



PACER Plus **Chapter Summary 2021**

Chapter 13: Transparency



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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 transparency. It is for anyone who wants an overview of the PACER Plus obligations that each signatory has agreed to.

What is the PACER Plus Transparency Chapter about?

The PACER Plus Transparency Chapter includes rules that require PACER Plus countries to make their laws, regulations, procedures etc readily available to those who want to find out about them. In practice, PACER Plus countries can best achieve transparency by making these measures available online.

The Chapter makes it easier for businesses, traders and investors to know as much as possible about the conditions of trade and investment in the countries where they want to do business or operate.

The word 'transparency' is not defined but in essence the goal of transparency is to achieve a greater degree of clarity, predictability and information about trade policies, rules and regulations of Members.

Examples

- If Tonga makes its import health standards available online, then a business in another country that wants to export chickens to Tonga knows exactly what health-related rules they have to comply with before they export.
- If Niue publishes online any requirements that have to be met by inward investors, then businesses from other PACER Plus countries can check the requirements and make sure they will be able to meet them before making an application to invest.
- If Tuvalu has a website that sets out the procedures that importers have to go through to get an advance ruling on tariff classification, then importers can make sure that they provide all the relevant information needed for their application to proceed.

General transparency requirements are found in the Transparency Chapter. More specific requirements for different subject areas are also found in a number of other PACER Plus chapters (e.g. trade in services, SPS, TBT).



Which agencies are the general transparency rules relevant to?

The general transparency rules are relevant to any agency that deals with government activity that affects trade or investment. These include:

- Customs
- Biosecurity
- Any technical regulations, standards or conformity assessment procedures (such as energy efficiency standards or product safety standards)
- Public health (food standards for imported food)
- Investment
- Immigration (in relation to the movement of natural persons)
- Any area of regulation that covers activities that overseas persons or businesses might get involved in – such as professional standards or operation of services sectors in which foreign companies might invest (e.g. electricity, telecommunications, water)

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General transparency-related obligations

The general transparency obligations involve **publication** and **notification**.

Publication

All of a country's laws, regulations, procedures, and administrative rulings of general application relating to any matter covered by PACER Plus must be promptly published and should be made available online.

- A shorthand term for laws, regulations, procedures and administrative rulings is **measures**.
- The publication requirements relate to measures of **general application**. This is a reference to measures that apply to a range of situations or cases, rather than being limited to just one company or one situation. For example, customs measures are of general application if they are not limited to a single import or importer.

What measures are subject to the obligations?

Measures are only subject to the obligation to publish if they relate to **matters covered by PACER Plus**. This means measures that apply to any area of government activity that affects trade, including:

- Customs
- Biosecurity
- Any technical regulations, standards or conformity assessment procedures (such as energy efficiency standards or product safety standards)
- Public health (such as food standards for imported food)
- Investment
- Immigration (only as it relates to the movement of natural persons to work in Tonga, including business visitors)
- Any area of regulation that covers activities that overseas persons or businesses might get involved in – such as professional standards or operation of services sectors in which foreign companies might invest (for example, water, electricity, telecommunications)

The obligations relate to both **adopted** measures and **proposed** measures.

Adopted measures are those that have been finalised and put in place. Once this has happened, the final version (for example, the statute or regulations) should be published.

Proposed measures are those that are in draft form or still at the stage of being discussed in a policy proposal or discussion document.



Procedures for publication

Proposed and adopted measures should be published online. If this is not possible, other forms of publication can suffice, but publishing online is preferred.

- For **adopted** measures, the requirement is to publish promptly, meaning as soon as possible after the measures are finalised.
- To the extent possible, countries are required to publish **proposed** measures in advance and, where appropriate, allow other PACER Plus countries to have a reasonable opportunity to comment on them.

Often PACER Plus countries won't have finalised drafts of proposed measures ready to publish in advance, but PACER Plus allows this obligation to be met by publishing a policy discussion document or proposal rather than the actual draft text of the measure.

Notification

Each PACER Plus country must, to the extent possible, notify the other countries of any measure that it considers **might materially affect the operation of PACER Plus or substantially affect another country's interests** under it. This includes those already in place or just being proposed.

