



WORLD TRADE
ORGANIZATION

Trade in Services and Scheduling of Specific Commitments

- Review of Key concepts -

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Advanced Scheduling Workshop for SADC Member States

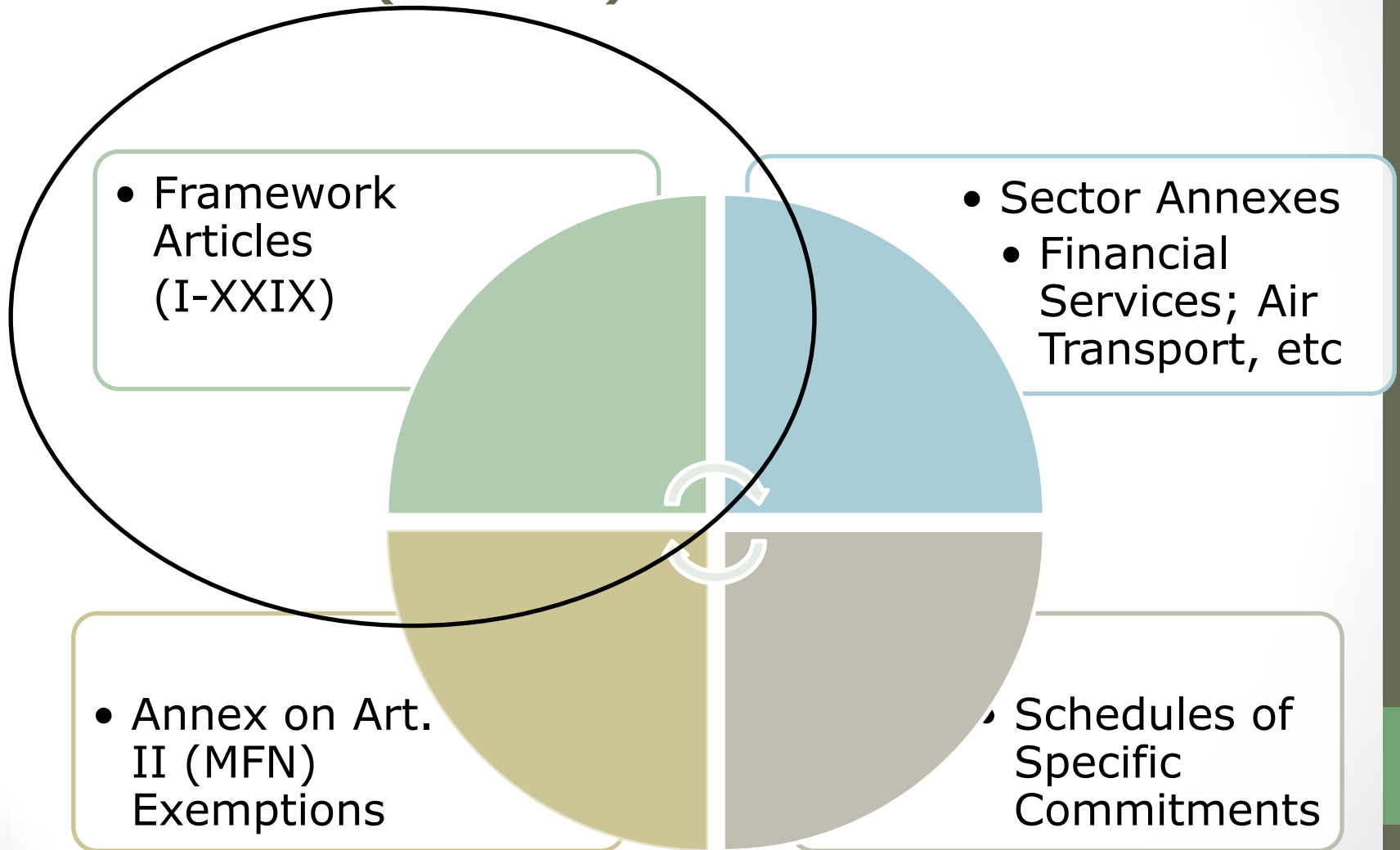
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What are we going to cover?

