

CTS Thematic Seminar  
“Mode 4 at Work”



**Mode 4 –  
Scope, commitments, MFN  
exemptions**

Trade in Services and Investment Division, WTO

Geneva, 10 October 2018

# Structure of the presentation



1. The WTO and the temporary movement of persons
2. The scope of mode 4
3. A snapshot of GATS mode 4 commitments and 4 MFN exemptions

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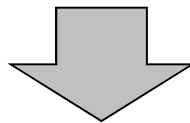
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# Why is the movement of persons covered by WTO disciplines?



Four modes of supply (GATS Article I):

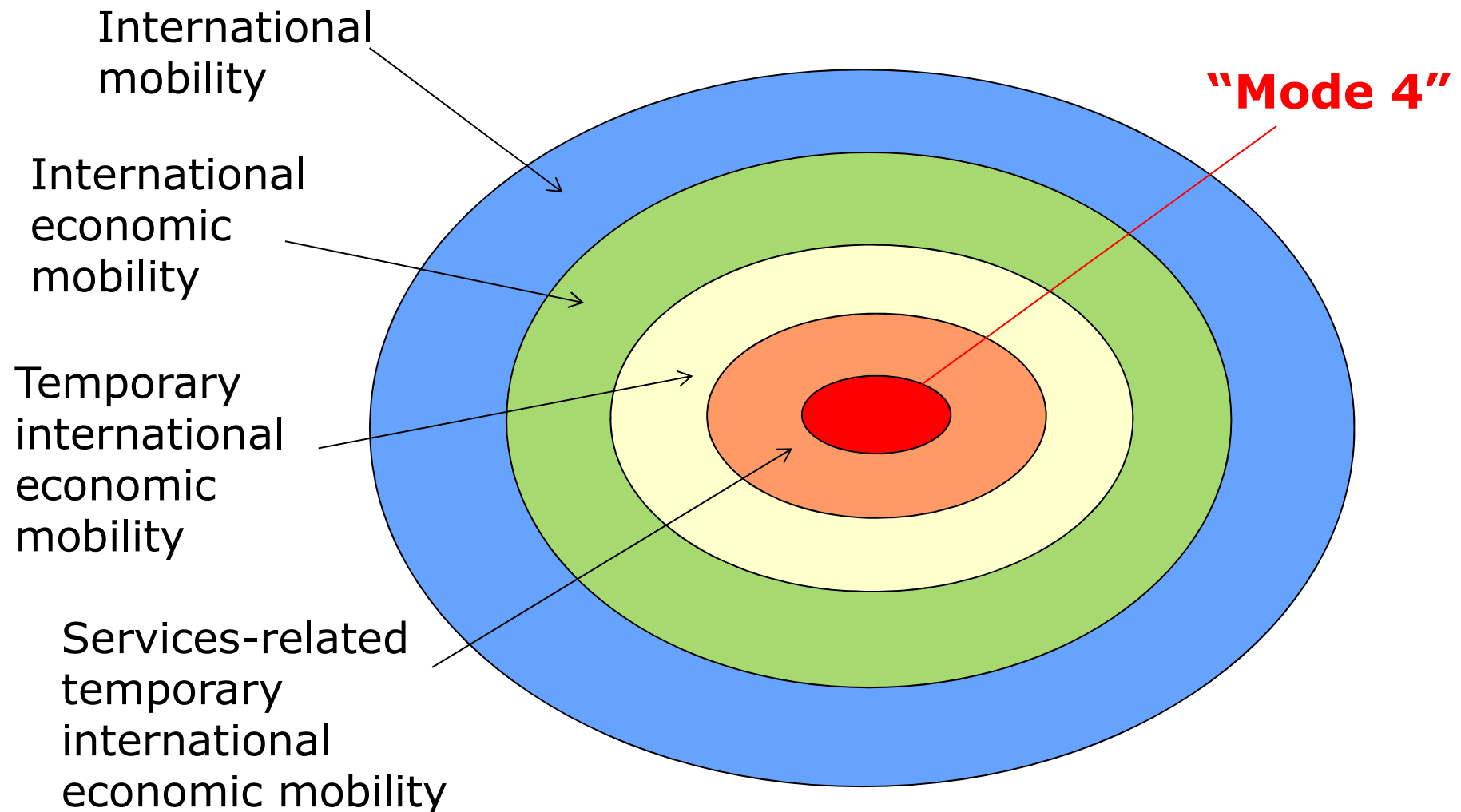
- (1) Cross border supply
- (2) Consumption abroad
- (3) Commercial presence
- (4) Presence of natural persons



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

# Mode 4

A “sub-sub-...-subset”  
of international mobility



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# GATS definition - Mode 4 is ...



The supply of a service by:

Natural person

Juridical person

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

[Article I:2(d) and Article XXVIII(j)]

## Annex on MNP (1/3) – Natural Persons may be:



- “Service suppliers of a Member”  
present in the territory of any other Member
  - *‘Independent professionals’*
- “Employed by a service supplier of a Member” (= or ≠ Member) present in the territory of any other Member
  - *‘Intra-corporate transferees’*
  - *‘Business visitors’*
  - *‘Contractual service suppliers’*
  - *‘Employees of foreign service suppliers’*



# Annex on MNP (2/3) – The GATS does not cover:



- natural persons  
“seeking access to  
the employment  
market”
- measures regarding  
citizenship,  
residence or  
employment on a  
**permanent** basis



## Annex on MNP (3/3) – Plus ...



Members are **free to apply measures to regulate** entry or temporary stay in their territory, provided these measures are **not** applied in such a manner as to **nullify or impair** the benefits of commitments\*