Notification provides stability for the market and for exporters by ensuring that regulations and other measures do not change without warning.

The notification obligation under Article 13.3 only applies in limited situations as described below. Remember though that other Chapters also have transparency obligations. Those in the **SPS and TBT Chapters** are particularly detailed, and notifications are required more often. The relevant guidelines for those Chapters should be consulted accordingly.

The threshold for notification under this obligation is high. Notification won't be required simply because a measure applies to a good that is imported, or a sector in which foreigners provide services or invests. Notification will only be required if a measure might:

- **materially affect the operation of PACER Plus:** "materially" means "in an important or noticeable way". Such a measure would have to be very significant (such as restricting transit shipments from other PACER Plus countries in such a manner as to make trade between PACER Plus countries difficult), or
- **substantially affect another country's interests under PACER Plus:** "substantially" means "to a large degree". A measure doesn't have to be notified simply because it will apply to another country's imports or investments. It only has to be notified if it might affect them to "a large degree". For example, an amendment to investment laws that make certain kinds of investments much more difficult to make.

Procedure for notification

The Chapter sets out the procedures for how notifications are to be made. The preferred method is by using a country's **Trade Portal**, but notifications can also be made manually via email to the Contact Points of other PACER Plus countries.



Transparency checklist

Adopted measures (including legislation, regulations, procedures, rulings)

- Check guidelines to see if the measure is of a type that must be published and/or notified
- If the measure is an SPS one, or a technical regulation, then also check the obligations in the Sanitary and Phytosanitary (SPS) or Technical Barriers to Trade (TBT) Chapter guidelines as relevant; also check the Services and Investment Chapters if provision of services or investment is involved

Publication

- To the extent possible, ensure that measure is promptly published:
 - on the PACER Plus country's legislation website
 - anywhere else that the PACER Plus country's legislative drafting manual may direct
 - on websites of relevant Ministries, Departments and Agencies
 - on the country's Trade Portal

Notification (if required)

- Notify other countries' Contact Points as soon as the date of entry into force is known

Proposed measures

- Check guidelines to see if the measure is of a type that must be published and/or notified
- If the measure is a SPS one, or a technical regulation, then also check the obligations in the SPS or TBT Chapter guidelines as relevant
- **Publication**
 - To the extent possible, ensure that measure is published in advance (i.e. before it is finalised and adopted):
 - On the relevant Ministry, Department or Agency website
 - If not possible to publish on website, then publish elsewhere
- **Give other PACER Plus countries a chance to comment**
 - If a proposed measure has been published in advance, to the extent possible and where appropriate, give other PACER Plus countries a reasonable opportunity to comment on the measure – this can be done through countries' Contact Points
- **Notification (if required)**
 - Make notification to countries' Contact Points as soon as the proposal or discussion document is released



Specific transparency obligations in other Chapters

The table below lists the specific transparency obligations that are found in the other subject-specific chapters of PACER Plus.

