



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

Chapter 6: Technical Barriers to Trade



# Table of contents

<b>Introduction .....</b>	<b>3</b>
<i>What is this summary about and who is it for? .....</i>	3
<i>What does the TBT Chapter do?.....</i>	3
<i>What agencies is the TBT Chapter relevant to? .....</i>	4
<i>What are technical regulations, standards and conformity assessment procedures?.....</i>	4
<i>Is the measure TBT or SPS? .....</i>	5
<i>Does the TBT Chapter affect countries' ability to regulate in the public interest? .....</i>	7
<b>Obligations under PACER Plus .....</b>	<b>8</b>
<b>Non-discrimination .....</b>	<b>9</b>
<i>MFN .....</i>	9
<i>National treatment.....</i>	10
<i>Application of the MFN and national treatment obligations to conformity assessment procedures.....</i>	10
<b>Transparency.....</b>	<b>11</b>
<i>PACER Plus countries must meet transparency obligations .....</i>	11
1. <i>Notification requirements.....</i>	11
2. <i>Publication.....</i>	12
3. <i>Timing of entry into force of TBT measures.....</i>	13
4. <i>Information exchange .....</i>	13
5. <i>Contact Points.....</i>	13
<b>Special and differential treatment .....</b>	<b>14</b>
<i>Indigenous technology and production measures .....</i>	14
<b>Technical discussions .....</b>	<b>15</b>
<i>How are technical discussions held? .....</i>	15
<i>What should countries do during the technical discussions?.....</i>	15
<b>Compliance with WTO obligations .....</b>	<b>16</b>
<b>Exceptions .....</b>	<b>21</b>
<i>Overview .....</i>	21
<i>General exceptions .....</i>	21
<i>National security.....</i>	21
<i>Treaty of Waitangi (only applicable to New Zealand) .....</i>	22



## Introduction

### What is this summary about and who is it for?

These guidelines describe the obligations in PACER Plus that apply to technical regulations, standards and conformity assessment procedures (known as technical barriers to trade and referred to in these guidelines as **TBT measures**).

This summary is intended for anyone who wants a general overview of the PACER Plus obligations. It does not, however, cover:

- the rules around the Code of Good Practice for the Preparation, Adoption and Application of Standards (Article 7), and
- the obligations on “cooperation” between governments (Article 10).

### What does the TBT Chapter do?

The TBT Chapter aims to make it easier for people and businesses from PACER Plus countries to trade with each other. It does so by imposing obligations on PACER Plus countries that relate to how they design, adopt and apply technical regulations, standards and conformity assessment procedures. The obligations aim to ensure that TBT measures do not create unnecessary obstacles to trade.

Governments use various methods to regulate the manufacture, sale and trade of goods. These methods can vary from country to country depending on the objective of the regulation, the market, and the product. The objectives are generally related to protecting health, safety, environment or providing consumer information. Different methods of regulation can be essential to achieving these objectives.

e.g. Country A has regulations that set out requirements for what information has to be included on labels on packaged food

TBT measures can create obstacles (or barriers) to trade, such as by imposing additional costs of compliance on an exporter, or preventing or hindering an exporter’s access to the market if the exporter cannot meet the required standards.

e.g. Country A requires imported drinks to be packaged in cans of a size that is different from how they are sold in every other country, for no reason related to health or safety. This could be difficult for foreign manufacturers who would have to make specially sized cans in order to sell its drinks in Country A.

Not all TBT measures are covered by the PACER Plus TBT Chapter. Some may not have an effect on trade; others may not have anything to do with trade in goods (e.g. standards related to services or labour).



Other types of regulation that can create barriers to trade also fall outside the scope of the TBT Chapter, for example, food safety and animal health-related regulations, border procedures or service agreements. In particular, measures that have to do with food safety or biosecurity may fall within the scope of the Chapter on Sanitary and Phytosanitary Measures.

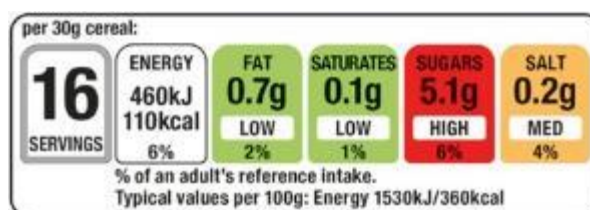
In addition to facilitating trade, the TBT Chapter's other objectives include to:

- ensure transparency and promote understanding of each other's technical measures
- strengthen information exchange and cooperation on technical measures
- promote good regulatory practice and good practice in the preparation, adoption and application of standards by standardising bodies in each country, and
- promote the WTO's TBT Agreement – both its practical implementation by countries that are WTO Members, and observance of its requirements by countries that are not.