\*Including by applying differential visa requirements

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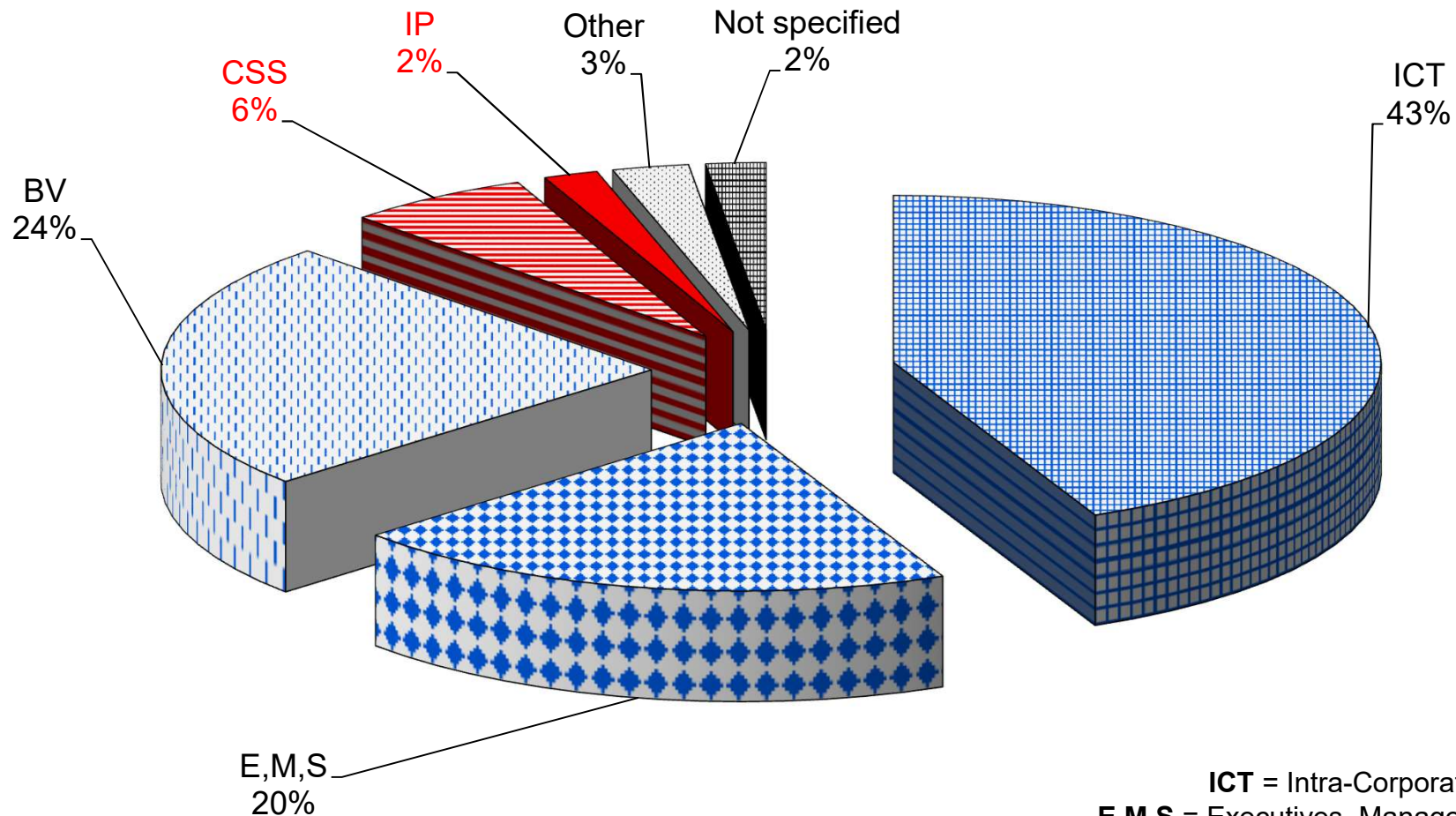
# A snapshot of commitments



- Governed by horizontal conditions ...→ apply to committed sectors
- Absence of full liberalization: “Unbound except..”
- Categories linked to commercial presence
- High-level of education/training
- Duration of stay: 3 months to 5 years
- Quotas/ENTs
- Residency and nationality requirements

# Categories included in mode 4 commitments

(% of total categories scheduled horizontally)



ICT = Intra-Corporate Transferees  
E,M,S = Executives, Managers, Specialists  
BV = Business Visitors  
CSS = Contractual Service Suppliers  
IP = Independent Professionals  
Source: WTO Secretariat (2018)

# Recently acceded Members – Mode 4 commitments



- Overall, little variation compared with “older” Members, both in terms of committed categories, definitions used and limitations scheduled
- Where there are differences, these concern:
  - Inclusion of “graduate trainees” (as ICTs)
  - More frequent recourse to ENTs, at times on top of quotas (also for ICTs)
  - Unanimous 1 year pre-employment requirement
  - Relatively shorter duration of stays (e.g. ICTs: maximum 3 years; BV: 60 days; etc.)

# Mode 4 MFN exemptions



- Caveats:
  - MFN exemptions not structured by mode → “all sectors”, but specific sectoral exemptions also potentially relevant (e.g. professional services)
  - Assessment complicated by unspecific references (e.g. to regional agreements), without clear mode 4 indication
- Still, **46 exemptions** with comprehensive sectoral coverage dealing with mode 4, on the part of 25 Members (EU28=1)
  - Preferences relate to work/residence permits, ENTs, nationality requirements, access to certain activities
  - Beneficiaries not always clearly identified (“traditional sources”)
  - Most destined for “indefinite” duration



THANK YOU