



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

Chapter 3: Rules of Origin



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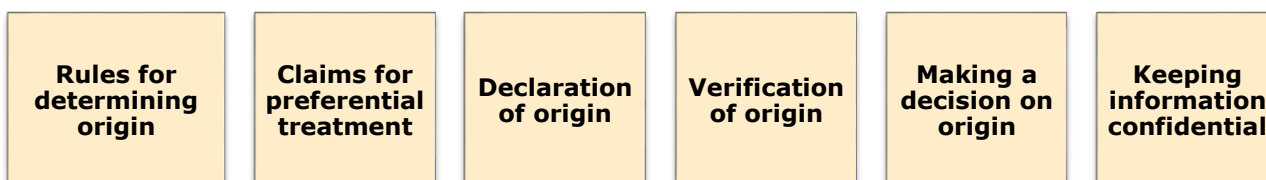
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## Introduction

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

This summary describes the key obligations in PACER Plus that apply to the application of rules of origin (**ROO**). It is intended for anyone who wants a general overview of the PACER Plus obligations. The summary covers the following topics, as well as exceptions to the obligations.



### What does the PACER Plus ROO Chapter do?

Under PACER Plus, governments have agreed to give preferential tariff treatment (i.e. lower or zero tariffs) to imports from other PACER Plus countries. Importers of goods from other PACER Plus countries will receive preferential treatment if they can show that the goods being imported “originate” from the country in question.

e.g., taro from Tonga will qualify for preferential treatment on entry to Kiribati, if the importer can show that the taro originates in Tonga.

The ROO Chapter has rules that set out the conditions on which goods will be treated as “originating”. Some rules require that PACER Plus governments put in place certain legislation or systems and some require officials to do certain things in their daily work.

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

The ROO Chapter is relevant to agencies that determine the country of origin of imports. This is usually the customs authority.

### Implications for customs officials

Everyone who deals with imports or exports has an important role to play in ensuring compliance with PACER Plus. Some PACER Plus rules are already reflected in countries’ legislation or regulations, and many already form part of officials’ daily operating procedures. Other rules, however, are new for countries.



## How is origin determined under PACER Plus?

PACER Plus uses the following rules to determine the origin of imported goods.



**Wholly obtained or produced** in the country e.g. tuna harvested in Solomon Islands



**Produced entirely** in one or more PACER Plus countries, by one or more producers, exclusively from originating materials

e.g. chocolate manufactured in New Zealand from cocoa beans grown in Solomon Islands, with other ingredients from New Zealand and Australia



### **Product Specific Rules:**

As set out in Annex 3-B, being:

- (1) change in tariff classification (**CTC**) (e.g. chair made in New Zealand using wood from Solomon Islands)
- (2) regional value content (**RVC**) (which for any good must meet a stated percentage), or
- (3) as set out in a process rule



## Rules for determining origin

PACER Plus includes a number of principles that countries have to reflect in their domestic laws and regulations. These are summarised briefly below:

### Cumulation

If a good satisfies the requirements to be considered originating (i.e. it is wholly obtained or produced; produced entirely; or satisfies a Product Specific Rule) then an importing PACER Plus country must treat that good as originating even if **it is produced in one or more PACER Plus countries by one or more producers**.

An importing PACER Plus country must treat originating goods or **materials** of any PACER Plus country used in the production of a good in another PACER Plus country as originating in the latter country.

Production that occurs in the territory of one or more PACER Plus countries by one or more producers may count as originating content in the origin determination of a good. This is regardless of whether the production was sufficient to confer originating status to the materials themselves.

### Minimal operations

If a claim for origin is based on a RVC, then an importing PACER Plus country may not take into account any of the following factors in determining whether or not a good is originating:

- operations to ensure preservation of goods in good condition for the purposes of transport or storage
- facilitating shipment or transportation
- packaging or presenting goods for sale
- affixing of marks, labels or other like distinguishing signs on products or their packaging, or
- disassembly.

### De minimus

Where a good does not satisfy a CTC requirement under the Product Specific Rules, an importing PACER Plus country must still treat it as originating so long as the following requirements are met:

- the value of all non-originating materials used in the production of the good that did not undergo the required CTC does not exceed 10% of the FOB value of the good; or
- for a textiles or apparel good, the weight of all non-originating materials used in its production that did not undergo the required CTC does not exceed 10% of the total weight of the good.