### What agencies is the TBT Chapter relevant to?

The TBT Chapter is relevant to any agencies that work on developing or applying technical measures. For example, agencies responsible for:

- commerce and business
- food and alcohol labelling
- energy efficiency requirements
- electrical standards, or
- regulation of tobacco.



### What are technical regulations, standards and conformity assessment procedures?

The PACER Plus obligations apply to: technical regulations, standards, and conformity assessment procedures. Together these are known as **TBT measures**.

- A **technical regulation** is a document that sets out product characteristics or process and production methods (including applicable administrative provisions). Technical regulations are **mandatory**. They can include terminology, symbols, packaging, marking or labelling requirements that apply to the product, process or production method.
- A **standard** is a document approved by a recognised body that provides rules, guidelines or characteristics for products, processes and production methods. Standards are similar to technical regulations, but are voluntary measures. They can include terminology, symbols, packaging, marking or labelling requirements that apply to the product, process or production method.

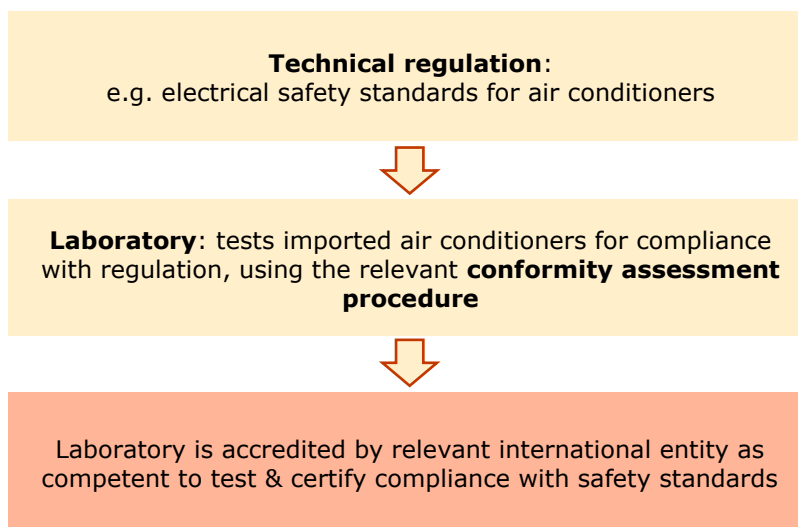
A **mandatory** regulation is one that is legally binding and enforceable. Another way of saying this is that it must regulate the characteristics of products in a binding or compulsory manner.



International standards are those that are developed by recognised international bodies, such as the International Organisation for Standardisation (**ISO**) and the International Electrotechnical Commission (**IEC**). These bodies create global standardised outcomes, rather than country-specific standardised outcomes.

- A **conformity assessment procedure** is any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

### Illustration: The role of conformity assessment procedures



### Is the measure TBT or SPS?

One issue for regulators when interpreting the TBT Chapter is whether the measure falls under the SPS or the TBT Chapter. The SPS Chapter contains notification requirements that are similar to those found in the TBT Chapter. The **diagram** on the next page should help regulators decide what type of measure they are dealing with.

Sometimes a measure may need to be notified under both Chapters as some aspects may fall under the SPS Chapter and others under the TBT Chapter.

