



PACER Plus Chapter Summary 2021

Chapter 5: Sanitary and Phytosanitary (SPS) Measures



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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 sanitary and phytosanitary (**SPS**) measures. It is intended for anyone who wants an overview of the PACER Plus obligations that each signatory has agreed to.

- The summary does not cover the rules on committee meetings or further cooperation between the PACER Plus countries.

What does the PACER Plus SPS Chapter do?

The SPS Chapter is about health and trade. With increased trade comes the increased movement of products that may present health risks – to people, plants, and animals.

The SPS Chapter has a number of key objectives:

- to facilitate trade between PACER Plus countries while protecting human, animal or plant life or health in their territories
- to provide greater transparency and facilitate understanding of the way in which each country applies SPS measures, and
- to promote the WTO's SPS Agreement – both its practical implementation by countries that are WTO Members, and application of its requirements by countries that are not.

In accordance with these objectives, PACER Plus allows countries to protect human, animal or plant life or health by applying measures (such as quarantine or food safety standards) to manage the risks associated with imports.

What agencies is the SPS Chapter relevant to?

The SPS Chapter is relevant to agencies that work on biosecurity matters – including those that develop import health standards, and those that enforce those standards at the border (e.g. departments of agriculture or biosecurity). It is also relevant for agencies involved in setting and enforcing standards for food safety (e.g. public health).



What is an SPS measure?

The word 'measure' can refer to almost any action taken by government, but it usually refers to a law, regulation, or some other official requirement. An 'SPS measure' is defined by reference to the risk it seeks to prevent.

In short, an SPS measure is any measure applied:

- to protect human or animal life from risks arising from additives, contaminants (including pesticide and veterinary drug residues and extraneous matter), toxins or disease-causing organisms in their food,
- to protect human life from plant- or animal-carried diseases,
- to protect animal or plant life from pests, diseases, or disease-causing organisms, or
- to prevent or limit other damage to a country from the entry, establishment or spread of pests (including weeds).

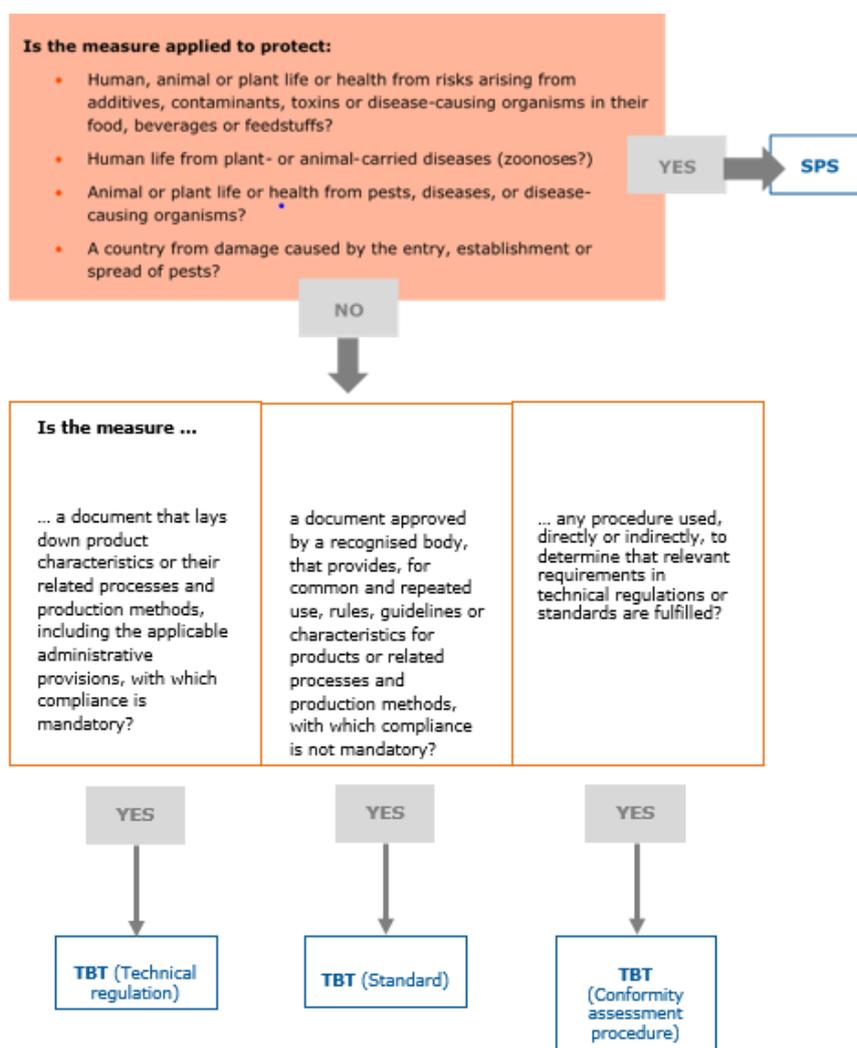
Examples of SPS measures:

- a requirement for inspections of products for microbiological contaminants
- maximum allowable levels of pesticide and other residues in food
- a requirement that products originate from specific disease-free areas
- an import ban on certain fruits that carry diseases or pests



Is the measure TBT or SPS?

One issue for regulators when applying the PACER Plus obligations is knowing whether a measure falls under the SPS Chapter or the Technical Barrier to Trade Agreement (**TBT**) Chapter. The following diagram differentiates between the two types of measures.



What does PACER Plus require?

The PACER Plus SPS obligations can be categorised as follows:



These obligations are explained on the following pages.



The basic obligations

PACER Plus allows countries to take SPS measures necessary to protect human, animal or plant life or health. The measures must, however, be consistent with the obligations in the SPS Chapter. Countries must ensure that their SPS measures:

- are applied **only to the extent necessary** to protect human, animal or plant life or health
- are based on scientific principles
- are not maintained without sufficient scientific evidence (except in an urgent situation), and
- **do not arbitrarily or unjustifiably discriminate** between PACER Plus countries where identical or similar conditions prevail.

These obligations are of most relevance to officials when they are setting new SPS measures (e.g. designing a new plant import health standard).

based on scientific principles

'scientific principles' are principles that are informed by science, which essentially means they are derived from scientific methods or that they have an exact, objective, factual, systemic or methodological basis

'based on' means that there is a rational relationship between the SPS measure and the scientific principles

not maintained without sufficient scientific evidence

this essentially means that there is enough scientific evidence to allow a country to arrive at a sufficiently objective conclusion in relation to risk

do not arbitrariness or unjustifiably discriminate

countries cannot introduce SPS measures that are arbitrary or unjustifiably discriminatory. This essentially means that a country should not treat two products differently if the products present the same level of risk. Where there is a difference in treatment, it should bear a rational connection to the stated objective of the measures



As discussed in the section below on International Standards and Scientific Justification, an SPS measure **will be presumed to be consistent** with these obligations if it is based on an **international standard, guideline or recommendation**.



Provisional measures

- If there is insufficient scientific evidence on which to base an SPS measure, countries may provisionally adopt a measure on the basis of pertinent (relevant) information.
- In this situation, a country must seek to obtain additional information necessary for a more objective assessment of risk. They must also review the measure within a **reasonable period of time**.

What constitutes a '**reasonable period of time**' will depend on the specific circumstances of each situation, including how difficult it is to obtain information. In essence, the reasonableness of the time taken will depend on whether it is fair, sensible and justifiable (as opposed to unwarranted and excessive)





Use international standards or have a scientific justification (“harmonisation”)

Harmonisation through use of international standards

A key goal of the SPS Chapter is to encourage the **harmonisation** of SPS measures between PACER Plus countries by encouraging them to use international standards.

Harmonisation is the establishment, recognition and application of common sanitary and phytosanitary measures by different countries.

Sally Jennings from the Ministry of Primary Industries (MPI) in New Zealand has prepared a short and easy to understand video that explains the concept of **harmonisation**. The video talks about the SPS Agreement, but the concept is the same. The video is available here:

<https://youtu.be/kcmd6DNUN-E>

Measures should be based on international standards

PACER Plus requires that, whenever possible, countries **base** their SPS measures on international standards, guidelines or recommendations.

What does it mean to base SPS measures on international standards, guidelines or recommendations?

A measure is **based on** international standards, guidelines or recommendations if it is built on or supported by them. It doesn't necessarily have to conform to the international measure in all respects but there must be at least some elements of the international standard present.

e.g. The Codex standard for honey says that honey must be free from heavy metals in amounts which may represent a hazard to human health. Codex also sets maximum levels for heavy metals.