Countries must include the value of the non-originating materials in the value of non-originating materials for any applicable RVC requirement for the good.



## Accessories

In an origin determination using the **CTC** method, an importing PACER Plus country must **disregard** accessories, spare parts, tools or instructional or other information materials that are customarily provided with the goods and are not invoiced separately from the goods.

In a determination of origin using the **RVC** requirement, an importing PACER Plus country must take into account accessories, spare parts, tools or instructional or other information materials that are provided with the goods. This requirement applies if the quantities and value of the accessories etc are customary for the goods and are not invoiced separately from the goods.

## Identical and interchangeable goods

An importing PACER Plus country must determine origin for identical and interchangeable goods or materials by either:

- physical segregation of each of the goods or materials, or
- the use of an inventory management method recognised in the generally accepted accounting principles of the country in which the goods are produced, or otherwise accepted by an importing PACER Plus country (so long as it is used throughout the fiscal year of the person that selected the method).

## Packing materials and containers

### Packing materials and containers for transportation and shipment

In an origin determination, an importing PACER Plus country must disregard packing materials and containers in which a good is placed exclusively for transportation and shipment.

### Packing materials for retail sale

When determining whether all of the non-originating materials used in the production of a good have met the applicable **CTC or process of production requirements** in the Product Specific Rules, an importing PACER Plus country must disregard packing materials and containers in which a good is packaged for retail sale that are classified together with the good.

In an origin determination using the **RVC** method, an importing PACER Plus country must take into account the value of the packing materials and containers in which a good is packaged for retail sale in calculating the RVC of the good.

If the packaging material and container is not customary for the good, an importing PACER Plus country must not include its value as originating in a RVC calculation.



## Indirect materials

An importing PACER Plus country must treat an **indirect material** as originating material regardless of where it is produced. The value of such a good is the cost registered in the accounting records of the good's producer.

An **indirect material** is a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good.

It can include things like fuel and energy, dyes and moulds, lubricants, gloves, or any other goods that are not incorporated into the good, but used in the good's production .

the good, on the date of entry into force of PACER Plus:

- was in the process of being transported from the exporting country
- has not been released from Customs control, or
- is in storage in a warehouse regulated by its Customs Administration.







## Claims for preferential treatment

An importer doesn't automatically get PACER Plus preferences (i.e. lower or zero tariffs) when their goods enter another PACER Plus country. They have to claim preferential treatment. PACER Plus requires an importing country to provide preferential treatment to imports from other PACER Plus countries, so long as:

- the good is "originating" according to PACER Plus rules
- the goods have either been directly transported from another PACER Plus country, or have been shipped through another country subject to certain conditions, and
- the exporter or producer provides a **Declaration of Origin**.

### Shipment through non PACER Plus countries

Goods will receive preferential treatment even if they have been shipped through a non-PACER Plus country, but this is subject to certain conditions. Goods that have been shipped through a non-PACER Plus country still qualify for preferential treatment so long as they have not undergone "subsequent production or any other operation" in that country.

Goods will still qualify for preferential treatment if they have been:

- unloaded
- reloaded
- stored
- repacked
- relabelled
- had any operation done to them to preserve them in good condition, or
- any other operation necessary to transport the goods to the importing country.

Goods may also obtain preferential treatment if, before importation, they have been shown in or used at an exhibition in a non-PACER Plus country.



## Declaration of Origin

If an importer wants to claim preferential tariffs, they have to provide a **Declaration of Origin** to the Customs Administration of the importing country. The Declaration must have been completed by the exporter or producer (or their authorised representative).

### What does a valid Declaration of Origin look like?

- It must:
  - be in writing (either hard copy or electronic)
  - be on an invoice for the goods, or a separate document
  - be in English
  - be an original if it's the first time it has been made (for later transactions a copy can be used)
  - be numbered if it is more than one page long (using the format 1/3, 2/3, 3/3), and
  - have unused spaces on the form crossed out to the extent possible.
- It may be in respect of one or more goods, and may include different types of goods.
- Any alterations may only be made by striking out the incorrect information and then making an addition – nothing may be erased, and nothing may be superimposed over anything else.
- If there are alterations, the exporter or producer must approve them before making the declaration.
- A Declaration of Origin is valid for two years after the date of signing.
- It must contain the information set out in **Table A** on the next page.