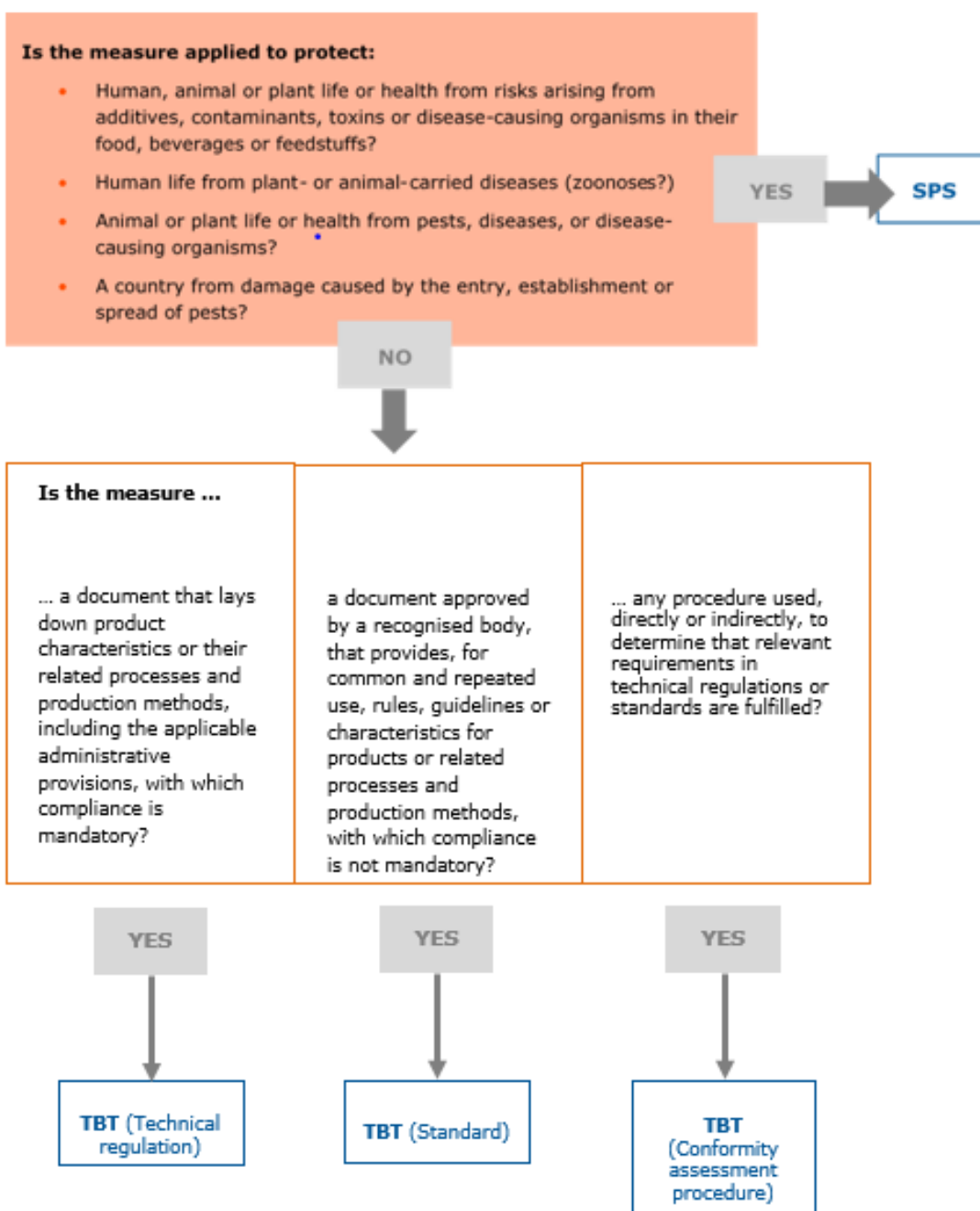
If the measure is a labelling requirement, then it is a TBT measure, regardless of the type of information that is required to be included on the label.

#### **TBT measures:**

**Technical regulation** - mandatory energy efficiency requirements for refrigerators

**Standard** - voluntary country of origin labelling requirements for produce, such as fruit and vegetables

**Conformity assessment procedures** - the inspection process used to determine whether refrigerators comply with the safety requirements or checks that the country of origin has in place





## Does the TBT Chapter affect countries' ability to regulate in the public interest?

No. The obligations in the TBT Chapter are written in such a way that countries are still able to **regulate in the public interest**. Countries may adopt TBT measures, including those to:

- protect human health or safety
- protect animal or plant life or health or of the environment
- prevent deceptive practices
- ensure the quality of exports, or
- protect essential security interests.

**Regulation in the public interest** is regulation that seeks to protect and benefit the public at large. This might include regulation for the allocation of scarce resources.

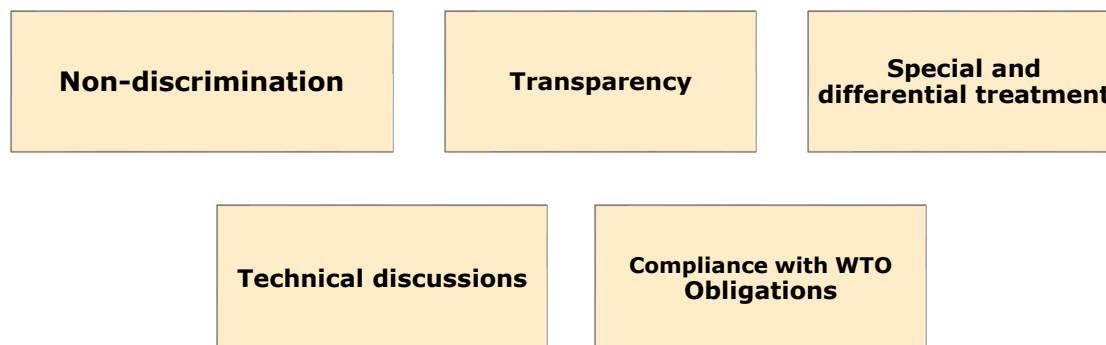
However, the measures must be designed and applied consistently with the rules in the TBT Chapter. These rules are described in the following pages.