- What constitutes trade in services? – Scope and coverage
- Architecture of the GATS and the SADC Trade in Services Protocol
- Main general obligations : Most-Favoured-Nation Treatment in GATS and under the SADC Trade in Services Protocol
- Main conditional obligations: Market Access and National Treatment
- Structures of Schedules of Commitments
- Other elements of the Trade in Services architecture: Transparency, Recognition, Exceptions...

General Agreement for Trade in Services (GATS): Structure



Architectural differences GATS – SADC TIS

Part of the Agreement/Protocol	GATS	SADC TIS Protocol
Framework Agreement	29 Articles	33 Articles <i>Art 3: Scope and Coverage</i> <i>Art 17: Temporary Movement of nat. Persons</i>
Sector/Mode Annexes	<ul style="list-style-type: none"> - Financial Services - Telecommunications - Air Transport - Telecommunications - Movement of Persons 	Annex concerning the Settlement of Disputes between the State Parties
MFN	<ul style="list-style-type: none"> - Annex on Art II Exemptions - MFN Exemption Lists 	MFN Exemption Lists
Annex: Schedules of Commitments	Art XX- describes main elements of schedules, & that they shall be annexes as integral part of GATS	<p>Art 16:5: State Parties' lists of commitments, upon adoption, shall be an integral part of this Protocol.</p> <p>Art 26: CMT may adopt annexes, integral part of Protocol</p>

Gateway Provisions

Scope and Definitions

GATS/TIS covers

- measures “affecting trade in services”
- at all governmental levels (plus non-governmental bodies exercising delegated powers)
- in all services sectors (sectors not further defined)
- applies to services and service suppliers
- Supply of a service includes the production, distribution, marketing, sale and delivery of a service (Art XXVIII)

Exclusions

- “services provided in the exercise of governmental authority”
- Air traffic rights: (Annex on Air Transport Services/ [Art: 3](#))

SADC TIS adopts most GATS definitions by reference (Art 1:1)

A closer look at the exclusions

1) **Services supplied in the exercise of governmental authority**

- Neither on a commercial basis,
- nor in competition with one or more service suppliers

Examples: *public education, fire-fighters, customs administration, monetary or exchange rate policies by a central bank.*

2) **Measures affecting air traffic rights**

The GATS, including its dispute settlement procedures, shall **not** apply to measures affecting air traffic rights, however granted, and services directly related to the exercise of traffic rights “

