



## Customs Revenue and Border Protection Amendment Regulations 2020

Sir Tom J. Marsters, KBE

  
Queen's Representative

### Order in Executive Council

At Avarua, Rarotonga this 17th day of November, 2020

Present:

### His Excellency the Queen's Representative in Executive Council

Pursuant to sections 99 and 352 of the Customs Revenue and Border Protection Act 2012, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following regulations—

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#### Schedule

**New Schedule 4 inserted**

**Schedule 4**

**Provisions relating to PACER Plus**

## Regulations

- 1 **Title**  
These regulations are the Customs Revenue and Border Protection Amendment Regulations 2020.
- 2 **Commencement**  
These regulations come into force on the day after they are made.
- 3 **Principal regulations amended**  
These regulations amend the Customs Revenue and Border Protection Regulations 2012 (the **principal regulations**).
- 4 **Regulation 3 (Interpretation)**  
Regulation 3 is amended by inserting the following definitions in their appropriate alphabetical order:
  - “**PACER Plus** means the Pacific Agreement on Closer Economic Relations Plus done at Nuku’alofa, Tonga on 14 June 2017”
  - “**PICTA** means the Pacific Island Countries Trade Agreement done at Nauru on 18 August 2001”
- 5 **New regulation 43A inserted**  
The principal regulations are amended by inserting the following new regulation 43A after regulation 43:
  - “**43A Provisions relating to countries that are parties to PACER Plus**  
The provisions in Schedule 4 have effect according to their terms.”
- 6 **Regulation 52 (Business records)**  
Regulation 52(5) is amended by omitting “paragraphs (a), (b), and (f)” and substituting “paragraphs (a), (b), (c), and (f)”.
- 7 **Schedule 3 and heading (Provisions relating to Free Trade Agreements)**
  - (1) The heading to Schedule 3 (including the bracketed reference to section 42) is omitted and the following heading and shoulder reference are substituted:

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**“Schedule 3**  
**“Provisions relating to PICTA”**
  - (2) In clause 1 of Schedule 3, the definition of **Party** is revoked and the following definition is substituted:

“**Party** means a State, Territory or Self-Governing Entity that has signed and ratified or acceded to PICTA pursuant to Article 26 of that agreement or that has acceded to PICTA pursuant to Article 27 of that agreement
- 8 **New Schedule 4 inserted**  
The principal regulations are amended by inserting the Schedule 4 set out in the schedule to these regulations after Schedule 3.

**Schedule**  
**New Schedule 4 inserted**

**Schedule 4**  
**Provisions relating to PACER Plus**

**1 Interpretation**

In this Schedule, unless the context otherwise requires—

**acquaculture** means the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators

**CIF value** means the value of the good imported and includes the cost of insurance and freight up to the port or place of entry into the country of importation

**declaration of origin** means a declaration made in accordance with clause 15

**declaration of origin requirements** are the requirements set out in Annex 3-A of Chapter 3 of the PACER Plus

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

**generally accepted accounting principles**—

- (a) means the recognised consensus or substantial authoritative support in a Party, with respect to—
  - (i) the recording of revenues, expenses, costs, assets and liabilities; and
  - (ii) the disclosure of information; and
  - (iii) the preparation of financial statements; and
- (b) includes broad guidelines of general application as well as detailed standards, practices and procedures

**identical and interchangeable goods or materials** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical

**indirect material** means 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, including:

- (a) fuel and energy;
- (b) tools, dies and moulds;
- (c) spare parts and materials used in the maintenance of equipment and buildings;

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- (d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings:
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies:
- (f) equipment, devices and supplies used for testing or inspecting goods:
- (g) catalysts and solvents:
- (h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production

**material** means any matter or substance that is used in the production of a good  
**non-originating good or non-originating material** means a good or material that does not qualify as originating in a party under this Schedule

**originating good or originating material** means a good or material that qualifies as originating in a party under this Schedule

**packing materials and containers for shipment** means goods used to protect a good during its transportation, other than containers and packaging material used for retail sale

**party** means a State, separate customs territory, or self-governing entity for which the PACER Plus is in force

**preferential tariff treatment** means the rate of customs duty that applies to an originating good in the territory of a party

**producer** means a person who engages in the production of goods or materials

**production** means methods of obtaining goods including but not limited to growing, mining, harvesting, farming, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, aquaculture, processing or assembling a good