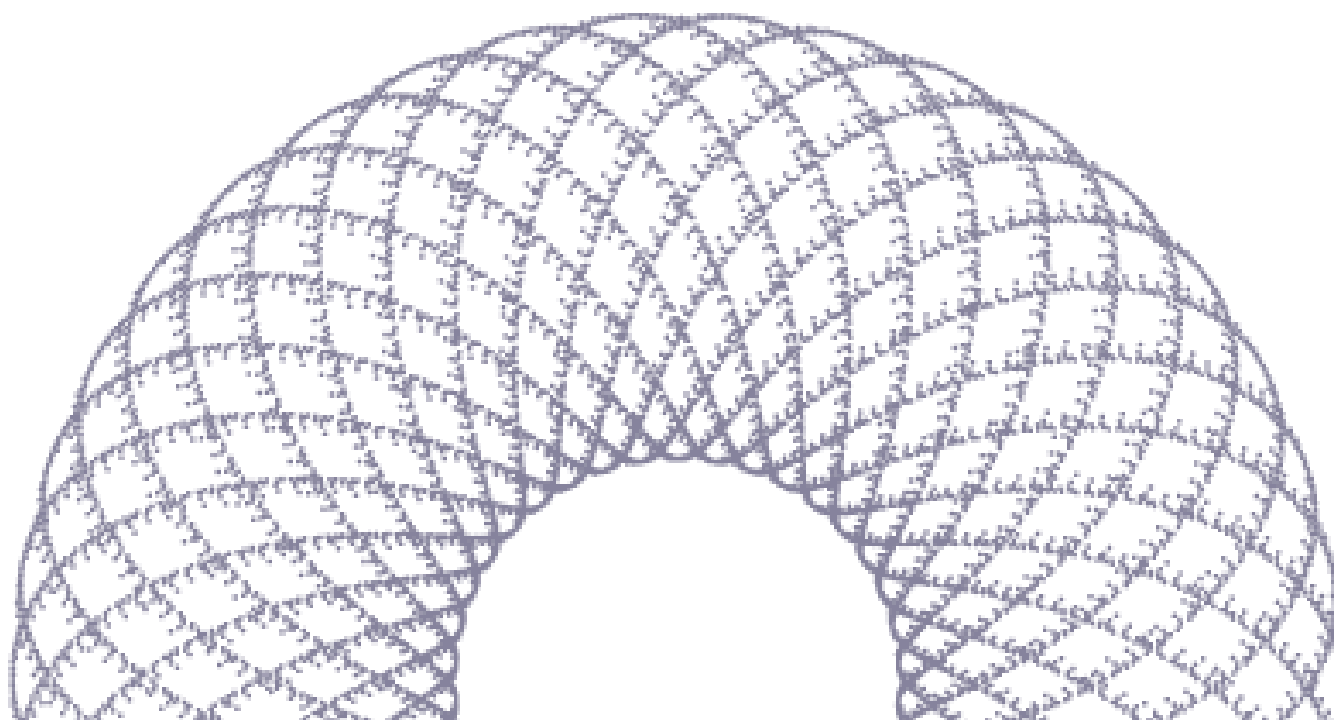


## Obligations under PACER Plus

PACER Plus has a number of obligations that affect how countries adopt and apply TBT measures. They can be categorised as follows:



The following pages summarise these obligations.







## Non-discrimination

In relation to their TBT measures, PACER Plus governments must treat all products from PACER Plus countries in accordance with two fundamental obligations:

- most favoured nation (**MFN**), and
- national treatment.

Together, MFN and national treatment are known as the “non-discrimination” obligation and they apply whenever officials are preparing, adopting or applying TBT measures.

### MFN

MFN is a type of non-discrimination rule that ensures producers from all PACER Plus countries can compete on a level playing field.

Products from PACER Plus countries are entitled to treatment that is: **no less favourable** than the treatment accorded to **like products** from any other country, whether or not that country is a member of PACER Plus

‘No less favourable’ means that a government must not take action that puts a product from one country at a detriment as compared to a product from another country.

e.g. Tonga must not require New Zealand products to list ingredients, without imposing the same requirement on Chinese products.