..but covers

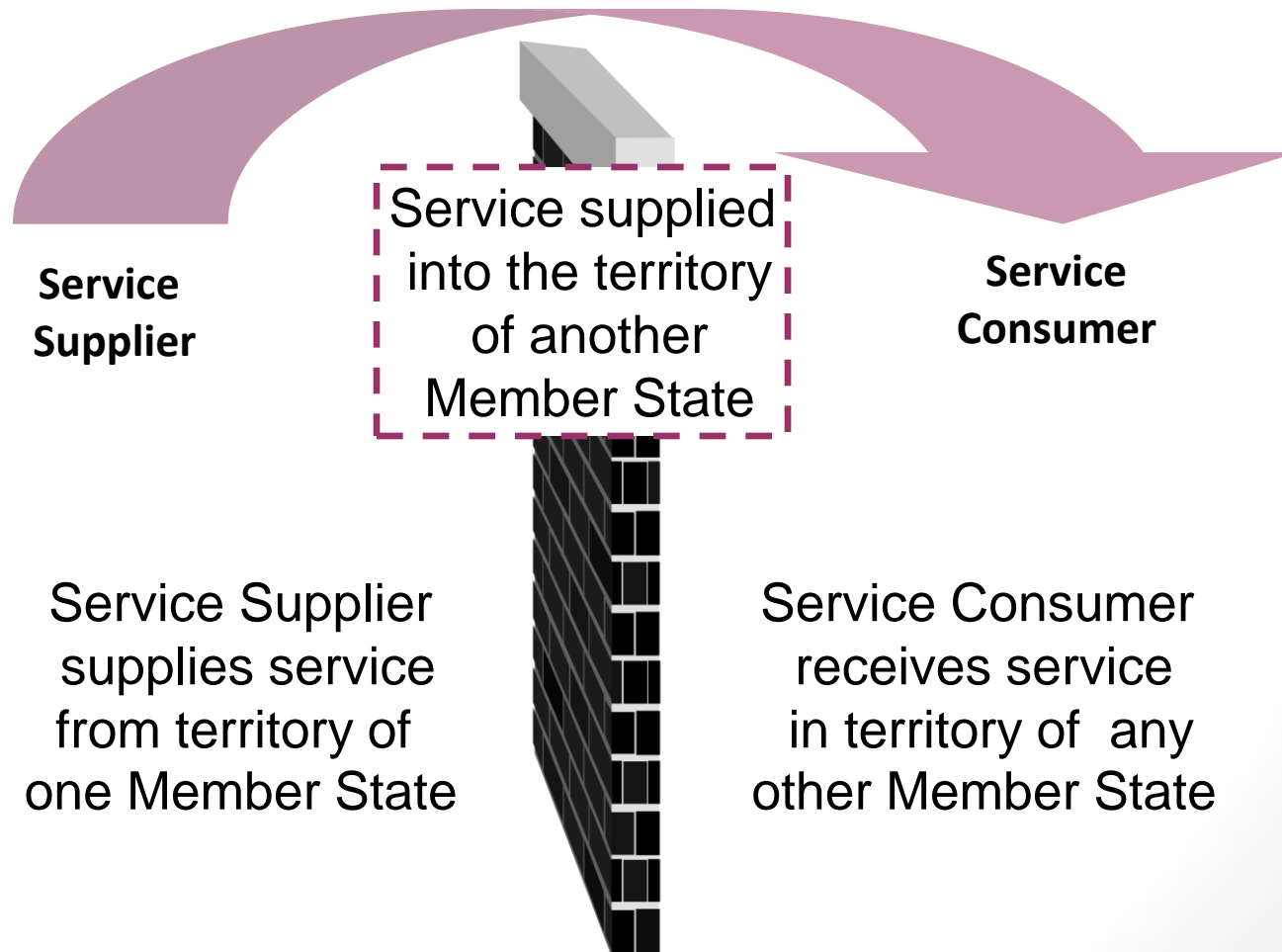
- (a) Aircraft repair and maintenance,
- (b) computer reservation systems,
- (c) selling and marketing of air services