**product specific rules** are the rules set out in Annex 3-B of Chapter 3 of the PACER Plus

**regional value content** has the meaning given to it in clause 4 of this Schedule.

**2 Originating goods**

A good is treated for the purpose of the Act and the Customs Tariff Act 2012 to originate in a party if—

- (a) the good —
  - (i) is wholly produced or obtained in a party as provided in clause 3; or
  - (ii) is produced entirely in 1 or more parties, by one or more producers, exclusively from originating materials in accordance with this Schedule; or
  - (iii) satisfies the applicable product specific rule as a result of processes performed entirely in the territory of 1 or more of the parties by 1 or more producers; or
  - (iv) otherwise qualifies as an originating good under this Schedule; and
- (b) the good meets all other applicable requirements of this Schedule.

**3 Good wholly obtained or produced**

For the purposes of clause 2, the following goods are wholly obtained or produced in a party:

- (a) plants and plant goods including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked, or gathered in a party;
- (b) live animals born and raised in 1 or more parties;
- (c) goods obtained from live animals in a party;
- (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering, or capturing in a party;
- (e) minerals and other naturally occurring substances extracted or taken from soil, the waters, the seabed, or beneath the seabed in a party;
- (f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law, by any vessel registered or recorded with a party and entitled to fly the flag of that party;
- (g) goods produced from goods referred to in paragraph (f) on board any factory ship registered or recorded with a party and entitled to fly the flag of that party;
- (h) goods taken by a party, or a person of a party, from the seabed or beneath the seabed beyond the exclusive economic zone and adjacent continental shelf of that party and beyond areas over which non-parties exercise jurisdiction under exploitation rights granted in accordance with international law;
- (i) goods which are—
  - (i) waste and scrap derived from production and consumption in a party, if the goods are fit only for the recovery of raw materials; or
  - (ii) used goods collected in a party, if the goods are fit only for the recovery of raw materials; and
- (j) goods produced or obtained in a party solely from products referred to in paragraphs (a) to (i) or from their derivatives.

**4 Regional value content**

- (1) For the purposes of clause 2, if a product specific rule requires a good to meet a regional value requirement, the formula for calculating the regional value content is—

$$RVC = \frac{V-VNM}{V} \times 100$$

where—

**RVC** is the regional value content of a good, expressed as a percentage; and

**V** is the value of the good, as provided in subclause (2); and

**VNM** is the value of non-originating materials, including materials of undetermined origin.

- (2) The value of the good referred to in subclause (1) is, for exported goods, the FOB value of the good.
- (3) The value of non-originating material or materials of undetermined origin is—
- (a) for imported materials, the CIF value at the time of importation of the materials; or

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- (b) for materials acquired within the territory of the party in which the good is produced, the earliest ascertainable price paid or payable for the materials in the territory of the party.
- (4) The value of goods must be determined according to the valuation rules under the Act.
- (5) For non-originating material or materials of undetermined origin included under subclause (1), the following expenses may be deducted from the value of the material:
  - (a) the cost of freight, insurance, packing and all other costs incurred in transporting the material within or between parties' territories to the location of the producer:
  - (b) duties, taxes and customs brokerage fees on the material paid in the territories of one or more of the parties other than duties and taxes that are waived, refunded or refundable or otherwise recoverable, including credit against duty or tax paid or payable:
  - (c) the cost of waste and spoilage resulting from the use of the material in the production of the good less the value of renewable scrap or by product:
  - (d) costs of processing incurred in the territory of one or more of the parties in producing the non-originating material:
  - (e) the cost of originating materials used or consumed in producing the non-originating material in the territory of one or more of the parties.
- (6) No deduction is allowed for an expense under subclause (5) if the amount of the expense is unknown or evidence of the amount is unavailable.
- (7) Costs must be recorded and maintained in accordance with generally accepted accounting principles applicable in the territory of the party in which the good is produced or manufactured.

### **5 Cumulative rules of origin**

- (1) A good is originating if it is produced in 1 or more of the parties by 1 or more producers, provided that the good satisfies the requirements in clause 2 and the other requirements in this Schedule.
- (2) Originating goods or materials of a party used in the production of a good of another party must be considered to originate in the latter party.
- (3) Production that occurs in the territory of 1 or more of the parties by 1 or more producer may count as originating content in the origin determination of a good regardless of whether that production was sufficient to confer originating status to the materials themselves.