There are various criteria used to define **like** products. In general, a “like product” describes two goods that have the same physical characteristics or end uses. Consumer tastes and preferences, and tariff classifications may also be relevant in deciding whether two products are “like” each other.

e.g. fishing boats produced in Vanuatu and fishing boats produced in Tonga may be considered “like products”. They are made of the same materials and are used for the same activity.



## National treatment

National treatment is another type of non-discrimination rule that officials must keep in mind whenever they do anything that might impact products from other PACER Plus countries.

Products from other PACER Plus countries are entitled to treatment that is **no less favourable** than the treatment a country provides to **like products** of national origin.

e.g., products from Tonga shouldn't receive any competitive advantage in Tonga's market as compared to products from the Cook Islands as a result of Tonga's technical regulations. In particular, Tonga must not require safety standards for imported products without imposing those standards on like domestic products.

'No less favourable' means that a government must not take action that puts a product from another PACER Plus country at a detriment as compared to a product from its own country.

## Application of the MFN and national treatment obligations to conformity assessment procedures

Where a country requires conformity with TBT measures, it must ensure that:

- the conformity assessment procedures are prepared, adopted and applied so that **like products** from another PACER Plus country are granted access to its market under conditions no less favourable than like products from other countries (whether or not members of PACER Plus) in comparable situations, and
- this access must include a right to an assessment of conformity under the appropriate procedural rules.



# Transparency

## PACER Plus countries must meet transparency obligations

Transparency is a key principle in PACER Plus.

Transparency obligations are aimed at ensuring stability for the marketplace and for exporters by ensuring that regulations do not change without warning.

The TBT Chapter contains five key transparency obligations related to TBT measures:

1. Notification requirements
2. Publication requirements
3. Timing between publication and entry into force of measures
4. Information exchange
5. Contact Points

### 1. Notification requirements

#### A. What to notify

A PACER Plus country must notify other PACER Plus countries of **any proposed or actual** TBT measure that it considers might materially affect the operation of the Agreement or otherwise substantially affect another country's interests under the Agreement. It must do so if:

- there is no international standard, guideline or recommendation, or the regulation's content is not substantially the same as that of the international standard, guideline or recommendation, and
- if the measure may have a **significant effect on the trade** of other PACER Plus countries.

#### B. How to determine whether a measure has a "significant effect on trade"

Whether or not a proposed or actual technical regulation or conformity assessment procedure has a significant effect on trade depends on:

- the value or other importance of imports in respect of the importing and/or exporting countries concerned, whether from other countries individually or collectively
- the potential growth of such imports, and
- how difficult it is for producers in other countries to comply with the proposed technical regulations.



### C. Procedure for making notifications

The TBT Chapter sets out details of the procedure for making notifications. Key aspects of the procedure include:

- Notification must be made at **an early stage** when amendments to the regulation or procedure can still be introduced and comments taken into account.
- Notifications can be made via a country's Trade Portal. They can also be made manually via email to the Contact Points of each country.
- If a country makes comments in response to a notification, the regulating country must, on request, discuss those comments, and take the comments and results of discussions into account.

**"At an early stage"** is described in PACER Plus as being when amendments can still be introduced and comments taken into account. Good practice would mean the following, to the extent possible:

- for an **actual measure**: as soon as it has been adopted (e.g. when a Bill is passed or a regulation enacted)
- for a **proposed measure**: soon after the proposal has been made, so that there is sufficient time for comments to be received and considered before it is drafted (say 4-6 weeks)

### D. Situations of urgency

The notification requirements are not as strict if urgent problems of safety, health, environmental protection or national security arise or threaten to arise.

However, even if such an urgent problem has arisen, countries are still obliged to do the following upon adoption of a measure:

- notify other PACER Plus countries of the TBT measure including what products are covered, its objective and rationale, and the nature of the urgent problems
- on request, provide other PACER Plus countries with electronic copies of the measure, and
- without discrimination, allow other Parties to make comments in writing, discuss these comments on request, and take the comments and the results of these discussions into account in making an informed decision about the measure.

## 2. Publication

Once a TBT regulation or conformity assessment measure has been adopted, there is an obligation to promptly publish it (or otherwise make it available) in a manner that enables interested Parties and persons to access them easily and get familiar with it.



### 3. Timing of entry into force of TBT measures

PACER Plus countries are obliged to allow **at least six months between the publication of a TBT measure and its entry into force.**

This time period allows producers in exporting countries to adapt their products or methods of production as needed.