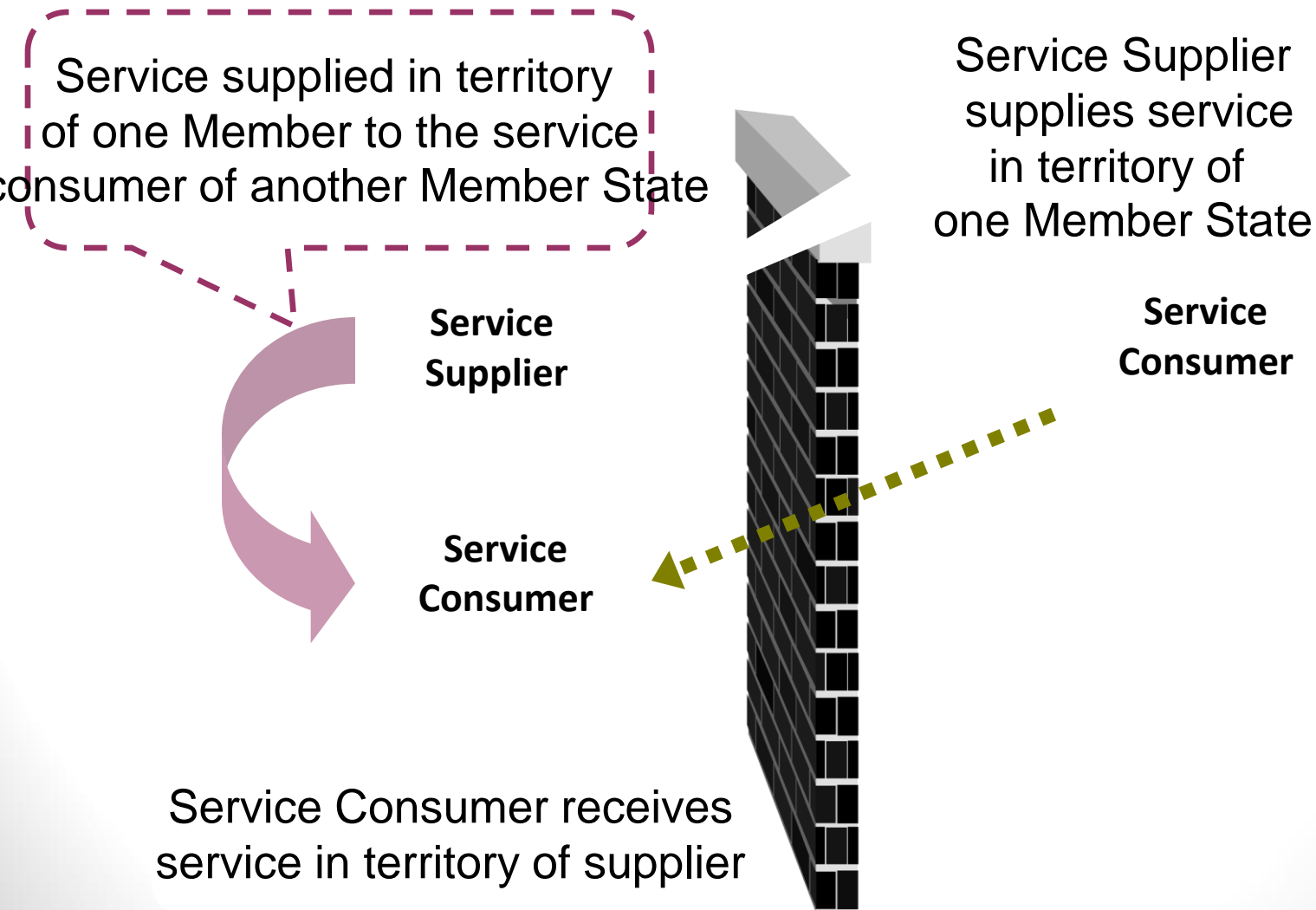
WTO OMC

How are services traded?

Cross border supply - Mode 1



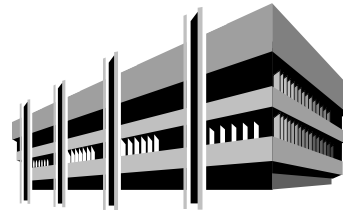
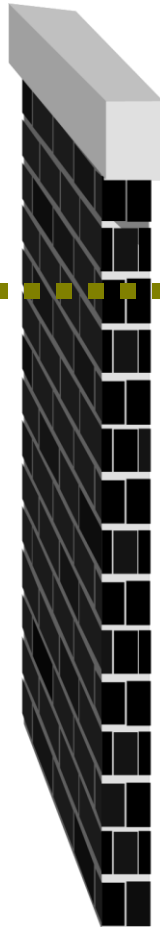
Consumption abroad - Mode 2



