



# **PACER Plus** **Chapter Summary 2021**

Chapter 4: Customs Procedures



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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 customs procedures. It is intended for anyone who wants an overview of the PACER Plus obligations.

This summary does not cover every obligation in the Customs Procedures Chapter. Instead, it focuses on those obligations that are most relevant to the daily activities of officials. In particular, it does not cover the following obligations:

- Customs cooperation (Article 5)
- Use of automated systems (Article 6)
- Review and appeal of administrative decisions (Article 14)
- Consultations between PACER Plus countries (Article 15)

### What does the PACER Plus Customs Procedures Chapter do?

The Customs Procedures Chapter requires PACER Plus countries to take steps to ensure that their customs procedures run more efficiently. The idea is that if customs procedures run efficiently, then it is easier for businesses to import and export goods, and trade will flow more smoothly. PACER Plus countries are required to put in place certain legislation or systems for customs procedures. They are also required to ensure that officials do certain things in their daily work.

The Customs Procedures Chapter has the following objectives:

- to ensure predictability, consistency and transparency in the application of customs laws and regulations among the PACER Plus countries
- to promote efficient, economical administration of customs procedures and the expeditious clearance of goods
- to simplify and harmonise customs procedures
- to facilitate trade among the PACER Plus countries and the security of that trade
- to enhance the implementation of the requirements of Article VII of GATT 1994, the Agreement on Customs Valuation and other relevant WTO provisions, and
- to promote cooperation between the Customs Administrations of the PACER Plus countries.

### What agencies is the Customs Procedures Chapter relevant to?

The Customs Procedures Chapter is relevant to agencies that deal with customs procedures such as tariff classification, valuation, and processing of imports.



## What does PACER Plus mean for customs officials?

Customs officials have an important role to play in ensuring compliance with PACER Plus. Some PACER Plus obligations are already reflected in countries' legislation and therefore officials need to ensure they comply with that legislation. Other obligations already form part of officials' daily operating procedures and require no change in practice. There will, however, be some obligations that are new and require things to be done a bit differently.

### There are three overriding principles

When trade with other PACER Plus countries is involved, customs officials must follow three important principles.

Customs procedures must be:

- predictable
- consistent, and
- transparent.

Customs officials play an important role in upholding these principles.

**predictable** means that customs procedures operate in a way that a trader would expect. For example, goods are valued as a trader would expect and not in some unusual way, and the import duties charged are what they would expect from reading the tariff schedule.

**consistent** means that customs officers implement procedures and practices so as to achieve consistent outcomes. For example, a trader bringing in goods this week should have the same experience when they bring in another shipment next week or next month. In the case of risk-based activities (such as random checks) the outcome for identical products should be the same.

**transparent** means that traders know what customs rules and procedures apply to their situation. For example, making information readily available to traders about what documents they must provide on importation.

### Other obligations that impact customs officials' activities

In addition to the general principles of predictability, consistency and transparency, PACER Plus has some specific obligations dealing with certain customs procedures. These obligations all exist to help make sure that trade flows smoothly. They deal with six areas of activity, and are described on the next pages.

<b>Advance Rulings</b>	<b>Valuation</b>	<b>Risk Management</b>
<b>Release of Goods</b>	<b>Keeping information confidential</b>	<b>Enquiry Points</b>



## Advance rulings

An **advance ruling** is an official decision (also known as a 'ruling') given to importers before importation. It can be about tariff classification, origin of goods, or valuation of goods. Advance rulings allow importers to make better informed business decisions.

PACER Plus does not require countries to making advance rulings available, but if a country does so, then the system for making advance rulings must be operated consistently with the PACER Plus rules.

### What do the obligations on advance rulings mean for customs officials?

Customs officials must make sure of the following things when issuing advance rulings.

#### Before an application is received

- importers must be allowed to apply for a ruling before importation, and
- importers must be given a detailed description of the information officials will need from them to process their application.