For example, if Australia changes its rules for food labelling, a producer in New Zealand needs time to change their labels before exporting there.

This obligation does not apply if the urgent circumstances, as outlined above, apply.

### 4. Information exchange

Each PACER Plus country must respond to all requests for information or clarification about their TBT measures, provided that the requests are **reasonable** and made in writing.

A response to a written request for information or clarification must be provided no later than 90 days after the country has received the request, or as agreed between the two countries.

### 5. Contact Points

PACER Plus sets up systems to ensure that officials from one country can easily contact their counterpart 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 related to services.

The TBT Contact Point's responsibilities are to:

- facilitate the exchange of information between the PACER Plus countries on any matters relating to the implementation of the TBT Chapter
- receive and make notifications, requests, comments, responses and other communications as required under the transparency obligations
- on request, provide to other PACER Plus countries, through their Contact Points, particulars or copies in electronic format of proposed regulations or procedures and, whenever possible, identify the parts that deviate in substance from relevant international standards, guides or recommendations
- where there are urgent problems of safety, health, environmental protection or national security, provide to other PACER Plus countries that request it, through their Contact Points, electronic copies of regulations or rules of procedure , and
- make, receive and respond (within 60 days) to requests under the Technical Discussions procedures for a detailed explanation of a TBT measure.



## Special and differential treatment

The special and differential treatment rules are an opportunity for the particular needs of developing PACER Plus countries to be considered in the preparation of TBT measures.

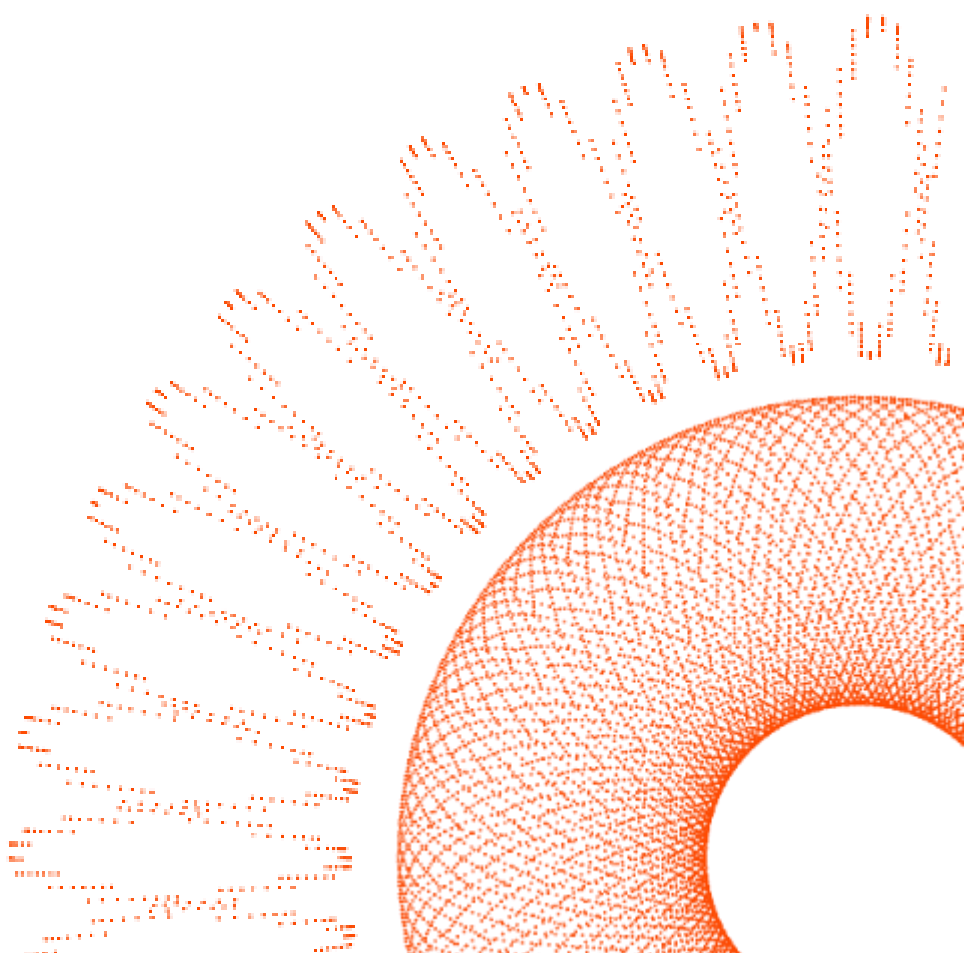
When preparing TBT measures, PACER Plus countries must take into account the special development, financial and trade needs of developing country members of PACER Plus.

