

TRANSPACIFIC PARTNERSHIP: TRADE IN SERVICES

Session 3

Philippine Services Conference and Roundtable
Discussion: Creating Synergies and Value
for Global Participation

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Services and Trade in Services

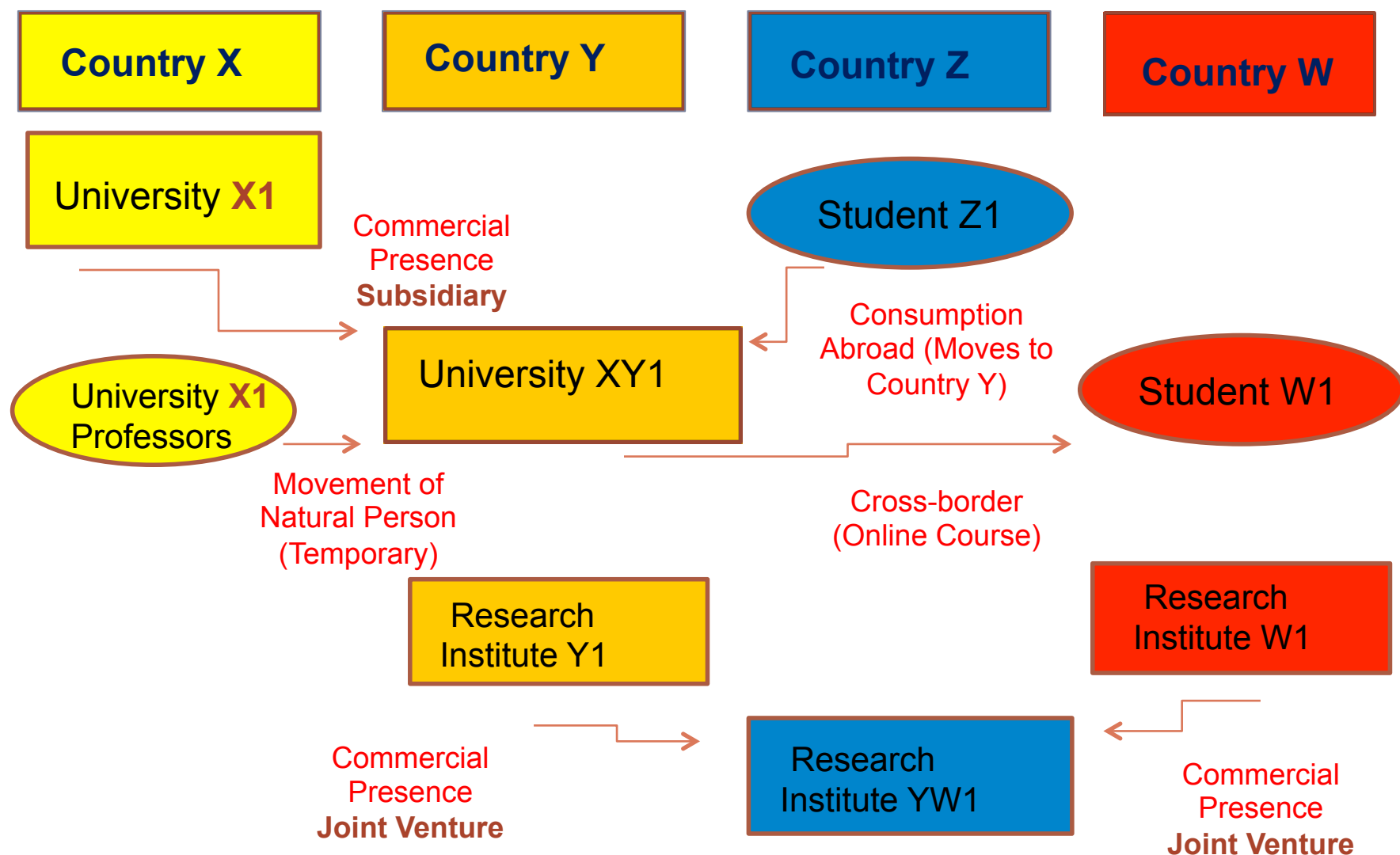
❑ Services

- refer to intangible products and activities
- are the results of a production activity that
 - changes the conditions of the consuming units, or
 - facilitate the exchange of products or financial assets.

