

International Trade Center UNCTAD/WTO
(Training Programme for Trade Officials and Negotiators
from Pakistan)

***“Mexico’s experience and perspective
in the negotiations of services”***

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Structure of presentation

- I. Uruguay Round (1986-1994)
- II. The economic importance of the services sector
- III. The General Agreement on Trade in Services
- IV. Trade in services within the GATS
- V. Services Sectoral Classification list
- VI. 4 modes of supply
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- XIV. The Market Access Negotiations in the WTO: Mexico's Offers
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I. Uruguay Round (1986-1994)

- Issues on the Uruguay Round:
 - Market access to industrial goods
 - Agriculture
- New sectors and issues in the multilateral trading system:
 - textiles
 - services
 - intellectual property
 - investment measures
 - dispute settlement
- The creation of the WTO as a new international organization for the administration of multilateral agreements related to trade

II. The economic importance of the services sector

- Services represent the most dynamic component in the economies of developed and developing countries. Notwithstanding its own relevance, services are an indispensable part in the production of most goods.
- The participation of services in global production and employment fluctuates between less than 30% and the 70%, depending on the level of development of each economy.
- At international level they represent around 20% of total trade.
- In Mexico, services represents 66% of GDP and 60% of the total employment, approximately.

III. The General Agreement on Trade in Services

- The inclusion of services in the Uruguay Round resulted in the establishment of the General Agreement on Trade in Services (GATS).
- By means of this instrument, Members create a credible and reliable system of international rules, that:
 - *Ensure fair and equitable treatment of all participants (principle of non-discrimination);*
 - *Stimulate economic activity through guaranteed policy bindings;*
 - *Promote trade and development through progressive liberalization, and*
 - *Increase the participation of developing countries*

III. The General Agreement on Trade in Services (Cont.)

General Principles

- ✓ Most Favoured Nation (MFN)
- ✓ National Treatment
- ✓ Market access
- ✓ Transparency

GATS Structure

- ✓ Disciplines
- ✓ Schedule of specific commitments
- ✓ Most Favoured Nation (MFN) Exemptions

IV. Trade in services within the GATS

The GATS applies in principle to all services sectors, with two exceptions:

- ✓ services supplied in the exercise of governmental authority, and
- ✓ measures affecting air traffic rights and services related to the exercise of such rights

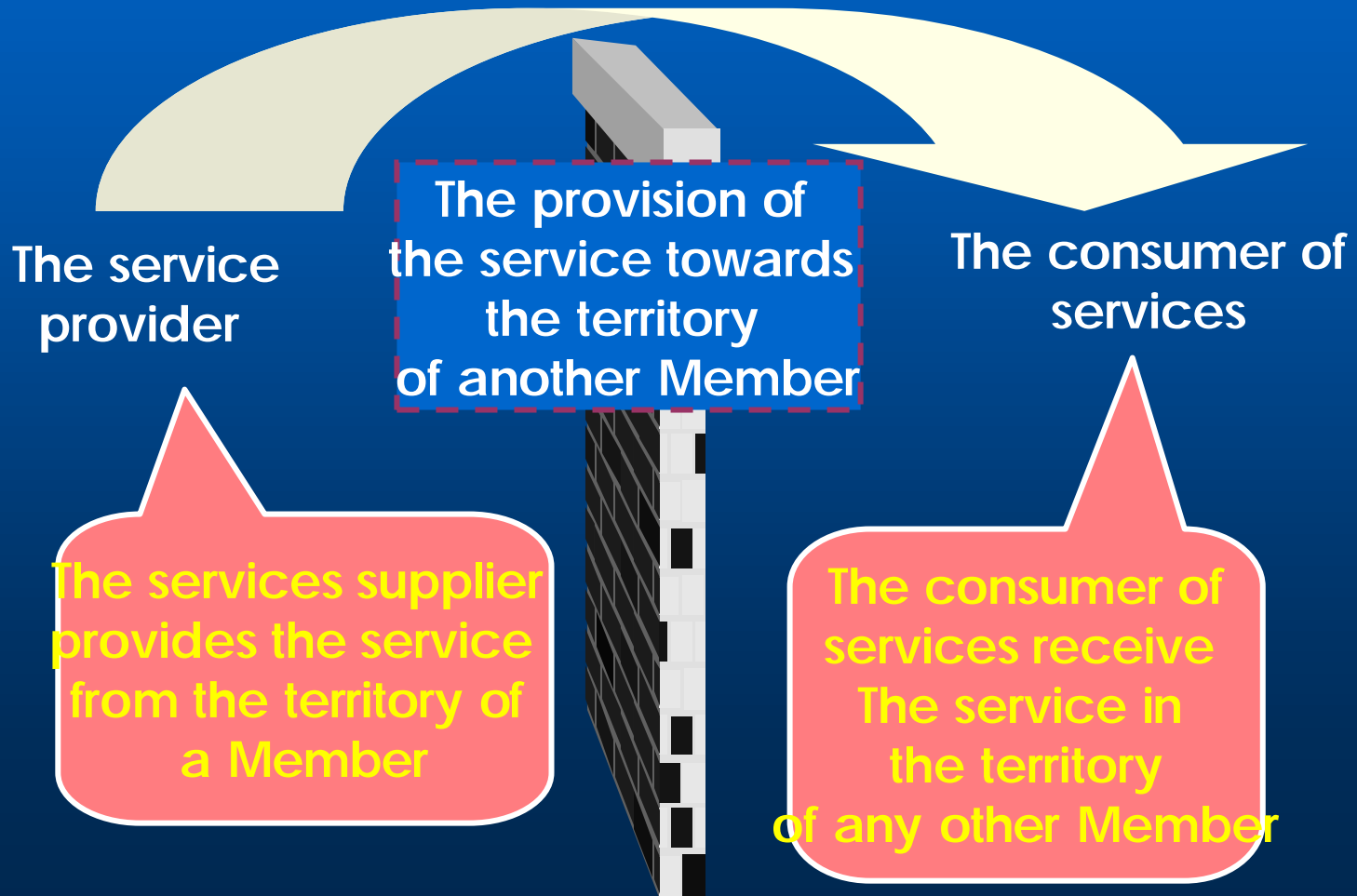
V. Services Sectoral Classification list

