



The General Agreement on Trade in Services

The GATS



- Defines new trade concepts and provides legal framework
- Provides guidance for ‘services trade policy’
- Assists governments that want to reduce their trade barriers and/or consolidate reforms
- Contributes to coordination of economic policy-making
- Better access to foreign markets
- Transparency and predictability of trading conditions
- Efficient and impartial settlement of disputes



Structure of the GATS

- A set of Rules and Disciplines
 - Articles of the Agreement
 - General Obligations
 - Specific Commitments
 - Annexes
- Schedules of Specific Commitments
 - Market Access
 - National Treatment



THE GATS: MAIN FEATURES





Scope and definition

- **MEASURES AFFECTING TRADE IN SERVICES AT ALL GOVERNMENT LEVELS**
- **ALL SERVICES** (except governmental services and measures affecting air traffic rights)
- **FOUR MODES OF SUPPLY**
 - **Cross-border supply** - **Consumption abroad**
 - **Commercial presence** - **Presence of nat. persons**
- **APPLICATION TO SERVICES AND SERVICE SUPPLIERS**



Excluded from scope: 'Governmental Services'

Excluded from coverage are “services provided in the exercise of governmental authority” which, in turn, are defined as services that are supplied “neither on a **commercial basis**, nor in **competition** with one or more service suppliers”. (Article I:3)*

- * Certain financial services (e.g. statutory systems of social security): Only (non-)existence of competition matters (see Annex on Financial Services)

