

# PACER PLUS REGIONAL WORKSHOP ON TRADE IN SERVICES

Day 2 S6. Review & Modification of Commitments



Richard Braddock  
Partner  
Lexbridge Lawyers

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[www.lexbridgelawyers.com](http://www.lexbridgelawyers.com)

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# Overview

1. Modification of Schedules
2. Services Chapter – review of commitments
3. General FTA review

# 1. Modification of Schedules

## Modification v Review

- FTA *requires* Services Chapter review of commitments
  - Aim to improve overall commitments (flexibility for limited capacity of DCs)
- FTA *requires* general review of FTA
  - Broad focus to further objectives of FTA
- FTA *allows* Party to modify or withdraw a commitment in Schedule
  - If Party needs to 'wind back' commitment in a sector
- Services review required to happen by FTA – involves all Parties
- Modification of Schedules only occurs if Party chooses to trigger process
  - May or may not happen
  - Requires negotiation on compensatory adjustment

## Article 9: Modification of Schedules

1. (a) A “modifying Party” may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.  
(b) A modifying Party shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Joint Committee no later than three months before the intended date of implementation of the modification or withdrawal.
2. (a) At the request of any Party whose benefits under this Agreement may be affected (an "affected Party") by a proposed modification or withdrawal ... the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Parties concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations.  
(b) Compensatory adjustments shall be made on a most-favoured-nation basis.
3. (a) If agreement is not reached between the modifying Party and any affected Party before the end of the period provided for negotiations, such affected Party may refer the matter to the Joint Committee. ...  
(b) If no affected Party has requested the intervention of the Joint Committee, the modifying Party shall be free to implement the proposed modification or withdrawal.
4. (a) The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the Joint Committee.  
(b) If the modifying Party implements its proposed modification or withdrawal and does not comply with the recommendations of the Joint Committee, any affected Party that participated in the Joint Committee’s meetings may modify or withdraw substantially equivalent benefits ...
5. The Joint Committee shall establish procedures for the rectification or modification of Schedules. ...

# 1. Modification of Schedules

- Any Party can trigger process to modify after in force 3 years
- Notify intended modification to Joint Committee
  - if any Party considers benefits affected - triggers negotiation
  - Seek agreement on compensatory adjustment – (all Parties on MFN basis)
  - Maintain general level of commitments not less favourable to trade than before modification
- If no agreement – affected Party can ask Joint Committee to set compensation
- Modifying Party cannot modify until makes compensatory adjustment
  - otherwise affected Party can withdraw equivalent benefits (retaliate) against modifying Party
- Joint Committee to establish detailed procedures

## 2. Services Chapter - Review

### **Article 18: Review of Commitments**

1. The Parties shall review commitments on trade in services, with the first review within three years of entry into force of this Agreement ..., with the aim of improving the overall commitments undertaken by the Parties under this Chapter so as to progressively liberalise trade in services among the Parties.
2. The Parties recognise the limited capacities of developing country Parties which will be taken into account in the review process. When improving the overall commitments undertaken by the Parties, appropriate flexibility will be given to the developing country Parties to opening fewer sectors, liberalising fewer types of transaction, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article 4.

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## 2. Services Chapter - Review

- Services Chapter commitment to review commitments on services
- Aim to ‘improve overall commitments undertaken by the Parties’ – progressively liberalise trade in services
- But – Art 18 recognises limited capacities of developing Parties – “taken into account” in review process
  - Flexibility to DCs to opening fewer sectors & liberalising fewer types of transactions

### Timing

- Art 18 requires first review within 3 years of entry into force of FTA (December 2023)

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## 2. Services Chapter - Review

### Process

- No details in Chapter – determined by *Committee on Services*
  - Decisions by *mutual agreement* – all Parties have opportunity to influence

### Actions

- Prepare for review discussions: implementation status; possible requests

### Opportunities

- Seek to address services issues in other Parties
- Opportunity to raise issues / challenges in relation to implementation
- Identify requests for additional commitments from other Parties
- Including issues identified in Art 4:
  - access to technology;
  - access to distribution networks & information networks;
  - greater access in sectors and modes of interest to FICs



## 2. Services Chapter - Review

### Services Chapter review

#### **Article 4: Increasing the Participation of Forum Island Countries**

1. The increasing participation of Forum Island Countries in services trade shall be facilitated through negotiated specific commitments pursuant to Article 5, Article 6, Article 7 and Article 8 relating to:

- (a) the strengthening of their domestic services capacity and its efficiency and competitiveness *inter alia* through access to technology on a commercial basis;
- (b) the improvement of their access to distribution channels and information networks; and
- (c) the liberalisation of market access in sectors and modes of supply of export interest to Forum Island Countries.

# 3. General Review of FTA

## CHAPTER 12: INSTITUTIONAL PROVISIONS

### Article 1: PACER Plus Joint Committee

1. The Parties hereby establish a Joint Committee consisting of representatives of the Parties.
2. The functions of the Joint Committee shall be to: ...
  - (k) undertake a general review of this Agreement with a view to furthering its objectives in three years from the date of entry into force, and every five years thereafter, unless otherwise agreed by the Parties.

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## 3. General Review of FTA

- Institutional Provisions Chapter gives the Joint Committee responsibility to undertake a *general review of the Agreement*
- Aim: “with a view to furthering its objectives”
- Much broader focus than Services review
  - Could include any issues including implementation of commitments; operation of DEC work programme; revising or amending provisions

### Timing

- Requires first review within 3 years of entry into force of FTA (December 2023) – unless agree otherwise

# 3. General Review of FTA

## Process

- No details in FTA – determined by Joint Committee
  - Decisions by mutual agreement – all Parties have opportunity to influence

## Opportunities

- Forum to raise any issue related to implementation & operation of Agreement – and associated DEC work programme
  - Trade issues faced in other Parties
  - Issues concerned with implementation
  - Issues related to DEC WP
- Proposals to expand or modify FTA – review or update provisions – address additional issues
- Requires preparation to identify issues / interests

# Quiz

PACER Plus - Services - Review





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# Thank you



Richard Braddock

Partner, Lexbridge Lawyers

+61 404 290 236

[richard.braddock@lexbridgelawyers.com](mailto:richard.braddock@lexbridgelawyers.com)