This rule helps ensure TBT measures do not create unnecessary obstacles to exports from developing PACER Plus countries.

Given that a number of PACER Plus countries are developing, how to implement this obligation is likely to be part of an ongoing conversation amongst countries.

## Indigenous technology and production measures

Developing PACER Plus countries may adopt TBT measures to preserve indigenous technology and production methods, and processes compatible with their development needs.





## Technical discussions

Technical discussions are an opportunity to help PACER Plus countries get to know another PACER Plus country's TBT measures, and for concerns on specific issues about these to be resolved.

A PACER Plus country that has an interest in another PACER Plus country's TBT measure can request a detailed explanation of the measure and, if necessary, may also request technical discussions with that country. This request must be made through the country's Contact Point. The TBT Chapter sets out the procedures to be followed for making a request, and also for when a request is received

If technical discussions have taken place and a mutually satisfactory solution cannot be reached, an importing PACER Plus country can decline a further request for technical discussions on **justifiable grounds**.

If an importing PACER Plus country declines a request for technical discussions on this basis, it must provide an explanation of its reasons.

### How are technical discussions held?

Technical discussions should be held electronically. However, if this is not possible then they may be conducted in person or as agreed by the countries.

### What should countries do during the technical discussions?

The countries involved in the discussions must make **every effort to reach a mutually satisfactory resolution** through technical discussions within 90 days from the date of the request or within a timeframe mutually agreed upon by them.

Either country participating in technical discussions **may invite another PACER Plus country or a relevant international or regional organisation** in the field of TBT measures to participate for the purpose of providing technical advice.



## Compliance with WTO obligations

The WTO TBT Agreement has some rules in addition to the PACER Plus rules described above.

- Countries who are **WTO Members** must apply the additional TBT Agreement rules found in Articles 1 to 10 of that Agreement.
- Countries who are **not WTO Members and are developing countries** must apply the additional TBT Agreement rules only to the extent of their capacity.

<b>WTO Technical Barriers to Trade (TBT) Agreement</b>	
<b>Topic</b>	<b>Obligation</b>
<b>Preparation, Adoption and Application of Technical Regulations by Central Government Bodies</b>	
TBT Art 2.2	<p>Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade.</p> <p>For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives include, but are not limited to: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.</p> <p>In assessing such risks, relevant elements of consideration include, but are not limited to: available scientific and technical information, related processing technology or intended end-uses of products.</p>
TBT Art 2.3	<p>Technical regulations shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.</p>
TBT Art 2.4	<p>Where technical regulations are required, and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.</p>
TBT Art 2.5	<p>A Member preparing, adopting or applying a technical regulation which may have a significant effect on trade of other Members shall, upon the request of another Member, explain the justification for that technical regulation in terms of the provisions of paragraphs 2 to 4. Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.</p>
TBT Art 2.6	<p>With a view to harmonizing technical regulations on as wide a basis as possible, Members shall play a full part, within the limits of their</p>





<b>WTO Technical Barriers to Trade (TBT) Agreement</b>	
<b>Topic</b>	<b>Obligation</b>
	resources, in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations.
TBT Art 2.7	Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.
TBT Art 2.8	Wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.
<b>Preparation, Adoption and Application of Technical Regulations by Local Government Bodies and Non-Governmental Bodies</b>	
TBT Art 3.2	Members shall ensure that the technical regulations of local governments on the level directly below that of the central government in Members are notified in accordance with the provisions of paragraphs 9.2 and 10.1 of Article 2, noting that notification shall not be required for technical regulations the technical content of which is substantially the same as that of previously notified technical regulations of central government bodies of the Member concerned.
TBT Art 3.4	Members shall not take measures which require or encourage local government bodies or nongovernmental bodies within their territories to act in a manner inconsistent with the provisions of Article 2.
TBT Art 3.5	Members are fully responsible for the observance of all provisions of Article 2. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of Article 2 by other than central government bodies.
<b>Procedures for Assessment of Conformity by Central Government Bodies</b>	
TBT Art 5.2	Members shall ensure that: <ul style="list-style-type: none"> <li>conformity assessment procedures are undertaken and completed as expeditiously as possible and in a no less favourable order for products originating in the territories of other Members than for like domestic products;</li> <li>the standard processing period of each conformity assessment procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the assessment in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the conformity assessment if the applicant so requests; and</li> </ul>