A honey standard that was the same as the Codex standard, except that it set a lower maximum level for heavy metals, would still be **based on** the Codex standard.

A measure based on international standards, guidelines or recommendations is presumed to be consistent with the obligations in the SPS Chapter.



Relevant international standards, guidelines, recommendations

Relevant international standards, guidelines or recommendations are those developed by:



Food safety –
Codex Alimentarius
Commission (**CODEX**)



Animal health –
World Organisation for Animal
Health (**OIE**)



Plant health –
International Plant Protection
Convention (**IPPC**)

If there is no international standard, or a higher level of protection is desired

If there is no international standard, or if a PACER Plus country wants to put in place an SPS measure that results in a higher level of protection than would be achieved through use of the international standard, then there must be a **scientific justification** for the measure.

What is a scientific justification?

Guidance as to what is meant by the term 'scientific justification' can be found in the WTO's SPS Agreement where it states at footnote 2 that:

*"there is a scientific justification if, on the basis of examination and evaluation of available scientific information in conformity with the relevant provisions of this Agreement, a Member determines that the relevant international standards, guidelines or recommendations for a measure if, on the basis are not sufficient to achieve its **appropriate level of protection**".*

Put more simply, there is a 'scientific justification' for a measure if there is a rational relationship between the SPS measure and the available scientific information.



Equivalence and adaptation

Equivalence

The concept of **equivalence** refers to the situation where an exporting country objectively demonstrates that its SPS measures achieve the acceptable level of risk of the importing country. In this situation, the importing country is required to accept the exporting country's SPS measures as being equivalent to its own. This saves producers in the exporting country from having to comply with two different sets of standards (one at home and one in the importing country).

Sally Jennings from MPI in New Zealand has prepared a short and easy to understand video that explains the concept of equivalence. The video talks about the SPS Agreement, but the concept is the same. The video is available here: https://youtu.be/GV_Lk-vxH_o

Regionalisation

Regionalisation refers to the process developed in the WTO's SPS Agreement of adapting SPS measures to regional conditions (including pest- or disease-free areas and areas of low pest or disease prevalence). In PACER Plus, the actual term used is "adaptation to regional conditions", but "regionalisation" is a useful shorthand.

Sally Jennings from MPI in New Zealand has prepared a short and easy to understand video that explains the concept of regionalisation. The video talks about the SPS Agreement, but the concept is the same. The video is available here: <https://youtu.be/DAICPioMrWQ>

What does equivalence mean for the importing country?

Equivalence requires the importing country to accept that an SPS measure of the exporting country is equivalent to its own, so long as the exporting country objectively demonstrates that its measure achieves the same level of protection as the importing country's SPS measures.

What does equivalence mean for the exporting country?

When an importing country is deciding if another country's SPS measure is equivalent to its own, it may require that country to give them **reasonable access** for inspection, testing and other relevant procedures. The exporting country must provide that access.



Bilateral or regional recognition arrangements

Equivalence may be recognised on a case by case basis (following the procedure set out below). It may also be provided for in a formal bilateral or regional recognition arrangement (a **recognition arrangement**).

Any PACER Plus country may request another country or countries to enter into negotiations for a recognition arrangement. Such an arrangement would put in place formal procedures for PACER Plus countries to recognise the equivalence of each other's SPS measures, as set out in the agreement.

If a country makes a request to enter into negotiations for a recognition arrangement, they should commence negotiations within a reasonable period of time.

Procedures for recognising equivalence and entering into negotiations for arrangements

Step one: request for recognition

The process of recognising equivalence or entering into negotiations starts when one country makes a request to another.

Step two: respond to a request

- the country receiving the request must process it as **expeditiously** as possible
- all countries involved must cooperate on the prioritisation of the request in accordance with domestic laws, regulations and procedures, and
- once an importing country has determined that the exporting country has provided sufficient information, it must begin the equivalence assessment within a **reasonable period of time** with a view to completing it as **expeditiously** as possible.

Expeditiously means quickly.

What constitutes a **reasonable period of time** will depend on the specific circumstances of each situation, including how difficult it is to obtain information. In essence, the reasonableness of the time taken will depend on whether it is fair and justifiable (as opposed to unwarranted and excessive).