**Table A: Information required in a Declaration of Origin**

| Type of information   | What information to include   |
|---|---|
| <b>Producer details (if there is more than one, all of them must be listed)</b> | Name, address (including country), email, telephone   |
| <b>Exporter details</b>   | If known, name, address (including country), email, telephone   |
| <b>Authorised representative details (if this is who signs the form)</b>        | If known, name, address (including country), email, telephone   |
| <b>Importer details</b>   | If known, name, address (including country), email, telephone   |
| <b>Description &amp; HS Tariff Classification</b>                               | Description of the goods and HS Tariff Classification to the 6-digit level. (The description should be enough to relate it to the goods.)   |
| <b>Origin Criterion</b>   | List what ROO criteria the goods qualify under: Wholly Obtained ( <i>WO</i> ); Produced Entirely ( <i>PE</i> ); or Product Specific Rules ( <i>PSR</i> ).   |
| <b>Period of Validity</b>   | If the declaration covers more than one shipment of identical goods, include a period of validity (up to two years from the date of declaration)  |
| <b>Authorised Signature and Date</b>  | <p>The exporter or producer (or authorised representative) must sign and date the declaration, which should read as follows:</p> <p><i>I declare that the good(s) described in this document qualify as originating in [NAME OF PACER PLUS COUNTRY] in accordance with the provisions of Chapter 3 (Rules of Origin and Verification Procedures) of the Pacific Agreement on Closer Economic Relations Plus (PACER Plus) and the information contained in this document is true and accurate. I assume responsibility for proving such representations and agree to maintain for a period of five years and present upon request or to make available during a verification visit, documentation necessary to support this declaration.</i></p> |



## Situations in which a country cannot require a Declaration of Origin

There are some situations in which a country must not require importers to present a Declaration of Origin in order to claim preferential tariff treatment. These situations are where:

- the goods have a customs value of \$US200 **FOB** or less, or the equivalent value in the local currency (or a higher value set by a government), or
- the goods are those in respect of which the government has waived the requirement for a Declaration of Origin.

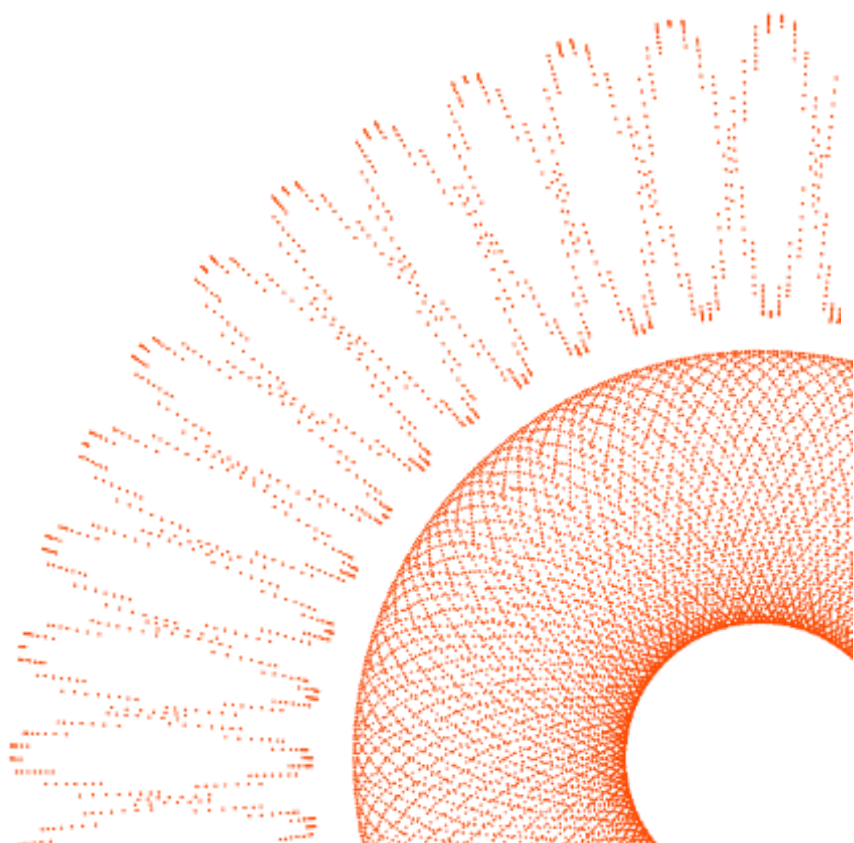
**FOB** means the free-on-board value of the good, inclusive of the cost of transport to the port or site of final shipment abroad.