### **6 Minimal operations and processes**

If a claim of origin is based solely on regional value content, the following operations or processes (whether undertaken by themselves or in combination with each other) are considered to be minimal and may not be taken into account in determining whether goods are originating:

- (a) operations to ensure goods are preserved in good condition for the purposes of transport or storage:
- (b) facilitating shipment or transportation:
- (c) packaging or presenting goods for sale:

- (d) affixing of marks, labels or other similar distinguishing signs on products or their packaging:
- (e) disassembly.

**7 De Minimis**

- (1) A good that does not satisfy the change in tariff classification requirements in a product specific rule is nonetheless an originating good if—
  - (a) the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10% of the FOB value of the good; or
  - (b) for a textiles or apparel good provided for in Chapters 50 to 63 of the Harmonised System, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10% of the total weight of the good.
- (2) A good referred to in subclause (1) must meet all other applicable requirements of this Schedule.
- (3) The value of any non-originating materials must, however, be included in the value of non-originating materials for any applicable regional value content requirement for the good.

**8 Accessories, spare parts, tools and instructional or other information materials**

- (1) For the purposes of determining origin, accessories, spare parts, tools or instructional or other information, materials provided with the good—
  - (a) must be considered originating goods; and
  - (b) must be disregarded in determining whether all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification or production process requirements.
- (2) If the good is subject to a regional value content requirement, the value of the accessories, spare parts, tools or instructional or other information materials provided with the good must be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.
- (3) Subclauses (1) and (2) only apply if—
  - (a) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the good; and
  - (b) the quantities and the value of those accessories, spare parts, tools or instructional or other information materials provided with the good are customary for that good.
- (4) Where accessories, spare parts, tools and instructional or other information materials presented with the good are not customary for the good or are invoiced separately from the good, they must be treated as separate goods for the purpose of determining the origin.

**9 Identical and interchangeable goods or materials**

The determination of whether identical and interchangeable goods or materials are originating goods must be made either:

- (a) by physical segregation of each of the goods or materials; or

- (b) by the use of an inventory management method used throughout the fiscal year of the person that selected the method and—
  - (i) recognised by the generally accepted accounting principles of the party in which the production is performed; or
  - (ii) accepted by that party in which production is performed.

**10 Treatment of packing materials and containers**

- (1) Packing materials and containers in which a good is placed exclusively for transportation and shipment must not be taken into account in determining the origin of a good.
- (2) Packing materials and containers in which a good is packaged for retail sale, when classified together with that good, must not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification or process of production requirements as set out in a product specific rule.
- (3) If a good is subject to a regional value content requirement, the value of the packing materials and containers in which the good is packaged for retail sale must be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.
- (4) If the packaging material and container is not customary for the good, its value must not be included as originating in a regional value content calculation for the good.

**11 Indirect materials**

An indirect material must be treated as an originating material without regard to where it is produced and its value must be the cost registered in the accounting records of the producer of the good.

**12 Records**

- (1) A producer, exporter, or authorised representative of the producer or exporter must keep, for 5 years from the date of export,—
  - (a) a record of all transactions relating to the origin of a good for which preferential tariff treatment is claimed in an importing party; and
  - (b) the declaration of origin relevant to the good, or a copy of the declaration.
- (2) An importer claiming preferential tariff treatment must keep, for 5 years after the date of import,—
  - (a) all records relating to the importation of good; and
  - (b) the declaration of origin of the relevant good, or a copy of the declaration.
- (3) The records that must be kept under the Act and this Schedule include electronic records.

**13 Consignment**

- (1) A good that is transported only among parties retains its originating status as determined under clause 2.
- (2) A good that has transited through a non-party retains its originating status as determined under clause 2 if the goods have not undergone subsequent production or any other operation in the territory of a non-party other than—
  - (a) unloading, reloading, storing, any other operation necessary to preserve the goods in good condition, repacking, relabelling, or any other operation necessary to transport the good to the territory of the importing party; or



- (b) the good has been shown in or utilised at an exhibition in a non-party.