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

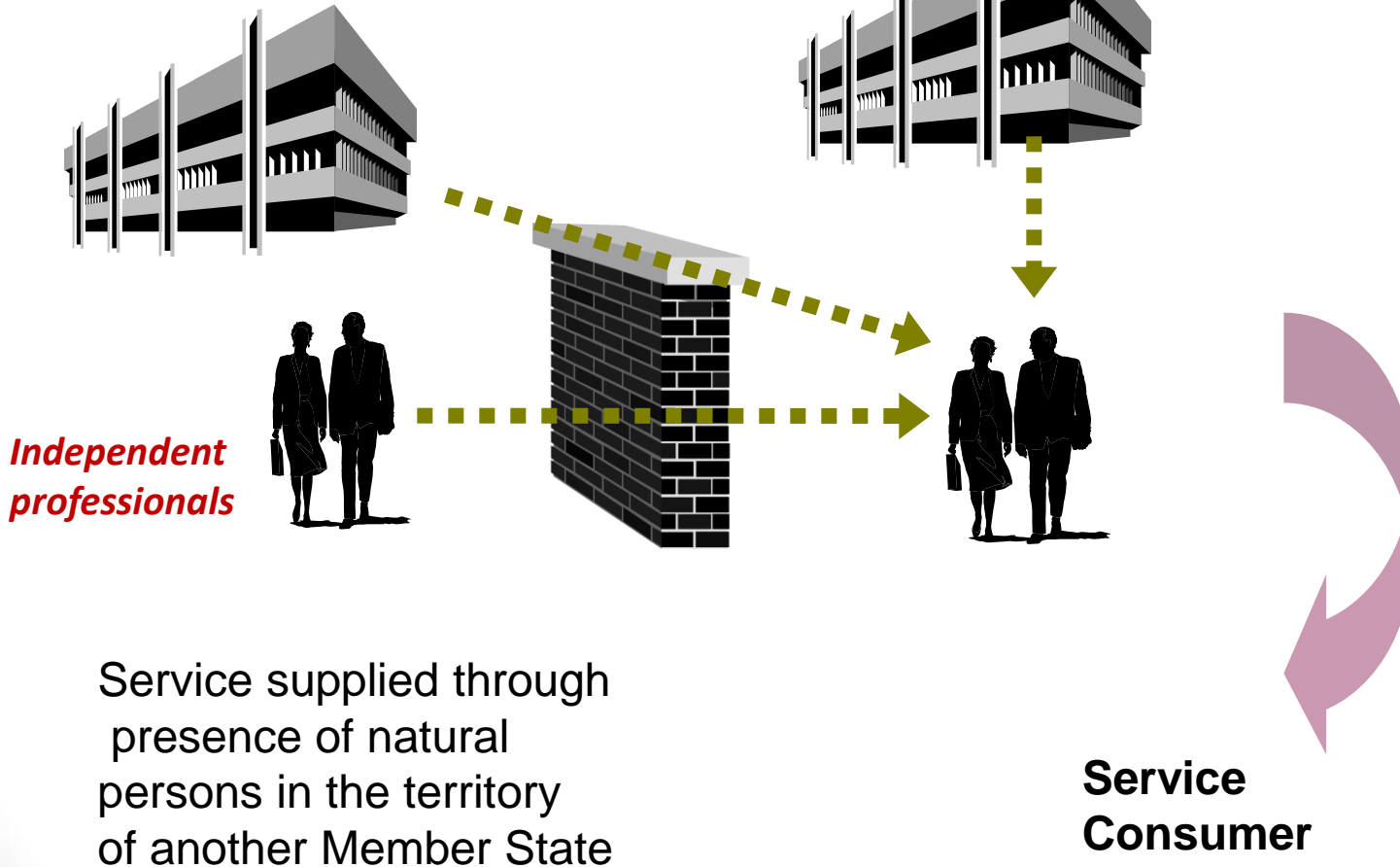


Service supplied through commercial presence

Natural Persons - Mode 4

*Employees of
a foreign-
based supplier*

*Employees of a
host-country
based employer*



Crucial issue: who is covered?

YES	NO
<ul style="list-style-type: none">• <u>Foreign employee</u> of foreign-owned service supplier in host country• <u>Foreign employee</u> of foreign-incorporated service supplier (any nationality) sent into host country to fulfil a contract• <u>Foreign employee</u> of multinational service supplier transferred into host country• <u>Independent foreign professional</u> entering a country to fulfil a contract• <u>Independent foreign professional</u> established in host country• Business visitors	<ul style="list-style-type: none">• Employee in goods sector• Employee of host country firm• Person with citizenship

In what modes are the following services supplied?

