

# Departmental Disclosure Statement

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Tariff (PACER Plus) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Foreign Affairs and Trade.

The Ministry of Foreign Affairs and Trade certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

28 March 2018

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## **Part One: General Policy Statement**

This Bill amends New Zealand law as part of the implementation of a free trade agreement, the Pacific Agreement on Closer Economic Relations Plus (PACER Plus) done at Nuku'alofa, Tonga, on 14 June 2017 (the Agreement). The Bill amends the Tariff Act 1988 and the notes to, and Part II of, the Tariff and—

- will enable the application of preferential tariff rates under the Agreement; and
- will amend the rules on “goods re-entered after repair or alteration” in the Tariff.

The Agreement will also be implemented by amendments to—

- the Tariff to enable the application of preferential tariff rates for parties to the Agreement; and
- the Customs and Excise Regulations 1996 to give effect to the rules of origin applicable to imports into New Zealand that originate from PACER Plus parties.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>YES</b>
This Bill seeks to give effect to the Pacific Agreement on Closer Economic Relations Plus (PACER Plus) ("the Agreement"), done on 14 June 2017 at Nuku'alofa, Tonga. The Agreement text can be found at <a href="https://www.mfat.govt.nz/pacer">https://www.mfat.govt.nz/pacer</a>	

<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>YES</b>
The PACER Plus National Interest Analysis (NIA) was prepared by the Ministry of Foreign Affairs and Trade and presented to the House of Representatives on 20 June 2017 in accordance with the Parliamentary treaty examination process. A copy of the NIA can be accessed through the Parliament website and from <a href="https://www.mfat.govt.nz/pacer">https://www.mfat.govt.nz/pacer</a>	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
The NIA prepared by the Ministry of Foreign Affairs and Trade incorporates the regulatory impact statement requirements. The NIA can be accessed through the Parliament website and from <a href="https://www.mfat.govt.nz/pacer">https://www.mfat.govt.nz/pacer</a>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
Treasury was consulted regularly during the NIA drafting process. In consultation with the RIA Team in the Treasury it was decided that it was sufficient for the Ministry of Foreign Affairs and Trade to provide the quality assurance.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>

## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>A cost-benefit analysis of the Agreement is included in sections 3.2, 3.3, 4 and 8 of the NIA, which can be found at <a href="https://www.mfat.govt.nz/pacer">https://www.mfat.govt.nz/pacer</a></p> <p>New Zealand companies currently export NZ\$376 million of goods to PACER Plus Parties excluding Australia. PACER Plus will preserve current New Zealand access to the goods markets of the Parties. PACER Plus may, over the long term, lead to minor increases in the volume of goods trade between the Parties as tariffs reduce the costs of imports for Pacific consumers, and aid for trade and related assistance improves the export capacity of the Pacific Island Countries. Since New Zealand already offers duty free access to Pacific Island Forum countries there is negligible impact on revenue from tariffs for New Zealand. In the year to December 2016, New Zealand exported NZ\$278 million of services to PACER Plus Parties, excluding Australia. This represents 1.3 percent of our total services exports. Services make up over 60 percent of Forum Island Country exports and offer greater potential for growth than trade in goods, especially in relation to tourism. We can expect two way trade in services to increase.</p> <p>PACER Plus is expected to have an overall net benefit to New Zealand socially due to the anticipated net economic benefits of PACER Plus, enhanced people to people relationships, and the reduction somewhat in the growth of potential demand in the future for New Zealand social services from nearby Pacific countries. Social regulation and employment and immigration policy settings are not affected by PACER Plus.</p> <p>A unique feature of PACER Plus is its significant development component. PACER Plus has been designed as a catalyst for sustainable economic growth in the Pacific. New Zealand and Australia will provide over \$55 million in direct and indirect trade-related support for the Pacific through PACER Plus and associated initiatives. Both are also committed to a target of least 20 percent of its total Official Development Assistance in 'Aid for Trade' in the Pacific for the first five years after PACER Plus enters into force. This is an opportunity to improve the coherency and the impact of our assistance to the Pacific in building capacity to quickly realise the benefits of PACER Plus. Pacific Island Forum signatories anticipate a reduction in revenue from tariffs as these are reduced over the course of two to four decades; hence the emphasis on development to boost domestic productivity and export capacity to offset and surpass potential revenue losses.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The Bill makes the amendments to New Zealand law necessary for it to ratify the Agreement. MFAT has worked with relevant domestic agencies in order to identify those amendments, and prepare the Bill. MFAT considers that the policy given effect by the Bill is consistent with New Zealand's international obligations.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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PACER Plus contains the same protections for the Treaty of Waitangi as all recent New Zealand Free Trade Agreements. The Treaty of Waitangi exception, along with other provisions in the Agreement, combine to protect the capacity of the Crown to implement domestic policies that fulfil its obligations to Māori, including under the Treaty of Waitangi, without being obliged to offer equivalent treatment to our PACER Plus partners. New Zealand's approach of including the Treaty of Waitangi exception in its free trade agreements is unique, and reflects the constitutional significance of the Treaty of Waitangi to New Zealand.
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PACER Plus will not impede New Zealand's current or future ability to meet its obligations to Māori, including under the Treaty of Waitangi. Nor will it prevent domestic changes that might be made in the future, including in relation to the protection of indigenous flora and fauna or Treaty of Waitangi settlements. In August 2016, based on feedback up to that point and the findings in the WAI 2522 report of the Waitangi Tribunal, an assessment of "Māori interests in PACER Plus" was published on the Ministry of Foreign Affairs and Trade website. This document and subsequent engagement have shaped the policy towards implementing PACER Plus that this Bill will contribute to. Additional information can be found in the NIA at section 7.7.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	
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	<b>YES</b>
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The Ministry of Justice has considered whether the Bill is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and has provided advice on this to the Attorney-General. The Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice and reports are accessible on the Ministry's website at: <a href="http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/">http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/</a>
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## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>NO</b>

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>The Ministry of Foreign Affairs and Trade organised and conducted a wide-ranging public outreach and consultation programme, including with relevant government agencies, Maori in their capacity as treaty partners and key stakeholders on negotiating objectives and FTA impacts. This programme used printed, emailed and website information, supported by extensive specific discussions with key stakeholders, such as exporters and industry sectors likely to be interested in or affected by the outcomes of the Agreement. When negotiations first commenced in 2009, a number of public submissions were received from various organisations and individuals in education, business, development, trade union, social services and church based organisation. The priorities and issues raised in the course of those and subsequent consultations (outlined in the NIA), were used to inform the latter part of negotiations and thinking around eventual implementation. Submissions were also sought for the parliamentary examination of PACER Plus over the course of June to August 2017.</p> <p>Key government agencies were involved throughout the negotiation of PACER Plus as part of an inter-agency team or as part of the group regularly consulted (including from the Ministry of Business, Innovation and Employment, the New Zealand Customs Service, Primary Industries, Inland Revenue Department, Treasury and the Department of Prime Minister and Cabinet).</p> <p>The Bill is focussed on a narrow range of adjustments. Consequently, there was no additional public consultation about the Bill itself with Maori treaty partners, stakeholders or the public.</p>	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
While no specific testing or assessment has been completed, the Bill is based on previous models successfully used for implementing other New Zealand free trade agreements, including with Malaysia, China, Hong Kong, Korea and the ASEAN-Australia-New Zealand FTA.	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
The Bill enables the application of preferential tariff rates under the Agreement to goods imported from specified PACER Plus parties.	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>

## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
A power in the Tariff Act will be modified to allow the Governor General, by order in council, to declare a country that is a party to PACER Plus to be a specified PACER Plus party for the purposes of the Tariff Act. This enables the preferential tariff rates agreed under PACER Plus to be applied when the agreement is ratified.	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
The Bill provides that the Bill comes into force on a date appointed by the Governor-General by Order in Council.	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>