

REGIONAL MOVEMENT OF NATURAL PERSONS & LABOUR MOBILITY WORKSHOP

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Session 1: Key trends and relevance of MNP



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Overview

- I. What is MNP? Significance & Challenges
- II. GATS: Mode 4; Labour Mobility; and Annex on Movement of Natural Persons

I. What is MNP? Significance & Challenges

I.1 What is MNP?

- MNP = “Movement of Natural Persons” – some FTAs refer to “Temporary Entry”
- MNP Chapters contain commitments to allow temp entry of specific categories of persons – provided satisfy all eligibility requirements / immigration measures
- Threshold issue: terms used interchangeably but “Movement of Natural Persons” (MNP) *not the same as Mode 4*
- **GATS / PACER Plus Services Chapter** applies to 4 mode service supply:
 - supply of a service by a supplier of one Party through presence of natural persons of a Party in the territory of another Party
- Scope of PACER Plus MNP Chapter is *broader*
 - Not only concerned with service supply
 - Extends to (non-service) business visitors & investors etc
- Labour mobility broader again – includes categories of persons / workers not covered by MNP (or mode 4) commitments

I.2 Significance of MNP: issues & challenges

- MNP highly significant to Services trade – vital to allow for Mode 4 service supply
 - Without migration / temporary entry of people from one country to another there could be no Mode 4 service supply
- In FTAs like PACER Plus – ability of Parties to take advantage of Services (mode 4) commitments depends on their people being permitted to temporarily enter and stay in partner country
 - In PACER Plus – Parties only made Mode 4 services commitments for categories of persons where they make MNP commitments – and subject to conditions in MNP Schedule
 - ‘Market access’ depends on their ability to ‘access’ the other country

I.2 Significance of MNP: issues & challenges

Challenges

- **Political:** MNP at intersection of trade, employment and migration
 - Domestic sensitivities: domestic workforce; unemployment; labour conditions; border control
- **Technical:** Identifying and measuring Mode 4 service supply
- Remittances from overseas workers significant source of income and skills development for some PICs
 - Challenge to distinguish between remittances vs mode 4 service supply

I.2 Significance of MNP: issues & challenges

Challenges – measuring Mode 4

- 2008 WTO study found measurement of Mode 4 poses formidable challenges
 - No clear statistical framework to assess the size of Mode 4 trade
- Items “compensation of employees” and “workers’ remittances” often used to measure Mode 4
- But – measures of total value MNP / labour mobility / remittances - not separate service suppliers vs employees vs business visitors
- Migration records often don’t identify whether service / non-service
- 2008 WTO estimated value Mode 4 at around 5% (US\$150-220 Billion)

