



An introduction to mode 4 of the GATS

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Structure of the presentation

1. **Why** does the WTO deal with the movement of people?
2. **Which** kind of movement is covered, a.k.a. what is mode 4?
3. **What** has been committed under mode 4?



Why is the movement of people covered by WTO disciplines?

Only as a means to an end, i.e.
to trade services



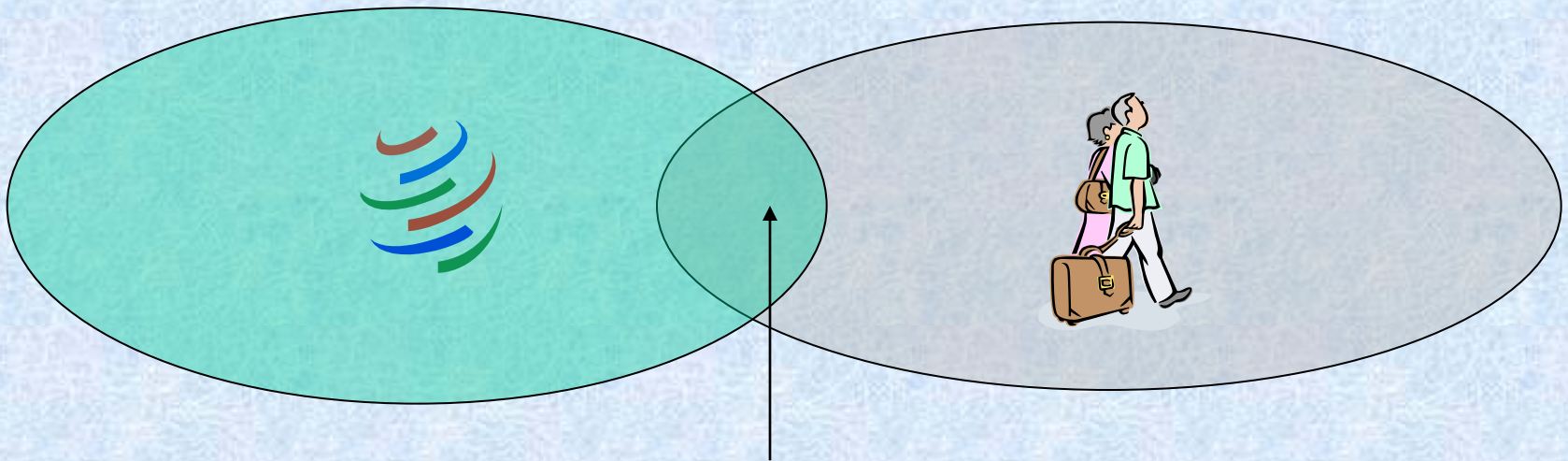
How can one trade services?

The four “modes of supply” of the GATS:

- (1) Cross border supply
- (2) Consumption abroad
- (3) Commercial presence
- (4) Presence of natural persons

Mode 4: trade or migration?

Mode 4 involves the temporary presence of a natural person abroad in relation to the supply of a service



Mode 4: trade AND migration!



What is mode 4?



Mode 4

“The supply of a service by a *service supplier* of one Member, through presence of *natural persons* of a Member in the territory of any other Member”

- The *service supplier* is **foreign** from the host country’s perspective
- As per the relevant Annex, mode 4 is of a “**temporary**” nature
- The *natural person* is either:
 - the **service supplier**, or
 - the **employee** of the service supplier

What “types” of persons?



- Natural persons who are **service suppliers**
 - Self-employed (“Independent professionals”)
- Natural persons who are **employed by a service supplier** and sent abroad to supply a service
 - “Intra-Corporate Transferees”
 - “Contractual service suppliers”
 - Temporary employees of services suppliers
 - “Business Visitors”

“Typical” definitions of categories in commitments - ICT

- **“Intra-corporate transferees” (ICT)** – work for an enterprise established in the territory of a Member and are transferred to the enterprise’s commercial presence in the territory of another Member in the context of the supply of a service. Often as executives, managers, specialists.
- **“Executives”** – direct the management, have wide latitude in decision-making, are supervised only by board of directors or stockholders, do not provide service directly
- **“Managers”** – direct organization or department, hire/fire, have day-to-day discretion, supervise other staff
- **“Specialists”** – have essential knowledge at advanced level of expertise, proprietary knowledge of organisation

“Typical” definitions of categories

in commitments - **BV**

- “**Business visitors**” (**BV**) are not engaged in supplying the service or making direct sales to the public, and do not receive remuneration from a source in host Member
- “**Sales**” **BV** – negotiate for the sale of a service, establish business contacts, attend business meetings and similar
- “**Set-up**” **BV** – set-up a commercial presence in another Member, where their employer has none



“Typical” definitions of categories in commitments - **CSS**

- “**Contractual service suppliers**” (**CSS**) – employees of a juridical person (which has no commercial presence in host Member) who supply a service on the basis of a contract their employer has concluded with a consumer in host Member
- The employee receives **remuneration** from the employer while abroad, has appropriate educational and professional qualifications, may not engage in other employment
- Commitment relates only to the activity which is the subject of the **contract**



“Typical” definitions of categories in commitments - **IP**

- “**Independent professional**” (**IP**) – self-employed person based in the territory of another Member who supplies a service on the basis of a services contract with a consumer in the host Member
- IP has appropriate educational and professional qualifications
- Commitment relates only to the activity which is the subject of the **contract**



But mode 4 does not cover ...