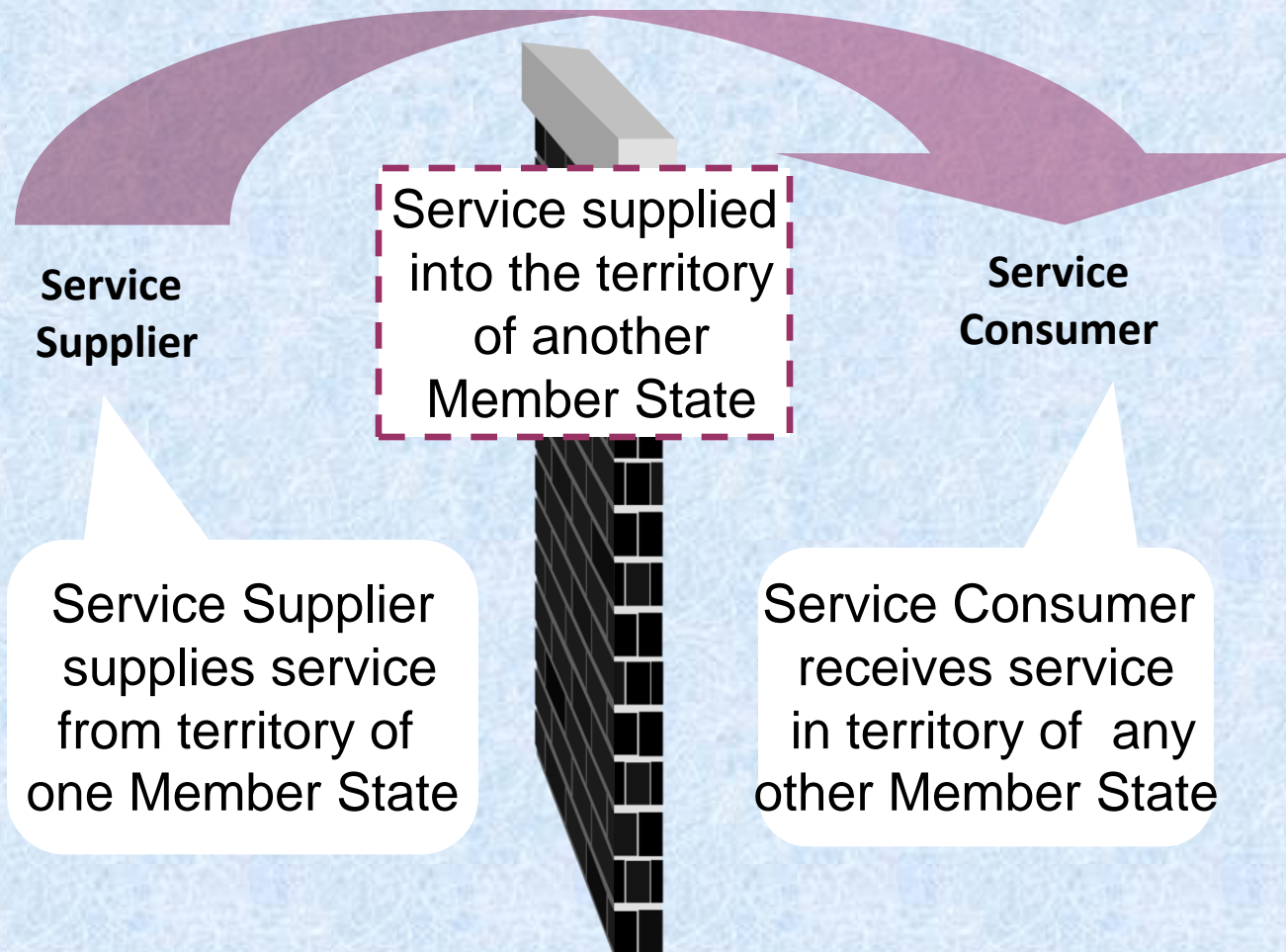
Mode 1 – Cross-border trade



“Supply of a service from the territory of one Member into the territory of any other Member”

- Defining criterion: territorial presence of supplier outside territory in which service is supplied
- Irrelevant: nationality of supplier

Cross border supply - Mode 1



Mode 2 - Consumption abroad



“Supply of a service in the territory of one member to the service consumer of any other Member”

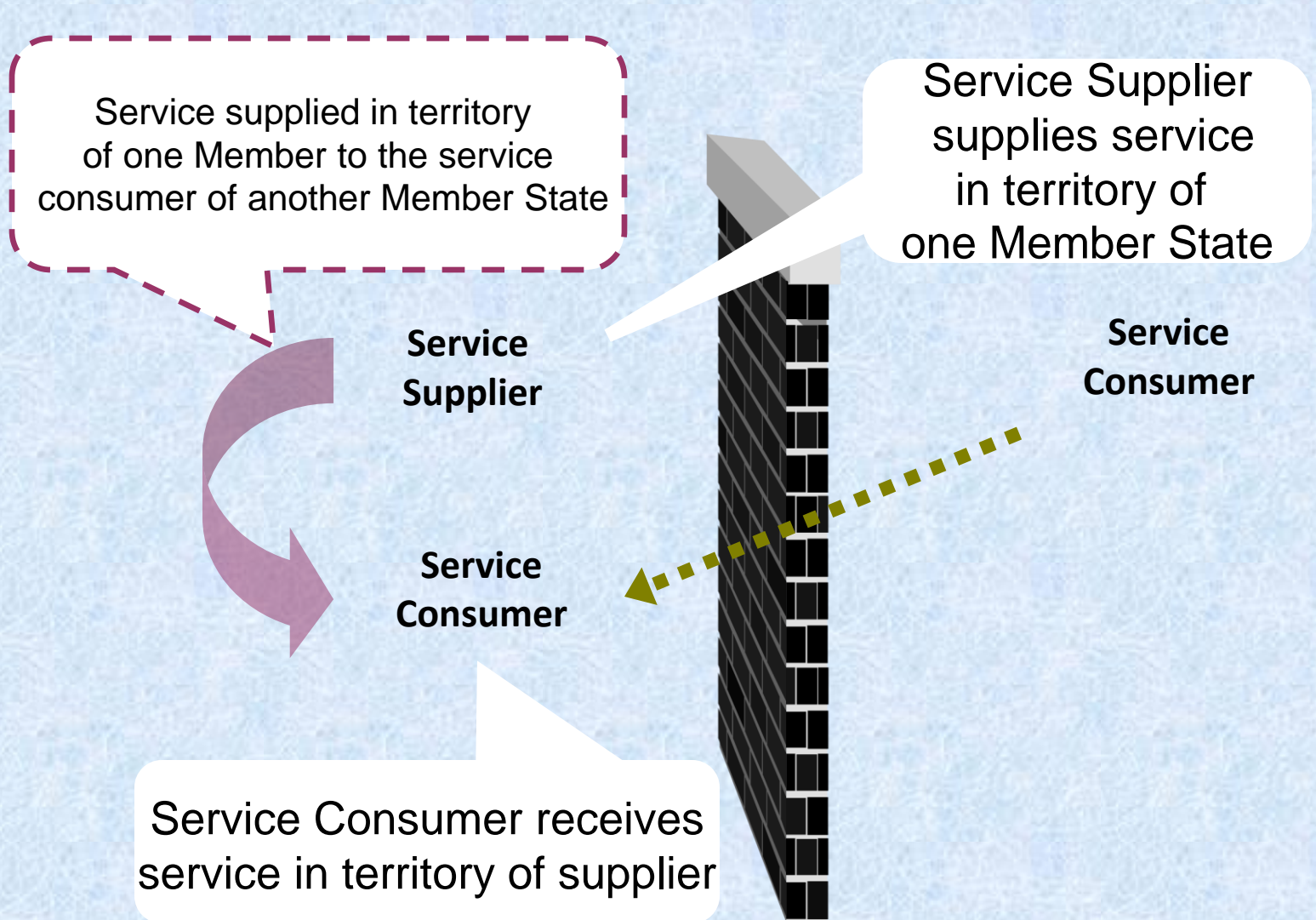
- Defining criterion:
 - territorial presence of supplier inside territory in which service is supplied,
 - consumer must be from other Member
- Irrelevant: nationality of supplier