❑ Trade in Services is the supply of service via

- Mode 1 cross border supply
- Mode 2 consumption abroad
- Mode 3 commercial presence
- Mode 4 movement of natural person

International Trade in Services



Old vs New Generation FTAs

“More meaningful outcomes”

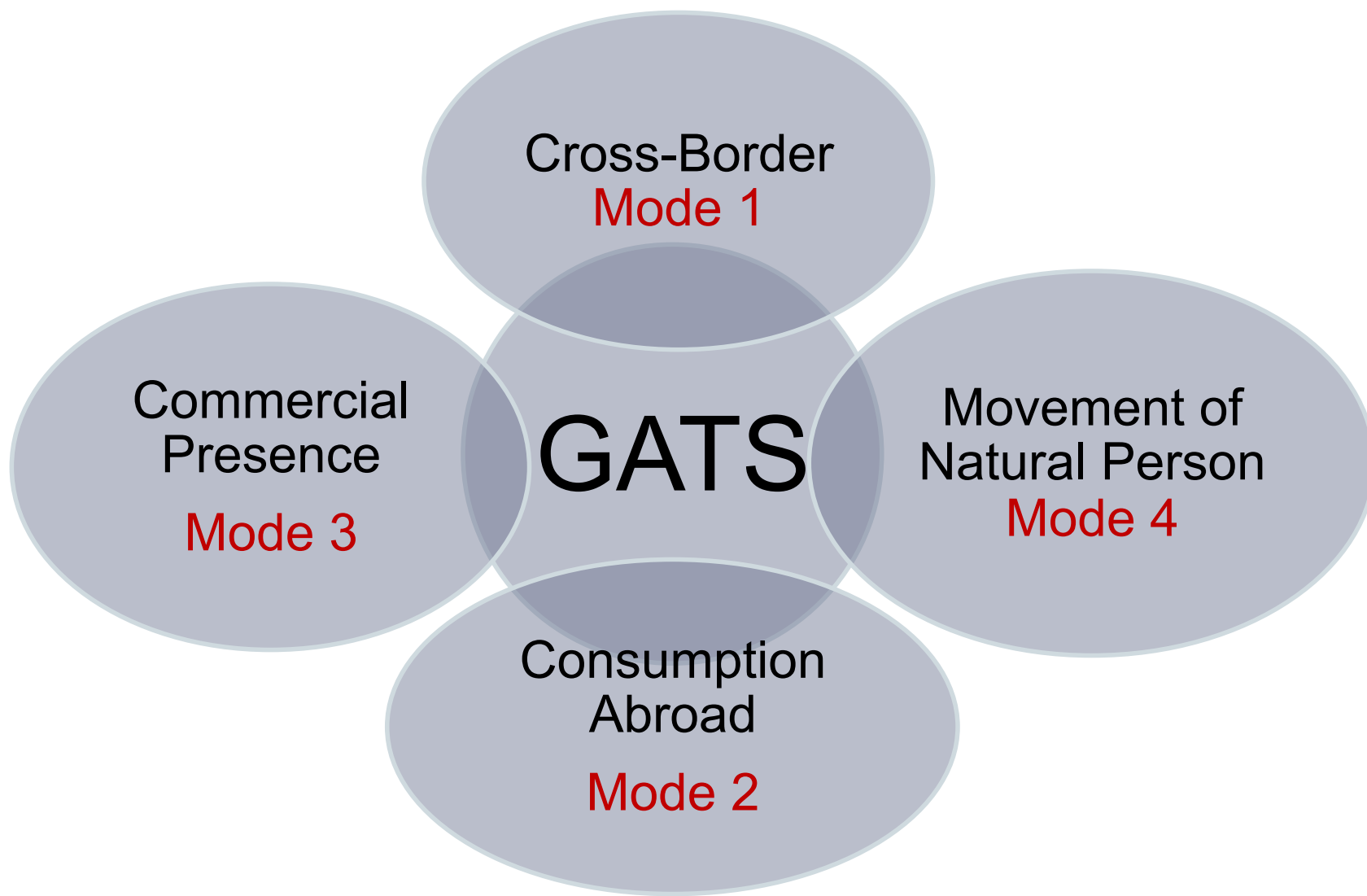
“Unprecedented **ambition** and **scope**”