#### When evaluating an application

- officials may request additional information from the applicant, and
- officials may tell the applicant how long they have to supply that additional information and if the applicant doesn't provide it then officials may reject their application.

#### When writing an advance ruling

- the ruling must be based on the facts and circumstances that the applicant has told officials about
- officials may also rely on other relevant information they have about the situation
- officials must issue the ruling to the applicant **promptly** – usually a country's laws and procedures provide a deadline for making rulings, and
- officials must give the applicant a written explanation of their reasons for making the ruling.

**'Promptly'** means doing something quickly and without unnecessary delay. Whether you have done something promptly will depend on your circumstances, so the key thing is to issue the ruling as soon as you reasonably can in those circumstances.



### What the ruling applies to

- the ruling must be applied to importations from either the date it is issued or another date that is stated in the ruling
- the ruling must be applied to importations for as long as a country's laws require
- whatever treatment the ruling requires, officials must provide that treatment to all importations that the ruling describes, so long as the facts and circumstances are the same. For example, if the ruling says it applies to parsnips, and says that parsnips are classified under Heading 0706.90.00, then officials must apply the import duty attached to Heading 0706.90.00 for any imports of parsnips while the ruling applies, and
- if an importer claims that an advance ruling applies to their importation, officials may evaluate the facts and circumstances to see if they are consistent with those on which the advance ruling was made.

### A ruling may be changed or revoked if

- officials determine that the ruling was based on an error of fact or law
- officials determine that the importer provided false or misleading information, or failed to provide relevant information
- the importing country's domestic laws change, or
- there is a change in a material fact or circumstance on which the ruling was based, or a conflicting ruling is issued.





## Valuation

### What is valuation?

Imported goods have to be valued so that customs officials know what import duties to charge.

PACER Plus requires that the system for valuing imported goods complies with Article VII of the *General Agreement on Tariffs and Trade (GATT)*. Each country's government is responsible for making sure it complies with Article VII of GATT.

Non-WTO members may, if they choose, apply the provisions of the *WTO Agreement on Customs Valuation*, but they only have to do so to the extent of their capacity.

PACER Plus also has its own rules on valuing imported goods and these are either reflected in countries' legislation or are part of standard operating procedures.

### What do the obligations on valuation mean for customs officials?

#### A country's customs legislation must comply with PACER Plus, which requires

- the valuation of goods to be based, to the greatest extent possible, on the transaction value of the goods
- the customs value of goods to be based on simple and equitable criteria consistent with commercial practices, and
- that valuation procedures apply generally to all importers and do not distinguish between where the goods are sourced from.

**to the greatest extent possible** in this context means that officials should do their best to value goods based on the transaction value. They should only use other methods if it is not possible to use the transaction value.

#### This means that, to the greatest extent possible, customs values must not be determined on the basis of

- the price at which domestically-produced goods are sold at in the importing country
- a system which provides for the acceptance of the higher of two alternative values
- the price of goods in the domestic market of the exporting country
- the cost of production (other than computed values which have been determined for identical or similar goods, in accordance with Arts 6 and 8(2) of the *Agreement on Customs Valuation*)
- the price of goods for export to a country other than the importing country
- minimum customs values, or
- **arbitrary** or fictitious values.

**to the greatest extent possible** in this context means that officials should do their best not to determine values on the basis of any of the factors listed. They should only use one of these factors if there is no other way of doing the valuation.

An **arbitrary** value is one that isn't based on the real nature of the good, or that is unpredictable or inconsistent.



### **What happens if a valuation is determined on the basis of one of these factors?**

If a value is determined on the basis of one of the factors listed above, officials should seek to remove that value as soon as it is practicable to do so. For example, when they are able to do the valuation in another way.

### **If an importer asks about the customs value of a good**

- officials must let them know what value has been assigned to the good and what method they used to determine the value.

### **If there is a problem to do with the application of a valuation procedure**

- officials from the importing country must discuss the problem with the country that raises it; officials may be required to participate in these discussions.