- Natural persons seeking **access to the employment market**
- Measures regarding citizenship, residence or employment on a **permanent** basis
 - ↳ mode 4 is referred to as the “*temporary*” presence of natural persons

Plus ... Governments are **free to regulate** entry and temporary stay (including by applying differential visa requirements), provided these measures do not nullify or impair commitments

Relative importance of mode 4 trade



Estimates are:

- Mode 1 25-30%
- Mode 2 10-15%
- Mode 3 55-60%
- Mode 4 <5%

But importance may differ across sectors,
depending on mode 4 being:

- the only feasible mode
- one amongst several
- only a complement and facilitator of trade under other modes



Mode 4 GATS liberalization – where do we stand?



A snapshot of commitments

- Governed by horizontal conditions (“horizontal commitments”)
- Absence of full liberalization: “Unbound except ...”
- Linked to commercial presence
- High-level of training/expertise, often as ICT
- Limited duration of stay: 3 months to 5 years

Mode 4 commitments – An example



Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	(4)Unbound except for measures affecting the entry and temporary stay of natural persons with managerial and technical skills which are in short supply in Mongolia, and fall within the following categories: business visitors, intracorporate transferees and professionals under a service contract.	(4)Unbound except for measures referred to under market access	
II. SECTOR-SPECIFIC COMMITMENTS			
1.BUSINESS SERVICES A. <u>Professional services</u> B. (b) Accounting	(1)None (2)None (3)None (4)Unbound except as indicated in the horizontal section	(1)None (2)None (3)None (4)Unbound except as indicated under market access	

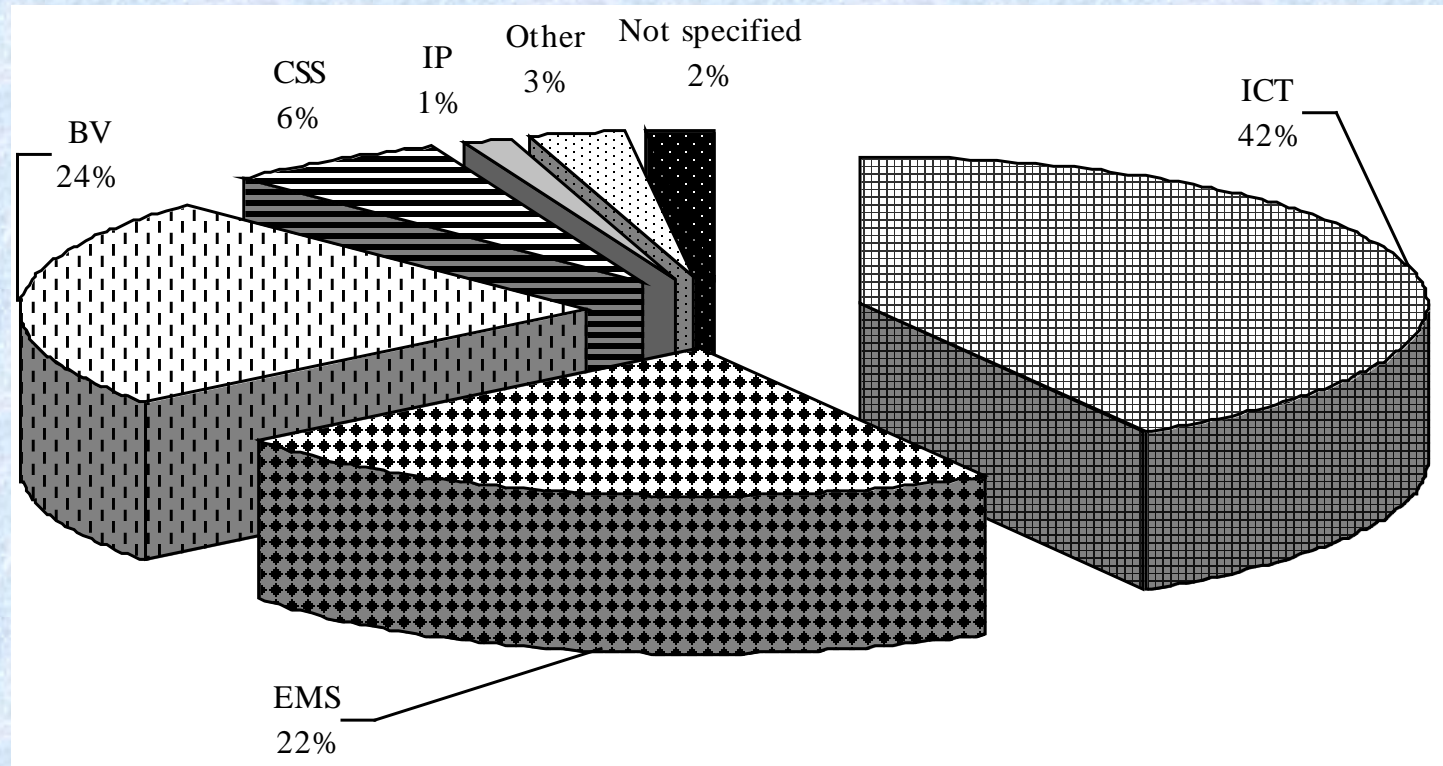


Main barriers scheduled

- Limited categories included
- Pre-employment requirements
- Economic Needs Tests/Labour Market Tests
- Quotas
- Residency and nationality requirem.
- Training/Education/Qualification
- Authorisation, approval, registration requirements
- Training of local workers

Structure of Horizontal Commitments

(% of total categories scheduled)



BV = Business Visitors

ICT = Intra-Corporate Transferees

E,M,S = Executives, Managers, Specialists

Source: WTO Secretariat (2009)



THANK YOU