Increased trade and investment

Remove barriers

Create a more open environment

WTO GATS AND ASEAN AFAS



TPP CHAPTERS ON SERVICES

Investment
(Chapter 9)

**Cross-
Border
Trade**
(Chapter 10)

Financial Services
(Chapter 11)

**Temporary
Entry for
Business
Persons**
(Chapter 12)

**Telecommunication
Services**
(Chapter 13)

**Government
Procurement**
(Chapter 15)

TPP: Cross-Border Trade

❑ Supply of a service

- from the territory of a Party into the territory of another Party;
- in the territory of a Party to a person of another Party; or
- by a national of a Party in the territory of another Party

❑ FTA Obligations

- treatment no less favorable than own supplier (National Treatment)
- treatment no less favorable than supplier of another Party or non-Party (Most Favored-Nation)
- not adopt any measure that impose limit on service suppliers (Market Access)
- not to require a service supplier of another Party to establish or maintain an office or enterprise, in its territory as a condition for the cross-border supply of a service (Local Presence)

TPP: Cross-Border Trade

❑ **Examples of Barriers** (Taken from TPP Annex 1)

▪ **Local Presence (Australia)**

In order to register to practise in Australia, patent attorneys must be ordinarily resident in Australia.

▪ **National Treatment (Malaysia)**

Foreigners are not allowed to act as customs agents and brokers.

▪ **Market Access (Brunei Darussalam)**

A foreign national or service supplier may not provide legal services in Brunei Darussalam except in relation to international law or home country law.

▪ **Most-Favored Nation Treatment (Singapore NCM Annex 1)**

Foreigners, except Malaysians, shall not be allowed to work as guards, but can be involved in the administration of the company.

❖ **Note: If measure is to be maintained, it must be scheduled by the Party**

TPP: Cross-Border Trade

□ Domestic Regulation

- **Domestic regulation** must be administered in a reasonable, objective and impartial manner
- **Measures** relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services
- Where **authorization is required**, competent authority must
 - Inform applicant of result (within reasonable time)
 - Establish indicative timeframe for processing timeframe
 - If application is rejected, inform applicant of reasons for rejection
 - Provide status of application (on request by applicant)
 - Allow applicant to correct minor errors in application (to the extent practicable)
- Ensure that there are procedures in place domestically to assess the competency of professionals of another Party

TPP: Cross-Border Trade

□ Recognition

- May **recognize** the **education** or **experience obtained**, **requirements met**, or **licenses** or **certifications granted**
 - through harmonization or on an agreement or arrangement, or may be accorded autonomously.
- A Party that is a party to an agreement or arrangement - afford adequate opportunity to another Party, on request, to negotiate accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement.
- If a Party accords recognition autonomously - afford adequate opportunity to another Party to demonstrate that education, experience, licenses or certifications obtained or requirements met in that other Party's territory should be recognized.

TPP: Cross-Border Trade

□ **Professional Services** (Annex 10-A)

- consult with relevant bodies in its territory to seek to identify professional services when two or more Parties are mutually interested in establishing dialogue on issues that relate to the recognition of professional qualifications, licensing or registration.
- relevant bodies to establish dialogues with a view to recognising professional qualifications, and facilitating licensing or registration procedures.
- encourage its relevant bodies to take into account agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing and registration
- take steps to implement a temporary or project specific licensing or registration regime based on a foreign supplier's home licence or recognised professional body membership, without the need for further written examination.