Chapter	Obligation	Action point						
Customs Procedures (Art 13)	Transparency means that traders know what customs rules and procedures apply to their situation.	Countries must make information readily available to traders about what documents they must provide on importation.						
Technical Barriers to Trade (Art 8)	<p>Notifications, requests, comments, responses and other communications shall be conveyed through Contact Points.</p> <p>Technical regulations and conformity assessment procedures are to be published promptly.</p> <p>Except in urgent circumstances an importing PACER Plus Country shall allow a reasonable interval between the publication of a technical regulation or related conformity assessment procedure and its entry into force in order to allow time for producers in exporting Parties, and particularly in developing country Parties, to adapt their products or methods of production to its requirements.</p> <p>The reasonable interval shall be a period of at least six months but could be shortened if it would mean that the legitimate objective that the measure aims to meet could not be achieved.</p>	<table border="1"> <thead> <tr> <th>Item</th> <th>Action Point</th> </tr> </thead> <tbody> <tr> <td>Where a relevant international standard, guide or recommendation does not exist AND if the regulation or procedure may have a significant effect on the trade of other Parties, the Party preparing it shall ...</td> <td> <ul style="list-style-type: none"> • Publish a notice of its proposal to introduce the regulation or procedure in a publication at an early appropriate stage; • notify other PACER Plus countries, at an early stage when amendments can still be introduced and comments taken into account, of the products to be covered by the regulation or procedure and its objective and rationale; • on request, provide to other PACER Plus countries through Contact Points particulars or copies in electronic format of the proposed regulation or procedure and, whenever possible, identify the parts which deviate in substance from relevant international standards, guides or recommendations; and • allow reasonable time for other PACER Plus Countries to make comments in writing, discuss these comments on request and take these written comments and the results of these discussions into account. </td> </tr> <tr> <td>The technical content of a proposed technical regulation or related conformity assessment procedure is not in accordance with the technical content of relevant international standards, guides or recommendations</td> <td>See above.</td> </tr> </tbody> </table>	Item	Action Point	Where a relevant international standard, guide or recommendation does not exist AND if the regulation or procedure may have a significant effect on the trade of other Parties, the Party preparing it shall ...	<ul style="list-style-type: none"> • Publish a notice of its proposal to introduce the regulation or procedure in a publication at an early appropriate stage; • notify other PACER Plus countries, at an early stage when amendments can still be introduced and comments taken into account, of the products to be covered by the regulation or procedure and its objective and rationale; • on request, provide to other PACER Plus countries through Contact Points particulars or copies in electronic format of the proposed regulation or procedure and, whenever possible, identify the parts which deviate in substance from relevant international standards, guides or recommendations; and • allow reasonable time for other PACER Plus Countries to make comments in writing, discuss these comments on request and take these written comments and the results of these discussions into account. 	The technical content of a proposed technical regulation or related conformity assessment procedure is not in accordance with the technical content of relevant international standards, guides or recommendations	See above.
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Chapter	Obligation	Action point	
		AND If such regulation or procedure may have a significant effect on the trade of other Parties, the Party preparing it shall ...	
Sanitary and Phytosanitary Measures (Arts 8 and 10)	The transparency obligations require countries to provide information on their SPS measures and to make notifications if other changes occur. For example, if an exporting country has questions or needs clarification about a regulation, the official enquiry point facilitates that process.	Members must: <ul style="list-style-type: none"> • Establish an Enquiry Point • Designate a Notification Authority • Publish SPS regulations Members must also notify new or changed SPS regulations when there is no international standard or the regulation is different than the international standard, but only if the regulation may have a <u>significant effect on international trade</u> .	
Trade in Services (Art 17)	Documents related to domestic rules must be published so that people from other PACER Plus countries can easily access the information they need to help them provide services in that country.	Item	Information to be published
		International Agreements	A list of all international agreements that the country is a party to and that relate to trade in services (e.g. international civil aviation agreements).
		Licensing requirements	<ul style="list-style-type: none"> • Application requirements • Criteria for application and renewal • Procedure for application and renewal • Applicable fees • An established timeframe for the processing of an application • Appeal or review process for decisions made • Procedures for monitoring or enforcing compliance with the terms and conditions of licenses
		Qualification requirements	<ul style="list-style-type: none"> • Application requirements • Criteria for application and renewal • Procedure for application and renewal • Procedure for verifying and assessing qualifications



Chapter	Obligation	Action point	
			<ul style="list-style-type: none"> • Applicable fees • An established timeframe for the processing of an application • Appeal or review process for decisions made
		Authorisation requirements	<ul style="list-style-type: none"> • Application requirements • Any periodic renewal requirements • Generally applicable terms and conditions of such authorisation • Appeal or review process for decisions made
Investment (Art 15)	People and businesses from other PACER Plus countries investing in another PACER Plus country need to know about rights and obligations that may impact them.	Item	Information to be published
		Laws, regulations and other rules	If another PACER Plus country requests information about any rules that may have a material impact on any covered investment, it should be provided to them.
		Names of relevant officials	Other PACER Plus countries must be provided with the names of the government departments or authorities who deal with foreign investment, as well as with a description of their role and responsibilities.

Disclaimer: This document provides a general summary of the obligations in the PACER Plus Transparency 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.