Reasonable access is access based on agreed parameters to carry out appropriate inspections, testing and other relevant procedures.

Step three: undertake an equivalence assessment

When undertaking an equivalence determination, an importing country's authorities should consider the guidance provided by relevant international organisations.

If an importing country's authorities decide to recognise another country's measure(s) or system as equivalent to its own, it must, as promptly as possible, take any necessary actions to allow trade on that basis.

For example, it must ensure appropriate instructions are provided to its biosecurity officials to ensure that the exporting country's SPS measure is equivalent to its own and that the product in question only has to comply with that measure.



Step four: report on the outcomes of the assessment

If an importing country's authorities decide not to recognise another country's SPS measure(s) or system as equivalent to its own, then it must, as soon as possible, provide the other PACER Plus country with an explanation of their decision to those countries' Contact Points.

An importing country's authorities are required, to the extent possible and if mutually agreed, to report on the outcome of equivalence determinations to other PACER Plus countries through their Contact Points.

Step five: technical discussions

If a country that requests another PACER Plus country to undertake an equivalence determination:

- has limited capacity to objectively demonstrate that its measure achieves that other's country's appropriate level of SPS protection, and
- feels that this limitation is an obstacle to getting equivalence recognised,

then the requesting country may request technical discussions with the country making the determination.

The purpose of technical discussions is to clarify the matter and identify any actions that might enhance the exporting country's capacity to otherwise help with acceptance of equivalence.

Adapting SPS measures to regional conditions

PACER Plus countries may agree with each other to cooperate on adaptation to regional conditions in order to facilitate trade. Any agreement must be in accordance with the SPS Agreement and relevant international standards, guidelines and recommendations.

Determination by an importing country about regional conditions in an exporting country

So long as it is consistent with the WTO's SPS Agreement, an importing country may make determinations in relation to regionalisation, pest- or disease-free areas, areas of low pest or disease prevalence, zoning and compartmentalisation.

e.g. a determination may be made by Tonga's biosecurity agency that, outside of Queensland, Australia is free of a particular pest

If, on evaluating the evidence provided by an exporting country, an importing country decides not to recognise pest- and disease-free areas, or areas of low pest and disease prevalence, then the importing country must provide the exporting country with the reason for its decision.