TPP: Cross-Border Trade

- ❑ In relation to APEC work in **engineering and architecture** to promote the recognition of professional competence and mobility of professionals in these fields.
- Encourage its relevant bodies to work towards becoming authorised to operate APEC Engineer and APEC Architect Registers
- Take further steps, a Party should consult its relevant professional bodies on development of procedures for temporary licensing and registration of engineers from another Party
 - Development of model procedures for adoption of competent authority
 - Engineering specialties to which priority should be given in developing temporary licensing and registration procedures

TPP: Cross-Border Trade

- In relation to transnational legal services each Party shall encourage its relevant bodies **to consider**, subject to its laws and regulations, **whether or in what manner**:
 - foreign lawyers may practice foreign law
 - foreign lawyers may prepare for and appear in commercial arbitration, conciliation and mediation proceedings
 - local ethical, conduct and disciplinary standards are applied to foreign lawyers
 - alternatives for minimum residency requirements
 - the following modes of providing transnational legal services are accommodated
 - temporary fly-in, fly-out basis
 - through the use of web-based or telecommunications technology
 - via commercial presence; a
 - foreign lawyers and domestic (host country) lawyers may work together in the delivery of fully integrated transnational legal services; and
 - a foreign law firm may use the firm name of its choice

TPP: Investment in Services

❑ **Supply of a service**

- In the territory of a Party by a covered investment (commercial presence)
- ❑ Investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment.

❑ **FTA Obligations**

- National Treatment
- Most-Favored Nation
- no nationality or residency requirement (Senior Management and Board of Directors)
- prohibits conditions or requirements attached to approval of investment (Performance Requirement)

TPP: Investment in Services

❑ **Examples of Barriers** (Taken from TPP Annex 1)

• **Performance Requirement (Mexico)**

The State may mandate PEMEX through its entitlements, exploration and production contracts, and permits, to include preferences for the purchase of national goods, contracting domestic services, as well as a preference for nationals, including technicians and senior management.

▪ **Senior Management and Board of Directors (Viet Nam)**

Foreign investment to provide maritime passenger and freight transportation services under the national flag of Viet Nam may not be provided except through a joint venture or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 49 percent. In addition, foreign seafarers may not exceed 1/3 of total employees of the ships. The Master or first chief executive must be a Vietnamese citizen.

❖ **Note:** If measure is to be maintained, it must be scheduled by the Party

TPP: Temporary Entry for Business Persons

- ❑ **Temporary entry** means entry into the territory of a Party by a business person of another Party who does not intend to establish permanent residence.

- ❑ **Business person** means (a) a natural person who has the nationality of a Party* or a permanent resident of a Party** who is engaged in trade in goods, the supply of services or the conduct of investment activities

* As per Party-Specific Definitions

** That prior to entry into force of the Agreement, the Party has made a notification consistent with Article XXVIII(k)(ii)(2) of GATS)

TPP: Temporary Entry for Business Persons

❑ FTA Obligations

Grant temporary entry or extension of temporary stay to business persons of another Party to the extent provided for in those commitments made

❑ Does not apply to:

- seeking access to the employment market of another Party,
- measures regarding citizenship, nationality, residence or employment on a permanent basis

❑ Does not prevent a Party from applying measures to:

- regulate the entry of natural persons of another Party 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

TPP: Temporary Entry for Business Persons

❑ Business Travel

- The Parties affirm their commitments to each other in the context of APEC to enhance the mobility of business persons, including through exploration and voluntary development of trusted traveller programmes, and their support for efforts to enhance the *APEC Business Travel Card* programme.

TPP: Government Procurement

- ❑ Covered procurement means government procurement:
 - (a) of a good, service or any combination thereof as specified in each Party's Schedule to Annex 15-A;
 - (b) by any contractual means, including: purchase; rental or lease, with or without an option to buy; build-operate-transfer contracts and public works concessions contracts

- ❑ The Schedule specifies the following:
 - Govt entities whose procurement is covered
 - Goods covered under the Chapter
 - Construction services covered under the Chapter
 - Services other than construction services covered under the Chapter

Participation in FTA

❑ Important Notes:

- Increasing interconnectedness
- Countries and companies and even individuals are internationalising
- FTA opens door to expand trade and investment
- But it is not a one-way arrangement - it has to be mutually beneficial

❑ How do we optimize engagement and participation in TPP or FTA?

- Do we want a share of the pie? What is our objective?
- How do we get that share of the pie? What must we do?

THANK YOU!!!