<b>WTO Technical Barriers to Trade (TBT) Agreement</b>	
<b>Topic</b>	<b>Obligation</b>
	<p>that, upon request, the applicant is informed of the stage of the procedure, with any delay being explained;</p> <ul style="list-style-type: none"> <li>• information requirements are limited to what is necessary to assess conformity and determine fees;</li> <li>• the confidentiality of information about products originating in the territories of other Members arising from or supplied in connection with such conformity assessment procedures is respected in the same way as for domestic products and in such a manner that legitimate commercial interests are protected;</li> <li>• any fees imposed for assessing the conformity of products originating in the territories of other Members are equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body;</li> <li>• the siting of facilities used in conformity assessment procedures and the selection of samples are not such as to cause unnecessary inconvenience to applicants or their agents;</li> <li>• whenever specifications of a product are changed subsequent to the determination of its conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the technical regulations or standards concerned;</li> <li>• a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.</li> </ul>
TBT Art 5.3	Members can carry out reasonable spot checks within their territories.
TBT Art 5.4	In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies exist or their completion is imminent, Members shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such guides or recommendations or relevant parts are inappropriate for the Members concerned, for, inter alia, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.
<b>Recognition of Conformity Assessment by Central Government Bodies</b>	
TBT Art 6.1	Without prejudice to the provisions of paragraphs 3 and 4, Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those



<b>WTO Technical Barriers to Trade (TBT) Agreement</b>	
<b>Topic</b>	<b>Obligation</b>
	<p>procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures. It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding regarding, in particular:</p> <ul style="list-style-type: none"> <li>• adequate and enduring technical competence of the relevant conformity assessment bodies in the exporting Member, so that confidence in the continued reliability of their conformity assessment results can exist; in this regard, verified compliance, for instance through accreditation, with relevant guides or recommendations issued by international standardizing bodies shall be taken into account as an indication of adequate technical competence;</li> <li>• limitation of the acceptance of conformity assessment results to those produced by designated bodies in the exporting Member.</li> </ul>
TBT Art 6.2	Members shall ensure that their conformity assessment procedures permit, as far as practicable, the implementation of the provisions in paragraph 1.
TBT Art 6.3	Members are encouraged, at the request of other Members, to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each other's conformity assessment procedures. Members may require that such agreements fulfil the criteria of paragraph 1 and give mutual satisfaction regarding their potential for facilitating trade in the products concerned.
TBT Art 6.4	Members are encouraged to permit participation of conformity assessment bodies located in the territories of other Members in their conformity assessment procedures under conditions no less favourable than those accorded to bodies located within their territory or the territory of any other country.
<b>Procedures for Assessment of Conformity by Local Government Bodies</b>	
TBT Art 7.2	Members shall ensure that the conformity assessment procedures of local governments on the level directly below that of the central government in Members are notified in accordance with the provisions of paragraphs 6.2 and 7.1 of Article 5, noting that notifications shall not be required for conformity assessment procedures the technical content of which is substantially the same as that of previously notified conformity assessment procedures of central government bodies of the Members concerned.
TBT Art 7.4	Members shall not take measures which require or encourage local government bodies within their territories to act in a manner inconsistent with the provisions of Articles 5 and 6.
TBT Art 7.5	Members are fully responsible under this Agreement for the observance of all provisions of Articles 5 and 6. Members shall formulate and implement positive measures and mechanisms in support of the



<b>WTO Technical Barriers to Trade (TBT) Agreement</b>	
<b>Topic</b>	<b>Obligation</b>
	observance of the provisions of Articles 5 and 6 by other than central government bodies.
<b>Procedures for Assessment of Conformity by Non-Governmental Bodies</b>	
TBT Art 8.1	Members shall take such reasonable measures as may be available to them to ensure that nongovernmental bodies within their territories which operate conformity assessment procedures comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with the provisions of Articles 5 and 6.
TBT Art 8.2	Members shall ensure that their central government bodies rely on conformity assessment procedures operated by non-governmental bodies only if these latter bodies comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures.
<b>International and Regional Systems</b>	
TBT Art 9.2	Members shall take such reasonable measures as may be available to them to ensure that international and regional systems for conformity assessment in which relevant bodies within their territories are members or participants comply with the provisions of Articles 5 and 6. In addition, Members shall not take any measures which have the effect of, directly or indirectly, requiring or encouraging such systems to act in a manner inconsistent with any of the provisions of Articles 5 and 6.
TBT Art 9.3	Members shall ensure that their central government bodies rely on international or regional conformity assessment systems only to the extent that these systems comply with the provisions of Articles 5 and 6, as applicable.



# Exceptions

## 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 TBT 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.

### 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 Technical Barriers to Trade. 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.