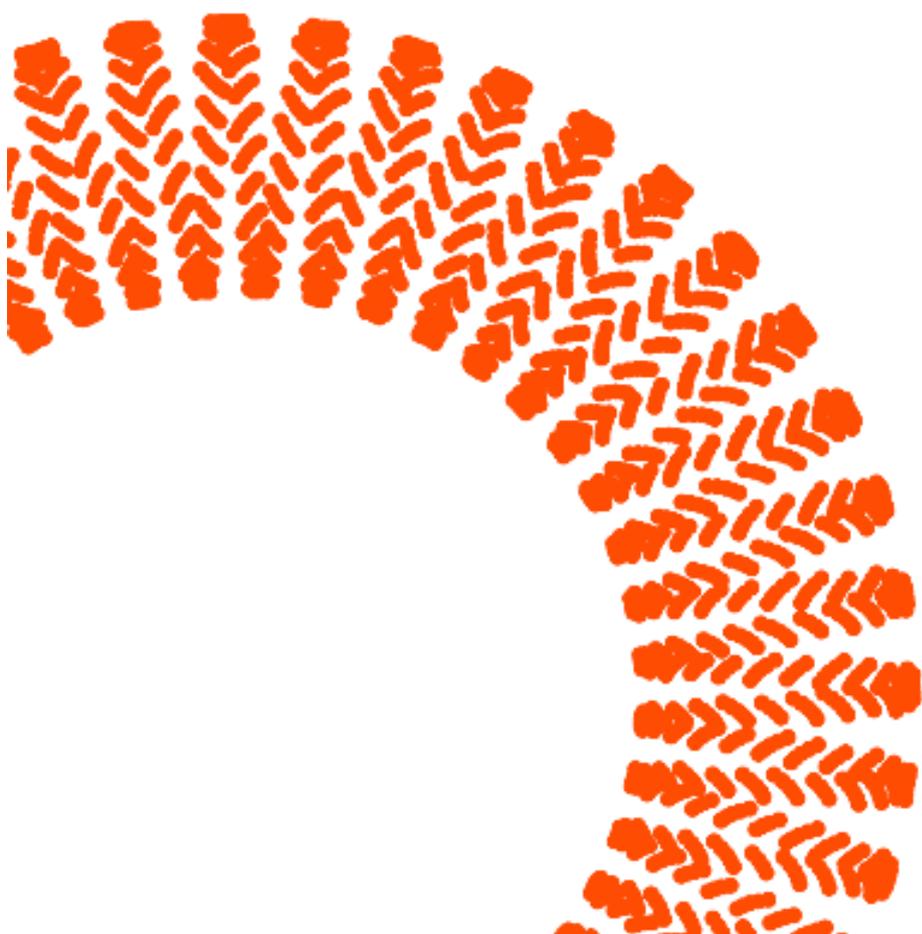


Special and differential treatment

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 SPS measures.

When preparing SPS measures, all PACER Plus countries, whether developed or developing, are required to take into account the development, financial and trade needs of developing country members of PACER Plus.

Given that a number of PACER Plus countries are developing, the question of how to implement this obligation is likely to be part of an ongoing conversation amongst countries. For example, if the appropriate level of SPS protection allows for the phased introduction of new SPS measures, then longer timeframes for compliance with the SPS measures by producers in developing countries should be allowed.





Transparency

Transparency is about making measures known to those who want to find out about them, usually through publication. It is important for predictability in trade. It is easier for individuals and companies to trade and invest if they know as much as possible about the rules and requirements they will face when entering a market. Obligations to notify PACER Plus countries of new SPS measures or of substantial changes to existing ones provide stability for the marketplace and for exporters by ensuring that measures do not change without warning.

What are the transparency obligations?

The transparency obligations require countries to provide information on new SPS measures and changes that they propose making to existing ones.

There are four main transparency obligations:

- an obligation to designate **contact points**
- an obligation to provide **notifications** to other countries
- an obligation to **publish** information
- an obligation to engage in **information exchanges**





Contact Points

PACER Plus sets up systems to ensure that officials from one country can easily get in touch with their counterpart officials in other countries, and obtain information about other countries' practices. Each country has to name a Contact Point for the SPS Chapter.

SPS Contact Points' responsibilities

A country's SPS Contact Point is responsible for:

- answering all reasonable questions and providing relevant documents regarding any SPS measures adopted or proposed in the PACER Plus country
- reporting the outcome of any equivalence determination to other PACER Plus countries
- providing other countries with a description of its Competent Authorities and their division of responsibilities, and keeping this information up to date
- letting the Contact Points from other PACER Plus countries know if there is a change to their Contact Point
- providing notifications, information, and any other communications to the other PACER Plus countries' Contact Points as required under this Chapter
- receiving, and responding to, requests for Technical Discussions under the SPS Chapter

Notification

Under the SPS Chapter, countries are obliged to notify the following to other PACER Plus countries' Contact Points:

- New SPS measures and amendments to existing measures, and
- Compliance of shipments with SPS measures.

1. New SPS measures and amendments to existing measures

PACER Plus requires a country to notify information about its SPS measures to the Contact Points of other PACER Plus countries if:

- it prepares a new SPS measure or an amendment to an existing one that have a **significant effect on the trade** of another PACER Plus country
- it applies a provisional SPS measure that affects the exports of another PACER Plus country, or
- there is a change in animal or plant health status that may affect existing trade



Whether or not an SPS measure 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 development of such imports, and
- difficulties for producers in other countries to comply with the proposed SPS measure.

The effect includes both import-enhancing and import-reducing effects on trade with other countries, so long as the effects are significant. This allows other governments and businesses to adapt to meet new requirements, whatever they may entail.

Timing of notification

In each case the notification must be timely, meaning as soon as possible after the measure or amendment has been prepared.

In situations where:

- 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,

a country must notify early enough so that interested PACER Plus countries can familiarise themselves with the proposal. There must be a reasonable amount of time for comments to be made (including in writing), discussed and considered, and the measure amended if desired.

How and where notifications are to be made

Notifications are to be made in accordance with the rules set out in the SPS Chapter. The two main options for notifications are to use a country's **Trade Portal** or to do so manually by emailing the Contact Points of other PACER Plus countries.