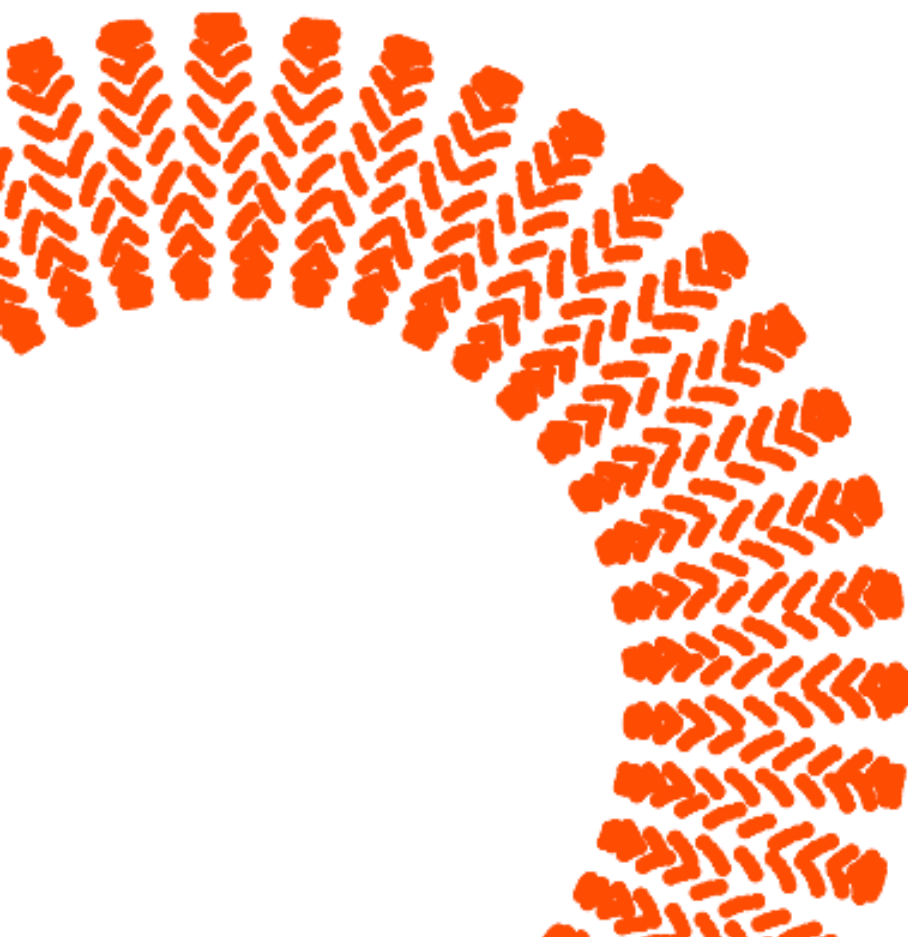


## Risk Management

Trade will flow more freely if customs officials focus their inspection procedures on high-risk goods. PACER Plus requires governments to administer customs procedures to facilitate the clearance of low-risk goods and focus instead on high-risk goods. They must regularly review these procedures too.

### What do the obligations on risk management mean for customs officials?

In each country, customs officials must follow the procedures that their government has put in place to prioritise clearance of low-risk goods.





## Release of goods

Trade will flow more freely if imported goods are released efficiently. PACER Plus has rules to ensure efficient release of goods.

### What do the obligations on release of goods mean for customs officials?

PACER Plus signatories must make sure that goods are released:

- within 48 hours of arrival or as soon as practicable, and
- where possible, at the point of arrival (such as the airport or port), without temporary transfer to warehouses or other locations.

It might not always be possible to meet these standards, but officials should try and do so.