**14 Goods in storage**

- (1) Customs must grant preferential tariff treatment for an originating good of an exporting party which on the date of entry into force of the PACER Plus is—
  - (a) in the process of being transported from the exporting party;
  - (b) has not been released from Customs control; or
  - (c) is in storage in a warehouse regulated by Customs.
- (2) However, subclause (1) only applies if the originating good is destined for home consumption in the Cook Islands and satisfies all the requirements in this Schedule.

**15 Declaration of origin**

- (1) A declaration of origin must be provided to support a claim for eligible preferential tariff treatment.
- (2) The declaration of origin must comply with the following requirements:
  - (a) it must be completed by the exporter or producer or an authorised representative of the exporter or producer;
  - (b) it must include the information required in the declaration of origin requirements;
  - (c) it must be made in respect of 1 or more goods and may include a variety of goods;
  - (d) it must be completed in English;
  - (e) it must be in written format, including electronic format;
  - (f) it must be an original, except copies may be made for subsequent transactions.
- (3) The declaration of origin may be made on the invoice for the goods or on a separate document, including on a company's letterhead.
- (4) A declaration of origin remains valid for 2 years after the date on which it is signed.

**16 Verification of origin**

- (1) When there is reasonable doubt as to the origin of a good, Customs may verify the eligibility of the good for preferential tariff treatment by—
  - (a) requesting, in writing, relevant information from the importer;
  - (b) requesting, in writing, relevant information from the exporter, producer, or an authorised representative of the exporter or producer;
  - (c) undertaking a verification visit to the premises of the exporter or producer in the territory of another party in accordance with clause 16; or
  - (d) undertaking any other procedure that Customs and the customs administration of the exporter agree on.
- (2) A request provided under subclause (1)(a) or (b) must include:
  - (a) the reason for the request, including the specific issue Customs seeks to resolve in the verification;
  - (b) sufficient information to identify the goods that are being verified; and
  - (c) a copy of relevant information submitted with the good including the declaration of origin.

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- (3) Customs must specify a period of 60 days from the date the written request is sent to the importer, exporter, or producer in which to respond.
- (4) Customs may extend the 60-day period specified under subclause (3) by a maximum of 30 days.

**17 Verification visits**

*Verification of imported goods claiming preferential tariff treatment*

- (1) If all verification actions under clause 16(1)(a), (b), and (d) have been exhausted and have failed to resolve the concerns of Customs, a verification visit may be conducted.
- (2) Before conducting a verification visit Customs must—
  - (a) make a written request to the exporter or producer to conduct a verification visit of their premises and the request must include details about—
    - (i) the proposed date of the visit; and
    - (ii) the objective and scope of the proposed visit, including specific reference to the goods that are the subject of the verification referred to in the declaration of origin; and
    - (iii) the names and titles of the Customs officers who will participate in the visit; and
  - (b) obtain the written consent of the exporter or producer whose premises are to be visited.
- (3) Customs must also notify the Customs administration of the other party of its intention to conduct a verification visit.

*Verification of exported goods claiming preferential tariff treatment in importing Party*

- (4) An exporter or producer that has consented to a Customs administration of an importing Party conducting a verification visit to its premises in the Cook Islands must also notify Customs of the visit before it takes place.
- (5) During the verification visit the exporter or producer must allow Customs—
  - (a) to participate as an observer;
  - (b) to undertake similar compliance verifications in respect of the exporter's or producer's activities to ensure compliance with Customs laws.
- (6) Nothing in this regulation affects the rights of Customs to undertake verification or compliance activities within its territory in accordance with its laws and regulations.

**18 Decision of origin**

- (1) Customs must permit preferential tariff treatment for goods if it is satisfied under clause 2 that the goods originate in a party.
- (2) Customs may deny preferential tariff treatment if—
  - (a) the goods do not meet the requirements of this Schedule; or
  - (b) the importer, exporter, or producer fails to comply with any of the relevant requirements under this Schedule; or
  - (c) verification action conducted under clause 17 has failed to determine the good is originating.

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- (3) Customs must, on request by the importer or producer, provide written reasons for a decision to deny preferential treatment.
- (4) Customs must not reject a claim of preferential tariff treatment only by reason of the invoice being issued in a non-party or by a third party.

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**Clerk of the Executive Council**

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These regulations are administered by the Ministry of Finance and Economic Management.

These regulations were made on the 17<sup>th</sup> day of November 2020.