I.2 Significance of MNP: issues & challenges

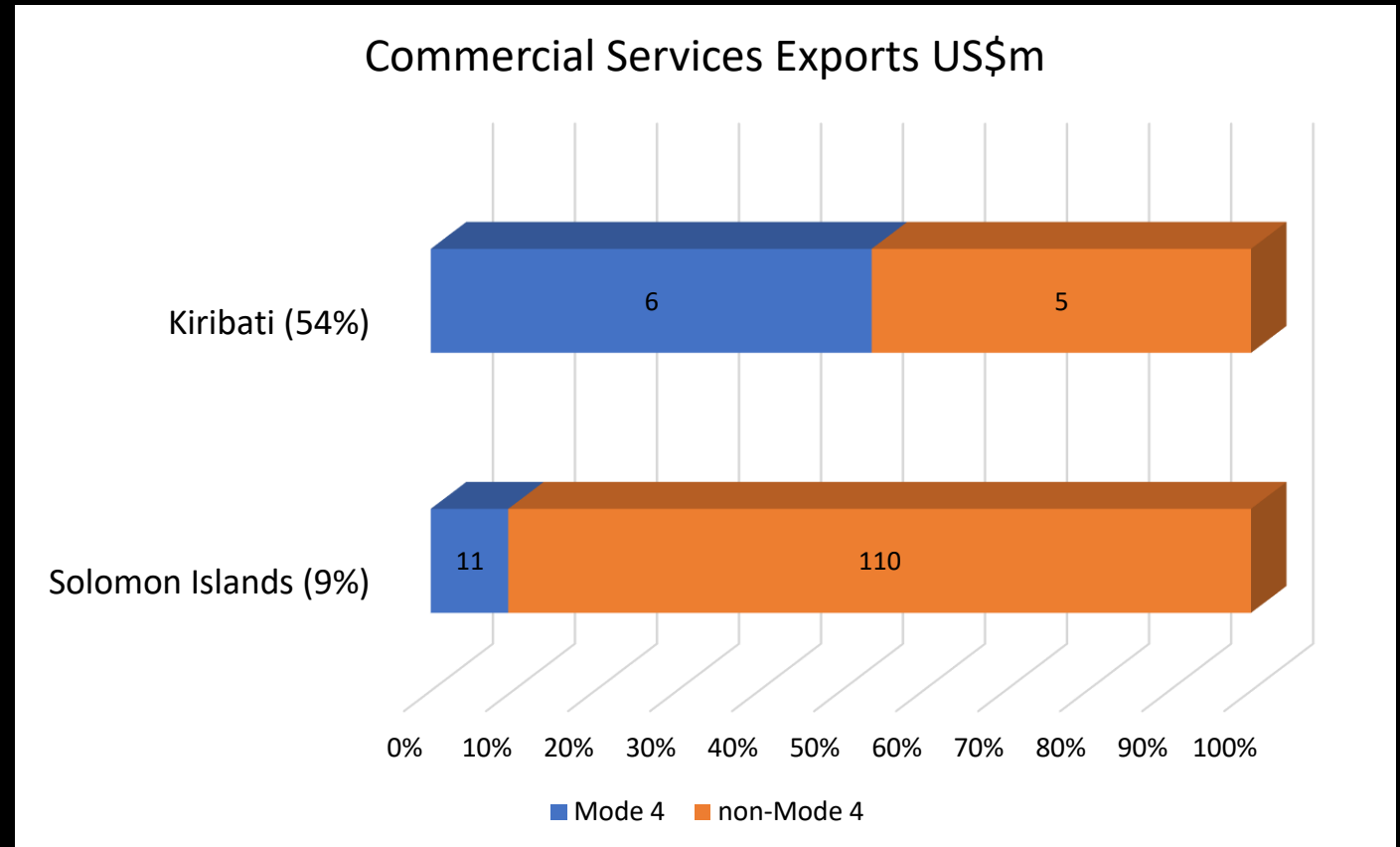
Challenges – measuring Mode 4

- Recent advances in statistics & measurement Mode 4
- Experimental dataset Trade in Services data by mode of supply (TISMOS)
 - Aims to estimate services by mode of supply for first time
 - Not settled / not consistent methodology used by reporting countries
 - Depends on assumptions / aggregation / balancing
 - Data patchy
- Recent estimates by Eurostat / US suggest higher level Mode 4 – at least for some countries: US 7% exports; UK: 13% exports

I.2 Significance of MNP: issues & challenges

Challenges – measuring Mode 4

- TISMOS data Mode 4 exports for 2 PP Parties / PICs: Kiribati and Solomon Islands (2017)
 - Combine with WTO estimate total commercial services exports for rough estimate proportion Mode 4