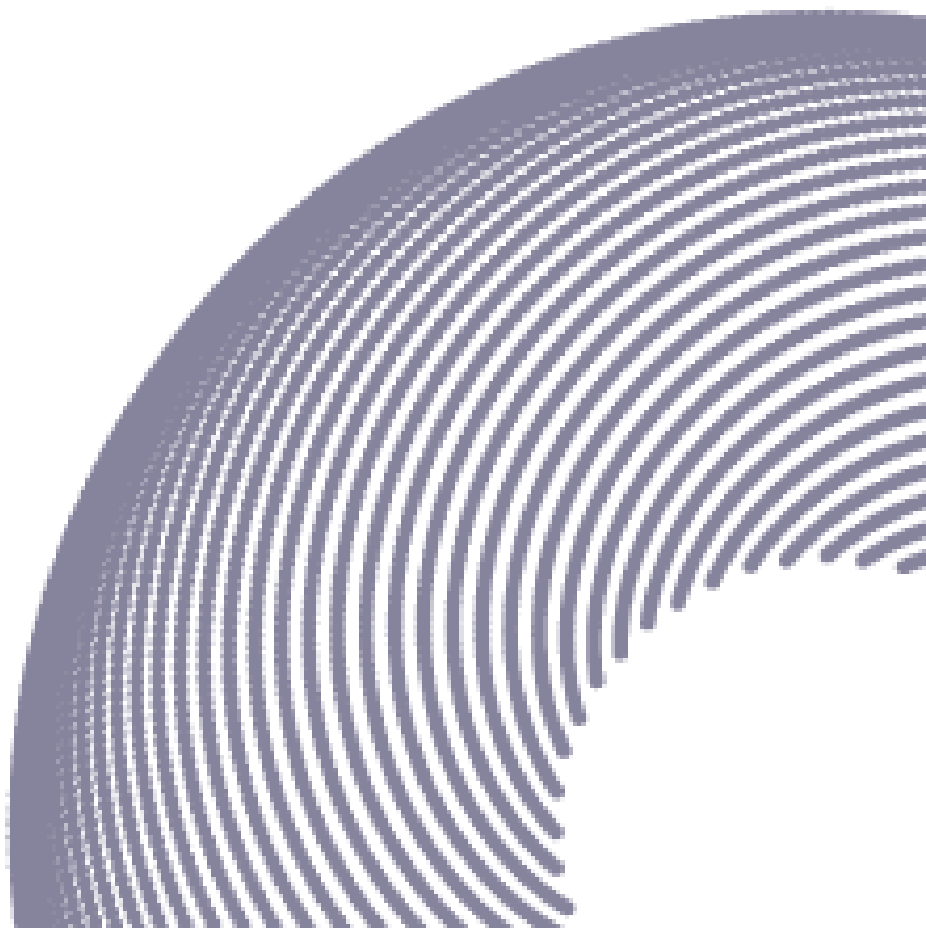
## Keeping information confidential

Customs procedures often require traders to give information to officials. It is important that officials keep this information confidential. PACER Plus has some particular rules about handling confidential information.

### What do the obligations on keeping information confidential mean for customs officials?

If customs officials receive any information from another PACER Plus country's Customs Administration, they must keep it confidential. There are only three situations in which they can use this information or show it to others:

- for the purpose for which it was provided (for example, if the information was provided to support an application for an advance ruling, then the officials can use it in the making of that advance ruling)
- if the law requires it (for example, if there is a police investigation) – but only if they have given notice ahead of time to the Customs Administration that provided the information, or
- if officials have obtained consent from the Customs Administration that provided the information.





## Enquiry 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 an Enquiry Point who will be responsible for answering enquiries on customs matters.

### What do the obligations on enquiry points mean for customs officials?

A government official who has been named the Enquiry Point for the Customs Procedures Chapter might receive enquiries from officials in other PACER Plus countries. It is their job to be helpful and answer these queries as soon as they are able to. They should acknowledge any enquiries received and, if there is going to be a delay in providing a response, let the person know when they can expect to hear back.





# Exceptions

## Overview

PACER Plus has a number of exceptions that allow countries to justify actions that would otherwise breach the obligations in the Customs Procedures 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.

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.

## National security

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.

## 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 Customs Procedures 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.