Urgent situations

Notification may be omitted if necessary, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. This is provided that the country adopting the measure:

- notifies other PACER Plus countries of the SPS measure once it is adopted, as well as what products are covered, its objective and rationale, and the nature of the urgent problems,
- on request, provides other PACER Plus countries with electronic copies of the measure, and
- without discrimination, allows other Parties to make comments in writing, discusses these comments on request, and takes the comments and the results of these discussions into account in making an informed decision about the measure.

Requests for information

On request from one PACER Plus country receiving the notification, another PACER Plus country must:

- give them an electronic copy of the proposed measure, and
- whenever possible, identify the parts of the measure that deviate in substance from international standards, guidelines or recommendations.



2. Compliance of shipments with SPS measures

Where trade is already taking place, PACER Plus requires notification in the following situations.

By the importing country

An importing country must notify the other PACER Plus countries' Contact Points if it identifies a **significant, sustained or recurring pattern of non-compliance** with one of its SPS measures.

By the exporting country

An exporting country has notification obligations if:

- there is a change in animal or plant health status within its territory that might affect existing trade, or
- after exportation of goods, it becomes aware of a significant SPS risk associated with a consignment destined for another PACER Plus country.

Publication

Where to publish

Adopted SPS measures, as well as all procedures and administrative rulings should be published online (e.g. on departmental websites and on the PACER Plus country's Trade Portal). But if this is not possible, other forms of publication can suffice (such as making reference to a document online and providing an email address for people to request a copy of the document).

Timing of entry into force of SPS measures after publication

PACER Plus countries must allow at least six months between the publication of a SPS measure and its entry into force. This time period allows producers in exporting countries to adapt their products or methods of production as needed.

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

Information exchange

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

The SPS Contact Point is responsible for responding to requests.



Technical Discussions

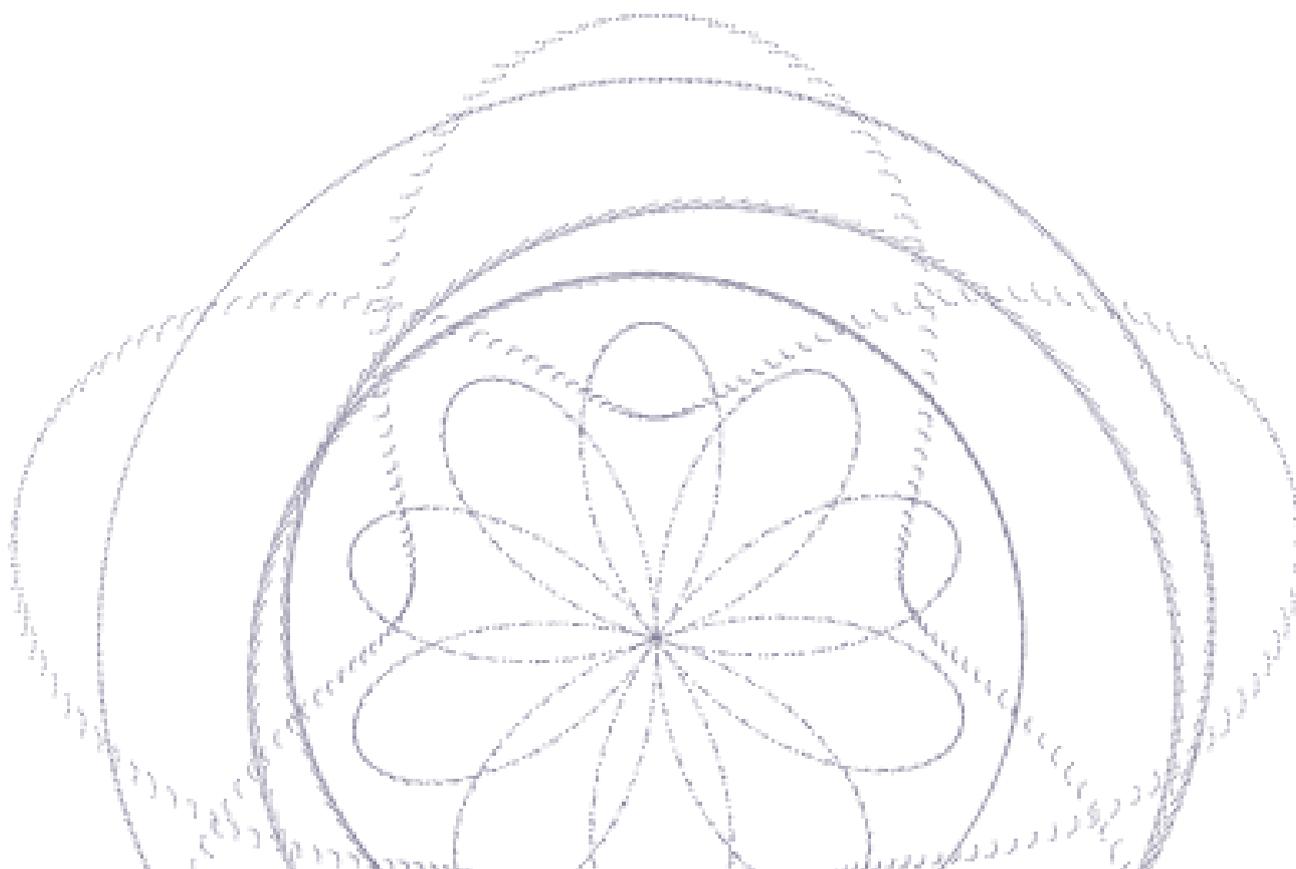
Technical discussions are an opportunity for all PACER Plus countries to learn more about other countries' SPS measures