- A professional accountant from Namibia travels to Angola to provide accounting services to a medium-sized company.
- An insurance company from Botswana establishes a subsidiary in Zambia.
- A truck registered in Lesotho is repaired in South Africa
- Student from Tanzania takes a long-distance degree course offered by a University in the United Kingdom
- A citizen of Uganda insures his car with a company established in Kenya.
- Consumer from Namibia takes a loan from Bank located in South Africa

GATS: Sector coverage

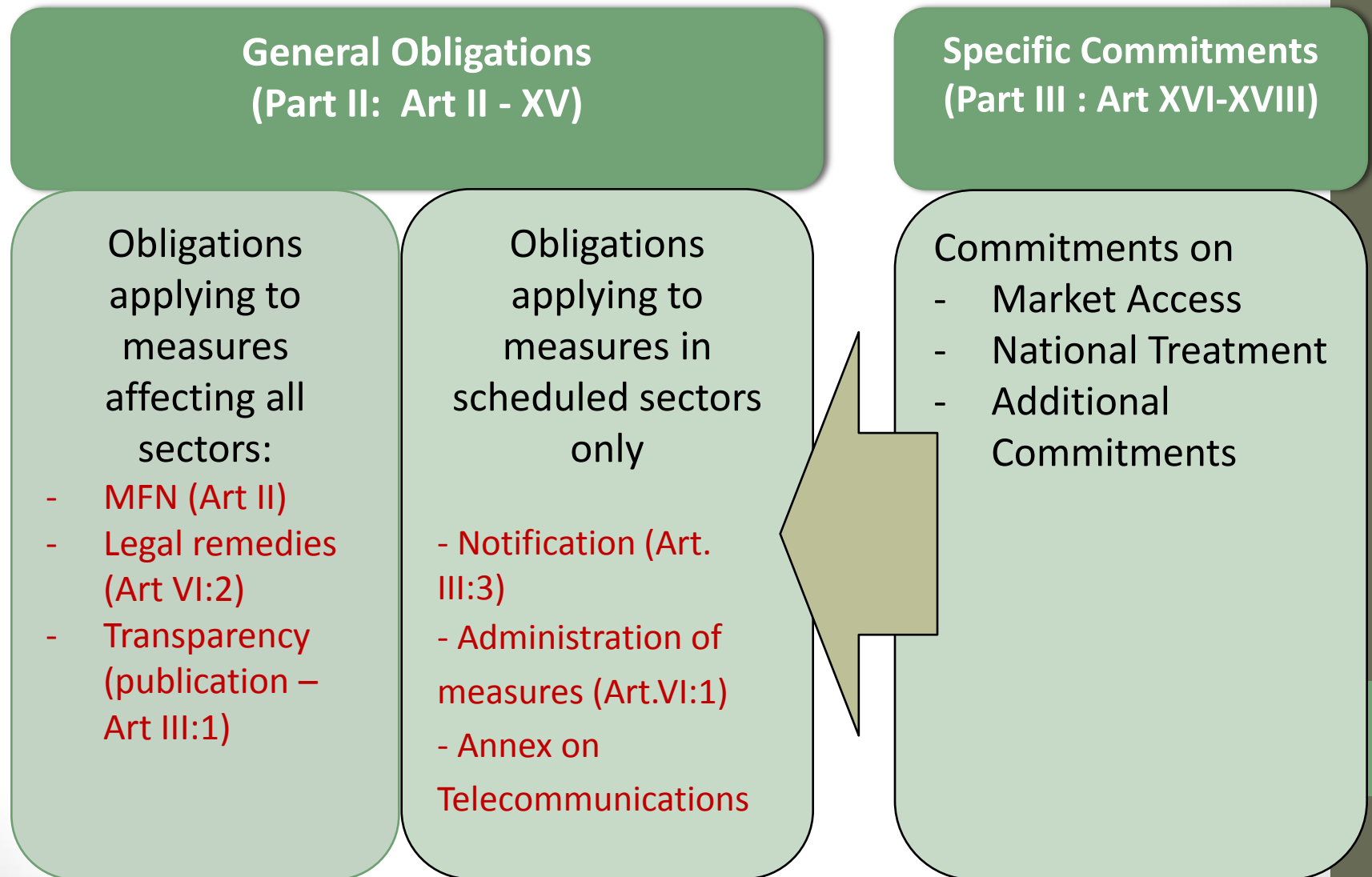
“All Services in all sectors” (other than exclusions)

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

Services Sector Classification list
“W/120”, use as a tool prescribed in
WTO Scheduling and SADC Negotiating
Guidelines

Any sector missing?

