long as the measure is not applied in a manner that would constitute:

- **Unjustifiable or arbitrary discrimination**, or
- A **disguised restriction** on international trade.

Unjustifiable or arbitrary discrimination will occur where the discrimination is not rationally related to the measure’s policy objective.

e.g. a country prohibits import of cigarettes to protect health, but then continues to make cigarettes themselves for domestic sale. This measure calls into question the health objective because if a country wants to protect health you would expect them to ban cigarettes no matter where they come from.

A **disguised restriction** on international trade could include a measure that unjustifiably or arbitrarily discriminates, or any other type of measure that abuses the exceptions, or is an illegitimate use of them.

PACER Plus does not require any country to provide information if it considers that to do so would be contrary to its **essential security interests**.



Also, PACER Plus does not prevent any country from taking:

- A measure that it considers necessary to protect its **essential security interests**, or
- Actions in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Essential security interests are those:

- Relating to fissionable and fusionable materials or the materials from which they are derived,
- Relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment
- Taken so as to protect critical public infrastructures including communications, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructures, or
- Taken in time of war or other emergency in international relations.

Measures to safeguard the balance of payments

PACER Plus countries are entitled to adopt restrictive import measures (e.g. Limit the amount of imports) if they find themselves in **serious balance of payments and external financial difficulties**, or at threat of such difficulties. This must be done consistently with WTO rules and meet the other conditions set out in Chapter 11, including being consistent with the IMF Articles of Agreement.

Taxation

The obligations in PACER Plus have limited application to taxation measures. They apply in the case of customs duties and internal sales taxes. But they do not apply to income taxes or most other tax policies.

Treaty of Waitangi (only applicable to New Zealand)

New Zealand may adopt any measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by PACER Plus, including in fulfilment of its obligations under the Treaty of Waitangi. Such measures may not be used as a means of arbitrary or unjustified discrimination or as a disguised restriction on trade.

Disclaimer: This document provides a general summary of the obligations in the PACER Plus Goods Chapter. It is for general information purposes only and is not intended to replace the legal text, or provide legal advice. It does not represent the legal interpretations or legal positions of any PACER Plus Party. Readers should not act or refrain from acting on the basis of information in this summary without seeking appropriate legal advice on the particular facts and circumstances at issue.