## When importers try to avoid making a Declaration

There might be situations where a Declaration of Origin would not normally be required, but where customs officials think that the importation in question is part of one or more transactions that seem to have been made for the purpose of avoiding making a Declaration.

In such a situation, a Declaration may be required, so long as the importation may **reasonably** be considered to have been made for this purpose.

What is '**reasonable**' will depend on the circumstances of each situation – it should be a fair and sensible conclusion. It must not be irrational.





## Verification of origin

Sometimes, an importing country might have a reasonable doubt about a good's origin. If this is the case, the Customs Administration may verify the eligibility of a good for preferential treatment.

### Verifying eligibility for preferential treatment

The Customs Administration may:

- make a written request for information to the importer
- make a written request for information to the exporter or producer (or their authorised representative)
- make a verification visit to the premises of the exporter or producer in the territory of another PACER Plus country, or
- any other procedure that the Parties agree.

### Written request for verification

A written request must include:

- the identity of the Customs Administration making the request
- the reason for the request, including the issue that you hope to resolve through verification
- sufficient information to identify the good that is being verified and
- a copy of relevant information that was submitted with the good, including the Declaration of Origin.

### Verification visits

A verification visit is when officials from the Customs Administration of the importing country visits the production facilities of the producer in the exporting country to determine if their claims about origin are valid.

#### **When may a verification visit be conducted?**

A country's Customs Administration may conduct a verification visit to the premises of the exporter or producer in another PACER Plus country if all other attempts to verify origin have been exhausted and have failed to resolve the concerns of the Customs Administration.



### What do the rules about verification visits require?

PACER Plus requires a Customs Administration to do the following things before it conducts a verification visit:

- **make a written request** to the exporter or producer to conduct a verification visit of their premises,
- **obtain the written consent** of the exporter or producer whose premises are to be visited, and
- **notify** the Customs Administration of the exporting country when it makes a written request to conduct a verification visit.

### What must a written request to conduct a verification visit contain?

- the identity of the Customs Administration making the request
- the name of the exporter or producer of the good in the exporting Party to whom it is addressed
- the date the request is made
- the proposed date and place of the visit
- the objective and scope of the proposed visit, including specific reference to the good that is the subject of the verification referred to in the Declaration of Origin
- the names and titles of the officials of the Customs Administration of the importing Party who will participate in the visit

### After making a written request, how will a customs official know that a verification visit can go ahead?

If the exporter or producer consents to a verification visit, they must give their **written consent** within 30 days of the receipt of the written request.

### Cooperating in verification activities

When goods are being exported from a country, there is a requirement for that country to (subject to the availability of resources and to the extent allowed by its laws, regulations and policies), whenever possible, cooperate in any action to verify eligibility of those goods, and also require its own producers and exporters to cooperate.



## Making a decision on origin

Once a Customs Administration has verified origin, they must notify their decision within certain timeframes.

### Timeframes for deciding on a claim for preferential treatment

PACER Plus recognises that actions taken by a Customs Administration to verify eligibility for preferential treatment may take some time. The following deadlines must be met:

Complete any action to verify eligibility within:  
**130** days of starting the action  
or **90** days of concluding a verification visit

Make a decision and give it in writing to the importer (or their representative) within another **21** days

### Denying a claim for preferential treatment

A claim for preferential treatment may be denied if:

- the good does not meet the PACER Plus requirements (i.e. it is not originating, or was shipped through a non-PACER Plus country and had more done to it than the actions listed on page 3)
- the importer, exporter, or producer doesn't provide a valid Declaration of Origin, or
- verification has been conducted but it hasn't been possible to determine that the good is originating.

If a Customs Administration denies a claim for preferential treatment, officials must, if the importer requests it, give full reasons for the decision in writing to the importer.