III. GATS: mode 4 & labour mobility

III.1 Scope of GATS

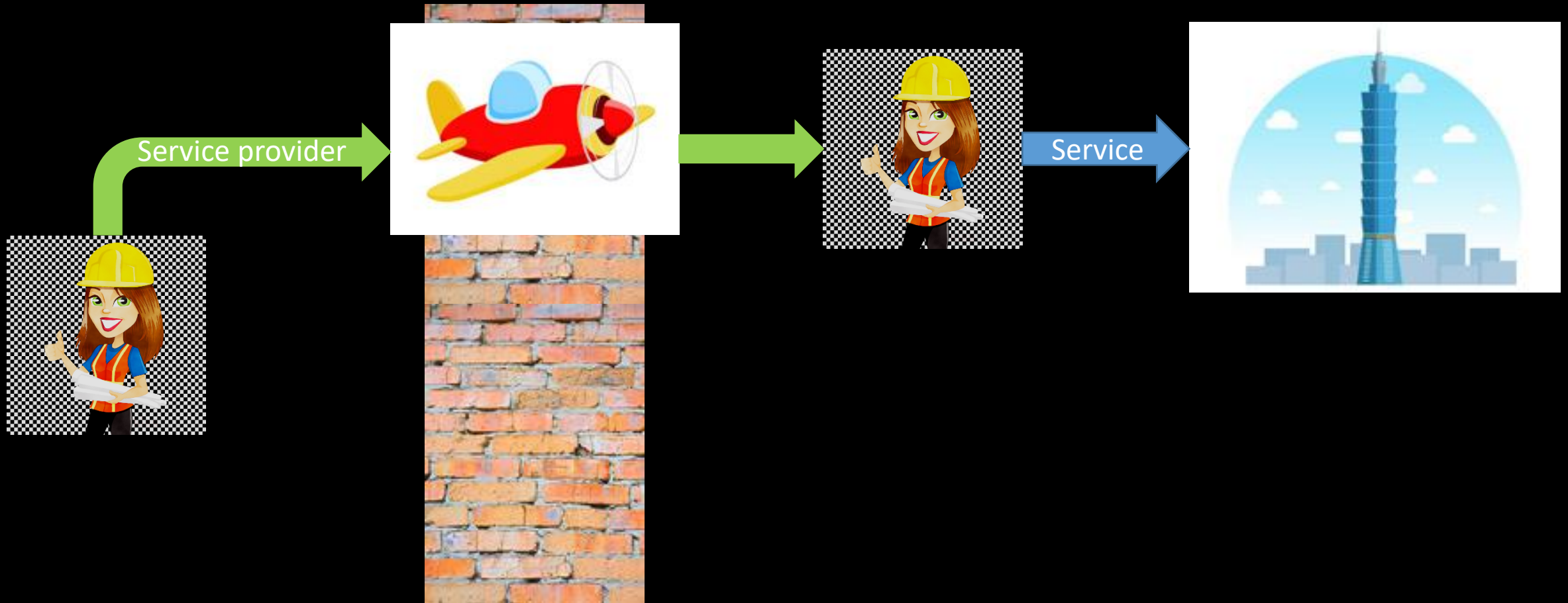
- GATS applies to “measures affecting trade in services”
- “trade in services” defined in terms of 4 ways (modes) of service supply

GATS: Article I: Scope and Definition

1. This Agreement applies to measures by Members affecting trade in services.
2. For the purposes of this Agreement, trade in services is defined as the supply of a service:
 - a) from the territory of one Member into the territory of any other Member;
 - b) in the territory of one Member to the service consumer of any other Member;
 - c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
 - d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.

Mode 4 – Movement of Natural Persons

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



III.2 GATS: mode 4 v labour mobility

- Scope of GATS limited to “measures affecting trade in services”
- Mode 4 - requires movement / migration of people from one Member to another Member to supply a service
 - But – focus of GATS on trade in services – not migration / temporary entry
- Labour mobility may include people migrating temporarily to work in service sectors but also to work in non-service sectors (e.g. agriculture)
 - Broader focus – beyond service sectors / ‘trade in services’
- GATS obligations apply in relation to (for benefit of) “services” and “service suppliers” – not workers / job-seekers more broadly
- Labour mobility includes low skilled workers
- In practice – WTO Members generally limited GATS Mode 4 commitments to higher skilled professionals / service suppliers

III.2 GATS: mode 4 v labour mobility

Why?

- History of WTO Agreement – evolution from focus on trade in goods (GATT) – tends to separate trade issues into ‘boxes’: goods, services, IP ..
- Labour mobility not fit neatly into one trade ‘box’
- Distinction: trade (in services) v labour / workers
- Labour / migration issue vs trade issue

Domestic sensitivities

- Members concerned about impact on local workforce / unemployment
- Mode 4 commitments generally subject to tight conditions: qualifications / experience / high skilled
- Use to address skill shortages but not open labour mobility

III.3 GATS: Annex on MNP

- Mode 4 - requires movement / migration of people from one Member to another Member to supply service
 - But – focus of GATS on trade in services – not migration / temp entry
- *GATS Annex on MNP* confirms GATS not affect ability of Members to maintain & apply immigration measures – provided not undermine a specific commitment
 - Means a commitment in Schedule to allow person to supply M4 service
- Significant qualification – if person can't enter territory of other Party - can't provide service (M4)
- Annex confirms GATS does not apply to measures affecting access to employment market; citizenship, residency or permanent employment
 - Temporary movement to work as / for a service supplier
 - Not job-seekers

ANNEX ON MOVEMENT OF NATURAL PERSONS SUPPLYING SERVICES UNDER THE AGREEMENT

...

2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. ... Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.

Thank you