Logic of obligations and commitments



Key obligations: Most favoured nation status (MFN) – GATS Article II/SADC Tis Art 4

With respect to any measure covered by this Agreement, 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)

A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions. (Article II:1)

What are MFN Exemptions needed for?

- National laws requiring reciprocal treatment or extending special preferences
- Bilateral or regional or other agreements extending preferences that do not satisfy the criteria of GATS Article V,
 - e.g. do not have “substantial sectoral coverage”, exclude modes of supply, and/or do not “provide for the absence or elimination of substantially all discrimination”.

Exceptions from MFN in SADC

- Services preferences granted between SADC MS (4:2)
 - *Notwithstanding paragraph 1, two or more State Parties may conduct negotiations and agree to liberalise trade in services for specific sectors or sub-sectors in accordance with the objectives in this Protocol.*
- Future preferential agreements of SADC MS with third countries (4:3)
 - *Nothing in this Protocol shall prevent a State Party from entering into new preferential agreements with third countries in accordance with Article V of GATS provided such agreements do not impede or frustrate the objectives of this Protocol.*
- Existing preferential agreements of SADC MS with third countries (4:4)
 - *Nothing in this Protocol shall prevent a State Party from maintaining any preferential agreement entered into with a third party, prior to the adoption of this Protocol*
- MFN Exemption Lists (4:5)
 - *A State Party may maintain a measure which is inconsistent with paragraph 1, provided it is listed in the Most Favoured Nation_(MFN) exemption list.*

Art 4:2-4 “afford reasonable opportunity to other State Parties to negotiate the same preferences “

SADC MFN Review Questions

What are the consequences of the following hypothetical scenarios?

- ... SACU MS want to give each other better treatment than other SADC MS in Financial Services and Road Transport Services.
- ... Botswana and India agree on preferences given to Indian software service supplier.
- ... Swaziland wants to conclude a Services EPA with the EU. Does it have to extend the same treatment granted to EU suppliers also to all other SADC service suppliers?
- ... At the end of the first round of SADC negotiations, some SADC Member States have signed and ratified the TIS Protocol, but not submitted any schedule. Other SADC Member States do not want to extend the preferences contained in their schedules to these countries.

Lists of MFN Exemptions: Elements

16th TNF adopted same structure as WTO for MFN Exemption Lists

1	2	3	4	5
Description of the sector or sectors in which the exemption applies	Description of the exemption, indicating why it is inconsistent with Article II	Country or countries to which the exemption applies	Intended duration of exemption	Conditions creating the need for the exemption

- At present 532 Exemptions by 99 Members (counting EU-12 as one)
- Some 90% of Exemptions intended for “indefinite” period

In what scenario can SADC
Members use SADC MFN
exemptions?

Discuss!

Other Permitted departures from MFN

- 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)

Permissible Provisions:

*SADC TIS Art 7 contains
mandate to start work
on mutual recognition
agreements*

Recognition (Article VII)

- Recognition of foreign education, experience, requirements met, or licenses and certifications granted to fulfil standards and criteria for authorization, licensing or certification of service suppliers.
- through negotiations or autonomously
- Openness of agreements for new Members
- No discrimination among countries
- Transparency of recognition measures and arrangements
- Use of multilaterally agreed criteria/development of international standards and criteria

Permissible Provisions:

Economic Integration (Article V)

- Preferential trade agreements must have substantial sectoral coverage and eliminate substantially all discrimination
- No increase in external trade barriers
- No discrimination of foreign-owned resident companies
- Notification and information requirement (working party)

Flexibility/exceptions for developing countries

What is liberalization of trade in services?

- Important distinction between “Regulation” and “Liberalization”
 - 1) The GATS does not prescribe or prohibit any form of “regulation”
 - 2) Countries can define regulatory requirements and processes according to national needs/preferences
 - 3) Only certain types of quantitative restrictions, and measures discriminating between foreign and local services or suppliers are relevant under the GATS, and only in sectors designated for liberalization