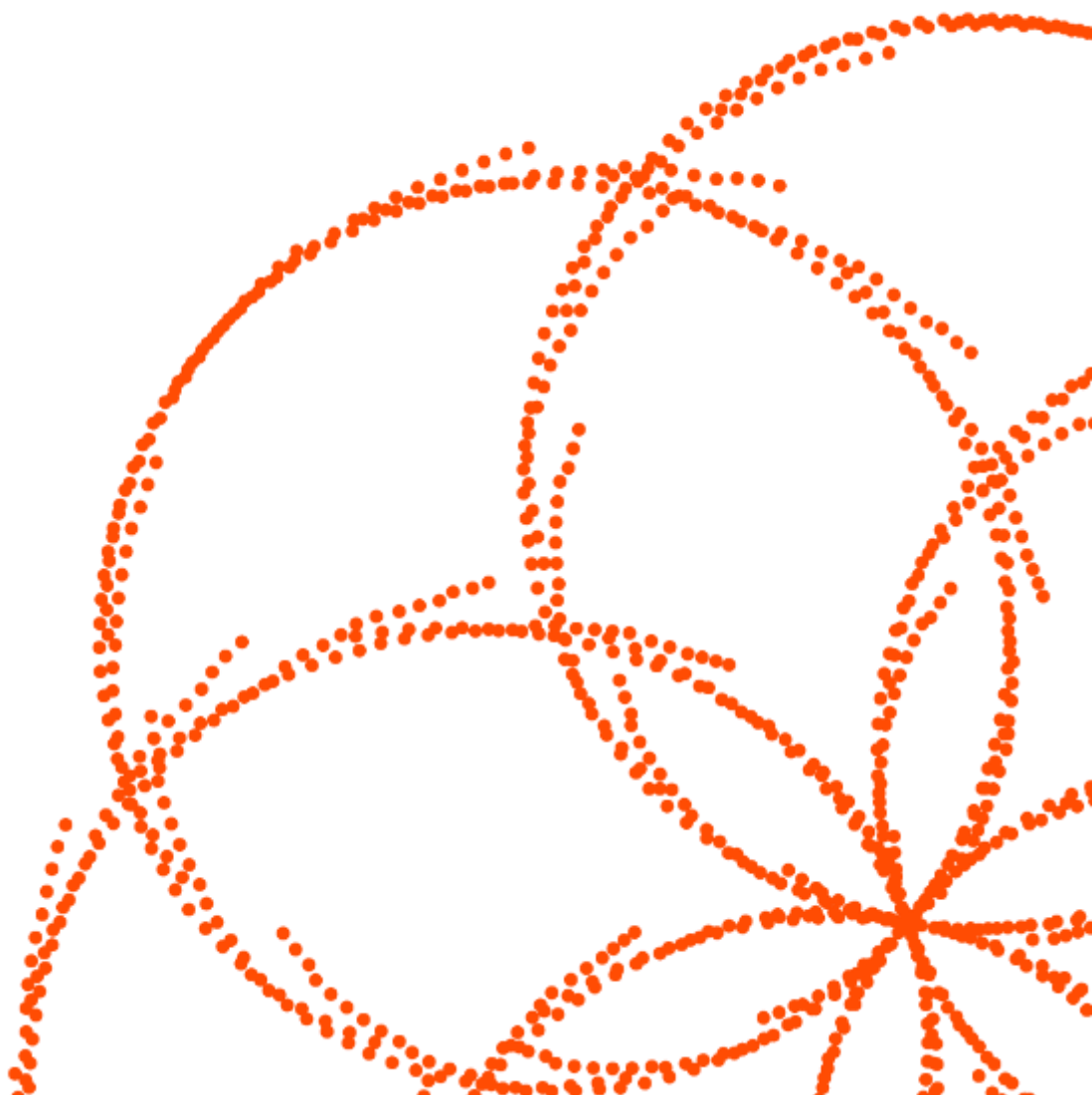
## Keeping information confidential

Verification actions often require traders to give information to officials. It is important that this information is kept confidential. PACER Plus has some particular rules about handling confidential information.

### What do the rules mean for custom officers?

If a customs official receives any information from other PACER Plus countries, they must keep it confidential and only use it for the purposes of verifying origin. The only situations in which such information can be used or shown to others are:

- if consent has been obtained from party that provided the information, and/or
- if officials are required by domestic law to provide the information (e.g. if the police require the information to be shared with them pursuant to law).







# Exceptions

## Overview

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