Mode 2 (cont'd)

- Scheduling Guidelines (p. 29, 30):
 - “to the consumer” may also include situations where only the property of the consumer moves e.g. ship repair
 - GATS obligations relate to treatment of services and suppliers, treatment of own consumers only insofar as service suppliers of other Members are affected

Consumption abroad - Mode 2



Mode 3 – Commercial presence



“Supply of a service by a service supplier of one Member, through commercial presence, in the territory of any other Member”

- Defining criterion: territorial presence of supplier in the territory in which service is supplied
- Relevant: nationality of supplier (majority foreign-owned or foreign-controlled)*
- Covers establishment phase and post-establishment

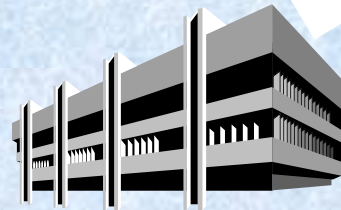
* Article XXVIII(n)

Commercial Presence - Mode 3



Service supplier establishes a commercial presence in the territory of another Member State

Service Supplier



Any type of business or professional establishment

Service Consumer



Service supplied through commercial presence



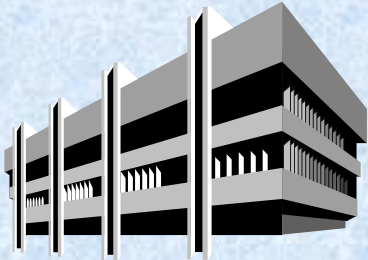
Mode 4 – Presence of natural persons

- 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”***

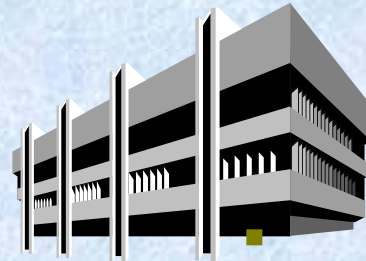
Natural Persons - Mode 4



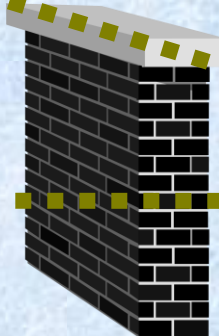
*Employees of
a foreign-
based supplier*



*Employees of
foreign-owned
commercial
presence*



*Independent
professionals*



Service supplied through
presence of natural
persons in the territory
of another Member

**Service
Consumer**



Which Mode of Supply?