PACER Plus allows countries to request technical discussions with each other on SPS measures affecting their trade. These should be held electronically. However, if this is not possible then they may be conducted in person or as agreed by the countries.

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

The Chapter sets out procedures for receiving and making a request, as well as for when countries may refuse a request for technical discussions.

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





Application of WTO SPS Agreement

The WTO SPS Agreement has some further obligations in addition to the PACER Plus rules that have been described above.

- Countries who are **WTO Members** must apply the obligations set out in Articles 1 to 8 of the SPS Agreement
- Countries who are **not WTO Members** must apply the additional SPS Agreement obligations only to the extent of their capacity

SPS Agreement obligations

Topic	Obligation
Playing a part in international organisations (SPS Art 3.4)	A WTO Member is required to play a full part, within the limits of its resources, in the relevant international organisations (in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organisations operating within the framework of the International Plant Protection Convention) to promote within these organisations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of SPS measures.
Risk assessment (SPS Art 5.1)	A WTO Member is required to ensure that SPS measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organisations.
Risk assessment (SPS Art 5.2)	In the assessment of risks, a Member must take into account: <ul style="list-style-type: none">• available scientific evidence;• relevant processes and production methods;• relevant inspection, sampling and testing methods;• prevalence of specific diseases or pests; existence of pest — or disease — free areas;• relevant ecological and environmental conditions; and• quarantine or other treatment.
Risk assessment (SPS Art 5.3)	In assessing risk, and determining the measure to be applied in achieving the appropriate level of protection, a Member must take into account: <ul style="list-style-type: none">• potential damage in terms of loss of production or sales in the event of the entry,• establishment or spread of a pest or disease,• costs of control or eradication in the territory of the importing Member, and• relative cost-effectiveness of alternative approaches to limiting risks.



Topic	Obligation
Determining appropriate level of SPS protection (SPS Art 5.4)	A WTO Member should, when determining the appropriate level of SPS protection, take into account the objective of minimising negative trade effects.
Determining appropriate level of SPS protection (SPS Art 5.5)	A WTO Member must avoid arbitrary or unjustifiable distinctions in the levels of protection it considers to be appropriate in different situations, if those distinctions result in discrimination or a disguised restriction on international trade.
Measures must not be more trade restrictive than necessary (SPS Art 5.6)	When establishing or maintaining SPS measures to achieve the appropriate level of protection, a Member must ensure that those measures are not more trade-restrictive than required to achieve their appropriate level of protection, taking into account technical and economic feasibility.
Provision of explanation (SPS Art 5.8)	<p>On request, a WTO Member must provide an explanation of the reasons for an SPS measure which another Party has reason to believe is constraining, or has the potential to constrain its exports.</p> <p>This obligation only applies if the measure is not based on international standards, guidelines or recommendations, or if there are no relevant international standards, guidelines or recommendations.</p>
Adaptation to regional conditions (SPS Art 6.1)	<p>A WTO Member must ensure that SPS measures are adapted to the sanitary or phytosanitary characteristics of the area — whether all of a country, part of a country, or all or parts of several countries — from which the product originated and to which the product is destined.</p> <p>In assessing the SPS characteristics of a region, factors that must be taken into account include:</p> <ul style="list-style-type: none">• the level of prevalence of specific diseases or pests;• the existence of eradication or control programmes; and• appropriate criteria or guidelines developed by relevant international organisations.
Adaptation to regional conditions (SPS Art 6.2)	<p>A WTO Member must recognise the concepts of pest- or disease-free areas and areas of low pest or disease prevalence.</p> <p>A Member must base its determination of these areas on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.</p>
Adaptation to regional conditions (SPS Art 6.3)	<p>If a WTO Member claims that areas within its territory are pest- or disease-free, or have low pest or disease prevalence, it must provide the necessary evidence to objectively demonstrate to importing Parties that these areas are, and are likely to remain, pest- or disease-free areas or have low pest or disease prevalence.</p> <p>For the purpose of providing evidence of pest-free or low-pest status, a WTO Member is required (if requested) to give reasonable access to the importing Member for inspection, testing and other relevant procedures.</p>



Topic	Obligation
Transparency (SPS Art 7)	<p>A WTO Member must notify changes in SPS measures and provide information on SPS measures in accordance with the provisions of Annex B of the SPS Agreement.</p> <p>Annex B provides that:</p> <p>A WTO Member must ensure that one enquiry point exists which is responsible for the provision of answers to all reasonable questions from interested Members as well as for the provision of relevant documents regarding:</p> <ul style="list-style-type: none">• any SPS regulations it adopts or proposes;• any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, operated within its territory;• risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of SPS protection;• its membership and participation (or that of relevant bodies within its territory) in international and regional SPS organisations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of the SPS Agreement, and the texts of those agreements and arrangements.
Control, Inspection and Approval Procedures (Art 8)	<p>A WTO Member is required to observe the provisions of Annex C of the SPS Agreement in the operation of control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, and otherwise ensure that their procedures are not inconsistent with the provisions of the SPS Agreement.</p> <p>Annex C provides that:</p> <p>A Member is required to ensure, with respect to any procedure to check and ensure the fulfilment of SPS measures, that:</p> <ul style="list-style-type: none">• the procedures are undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products;• the following requirements are met:• the standard processing period of each procedure is published or 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 procedure in a precise and complete manner to the applicant so that corrective action may be taken if necessary;



Topic	Obligation
	<ul style="list-style-type: none">• even when the application has deficiencies, the competent body proceeds as far as practicable with the procedure if the applicant so requests; and• that upon request, the applicant is informed of the stage of the procedure, with any delay being explained;• information requirements are limited to what is necessary for appropriate control, inspection and approval procedures, including for approval of the use of additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs;• confidentiality of information about imported products arising from or supplied in connection with control, inspection and approval is respected in a way no less favourable than for domestic products and in such a manner that legitimate commercial interests are protected;• any requirements for control, inspection and approval of individual specimens of a product are limited to what is reasonable and necessary;• any fees imposed for the procedures on imported products are equitable in relation to any fees charged on like domestic products or products originating in any other Member and should be no higher than the actual cost of the service;• the same criteria should be used in the siting of facilities used in the procedures and the selection of samples of imported products as for domestic products so as to minimise the inconvenience to applicants, importers, exporters or their agents;• whenever specifications of a product are changed subsequent to its control and inspection in light of the applicable regulations, the procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned; and• a procedure exists to review complaints concerning the operation of such procedures and to take corrective action when a complaint is justified. <p>If a Member operates a system for the approval of the use of food additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs which prohibits or restricts access to its domestic markets for products based on the absence of an approval, then a Member is required to consider the use of a relevant international standard as the basis for access until a final determination is made.</p> <p>Where an SPS measure specifies control at the level of production, the Member in whose territory the production takes place shall provide the necessary assistance to facilitate such control and the work of the controlling authorities.</p>



Exceptions to the obligations

Overview

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

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

General exceptions

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

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

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

- unjustifiable or arbitrary discrimination, or
- a **disguised restriction** on international trade.

Unjustifiable or arbitrary discrimination

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

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

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



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 SPS 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.