- A foreign tourist takes a guided tour of the inland
- A non-resident bank provides financial advice to a client.
- A Russian trucking company transports cargo from Russia to Astana
- A foreign lawyer, pursuant to a service contract, comes into the country to advise a client



GATS: Sector coverage

- Business Services
- Communication
- Construction
- Distribution
- Education
- Environmental Services
- Health Related Services
- Financial Services
- Tourism
- Recreation, Culture, Sports
- Transport
- Other Services

Logic of obligations and commitments



General Obligations (Part II: Art II - XV)

Obligations applying all services covered:

EX:

- MFN (Art II)
- Adm. remedies (Art VI:2)
- Transparency (publication – Art III:1)

Obligations applying to scheduled services sectors only

EX:

- Notification (Art. III:3)
- Administration of measures (Art.VI:1)
- Verification of competence (Art.VI:6)

Specific Commitments (Part III : Art XVI-XVIII)

- Market Access
- National Treatment
- Additional Commitments

General obligations



“Unconditional obligations” applying to all covered services:

- **Most-Favoured-Nation Treatment (Art. II)**
- Certain transparency requirements (Art. III:1, & 4)
- Some other “good governance” provisions (availability of administrative remedies; monopolies have to comply with MFN...etc.)

Note: There is no obligation to open markets

The Cornerstone: MFN Treatment



“... each Member shall accord **immediately and unconditionally** to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country” (Article II:1)

Exemptions could have been sought at the date of entry into force of GATS for periods not exceeding ten years in principle.



Permissible departures from MFN

- Annex on Article II Exemptions
- Economic Integration (Article V)
& Labour Markets Integration Agreements (Article Vbis)
- Recognition (Article VII)
Elimination of regulation-related restrictions (licenses, certificates, etc.)
- Other
 - General and Security Exceptions (Art. XIV and XIVbis);
 - Prudential carve-out in financial services.

Special status: Maritime transport (> Members without commitments)

How MFN Exemptions are structured



SOUTH AFRICA – LIST OF ARTICLE II (MFN) EXEMPTIONS (excerpt)

Sector or subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Road Transportation	Regional bilateral and plurilateral road transport agreements providing for the transport rights to carry goods and passengers to or from South Africa and between third countries concerned, to be reserved for the road transport operators of the contracting parties to existing and future agreements. Cabotage restricted to South African registered vehicles and operators.	Botswana Lesotho Swaziland Malawi Zimbabwe Other Sub-Saharan African countries	Indefinite	To enhance the development of an integrated road transport system to underpin the economic development of the region and to ensure the availability of an efficient distribution network for relief supplies in case of natural disasters such as frequently occurring droughts in the region.

Conditional obligations



- Art. III:3 (add. transparency requirements)
- Art. VI:1 (administration of measures)
- Art. VI:5 (regulatory disciplines)
- Art. VI:6 (procedures for verifying competence)*
- Art. VIII (compliance of monopolies)
- Art. XI:1 (current transactions)
- Art. XI:2 and fn 8 to Art. XVI (capital transfers)
- Annex on Telecommunications

* Professional services only

Conditional obligations



Common purpose:

Protect the commercial value of commitments from being undermined by non-transparent or excessively burdensome government interventions.

Note: Unlike commitments on market access or national treatment, conditional and unconditional obligations cannot be modified by individual Members (certain exceptions for MFN).



THE GATS:
specific commitments



How Schedules of Commitments are structured:



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
<p><u>Hotels and restaurants</u> (CPC 641- 643)</p>	<p>1) Unbound*</p> <p>2) None</p> <p>3) The admission of new hotels in individual provinces may be made contingent on past tourist arrivals over a representative period</p> <p>4) Unbound except as indicated in the horizontal section</p>	<p>1) Unbound*</p> <p>2) None</p> <p>3) Foreign-owned hotels and restaurants are subject to training requirements (one trainee per two regular staff)</p> <p>4) Unbound</p>	

*Unbound due to lack of technical feasibility

NOTE: “Unbound” = no commitment (full policy discretion)

“None” = no limitation (full commitment)

“The admission of ... “ and “Foreign-owned “ = partial commitments

Market Access and National Treatment: Main elements



- MARKET ACCESS (Article XVI)
 - Absence of quota-type and similar restrictions

- NATIONAL TREATMENT (Article XVII)
 - Non-discrimination with regard to **all** measures affecting the supply of a service
 - Any **limitations** must be inscribed in Schedules under the relevant mode(s).



THE END