The WTO classification (W/120) contains twelve broad sectors as follows:

- Business (professional services);
- Communication;
- Construction and Engineering;
- Distribution;
- Education;
- Environment;
- Financial;
- Health;
- Tourism and travel;
- Recreation, cultural, and Sporting;
- Transport;
- Other

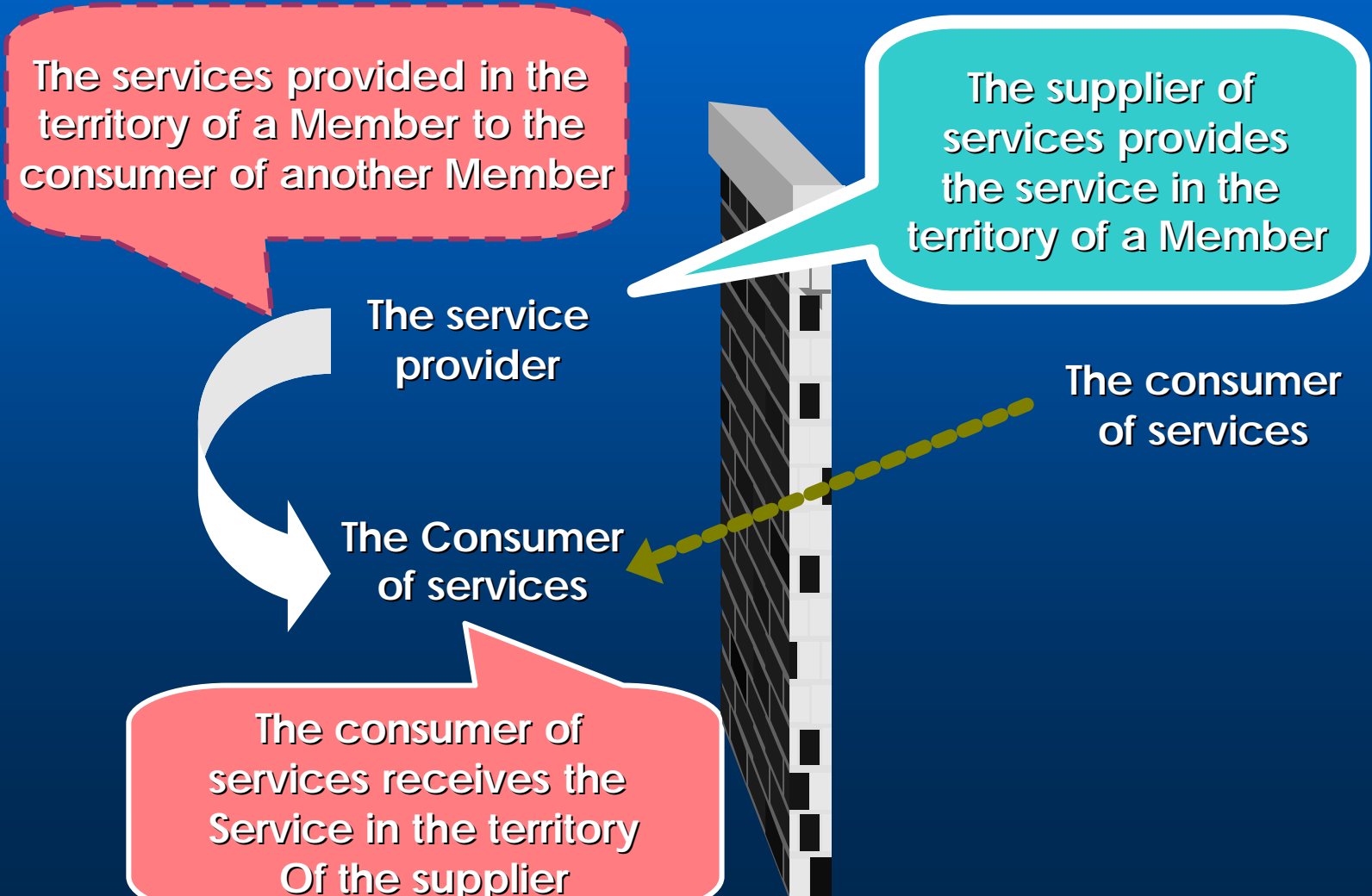
VI. 4 Modes of supply

Cross-border supply: mode 1



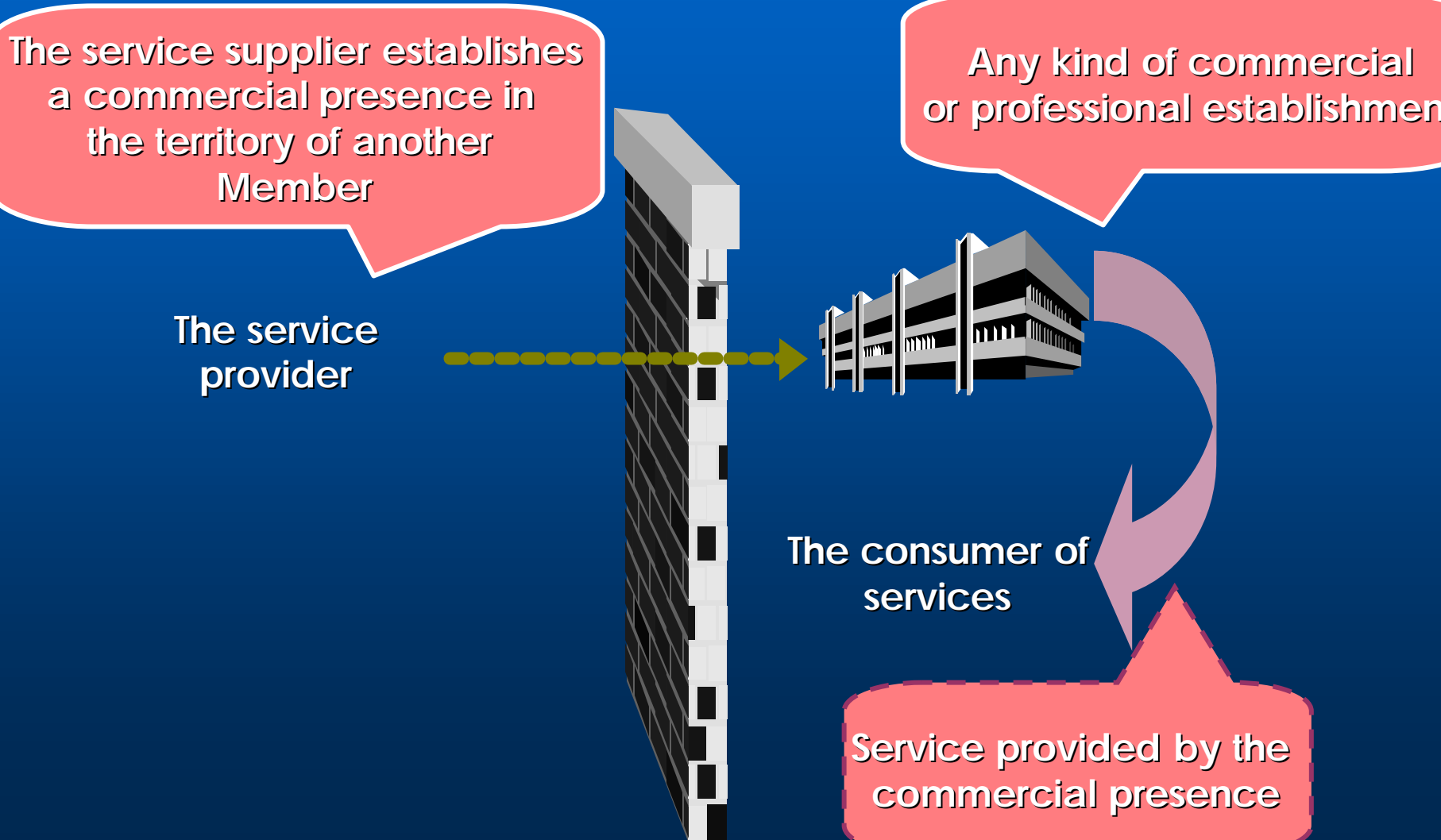
VI. 4 Modes of supply (Cont.)

Consumption abroad: Mode 2



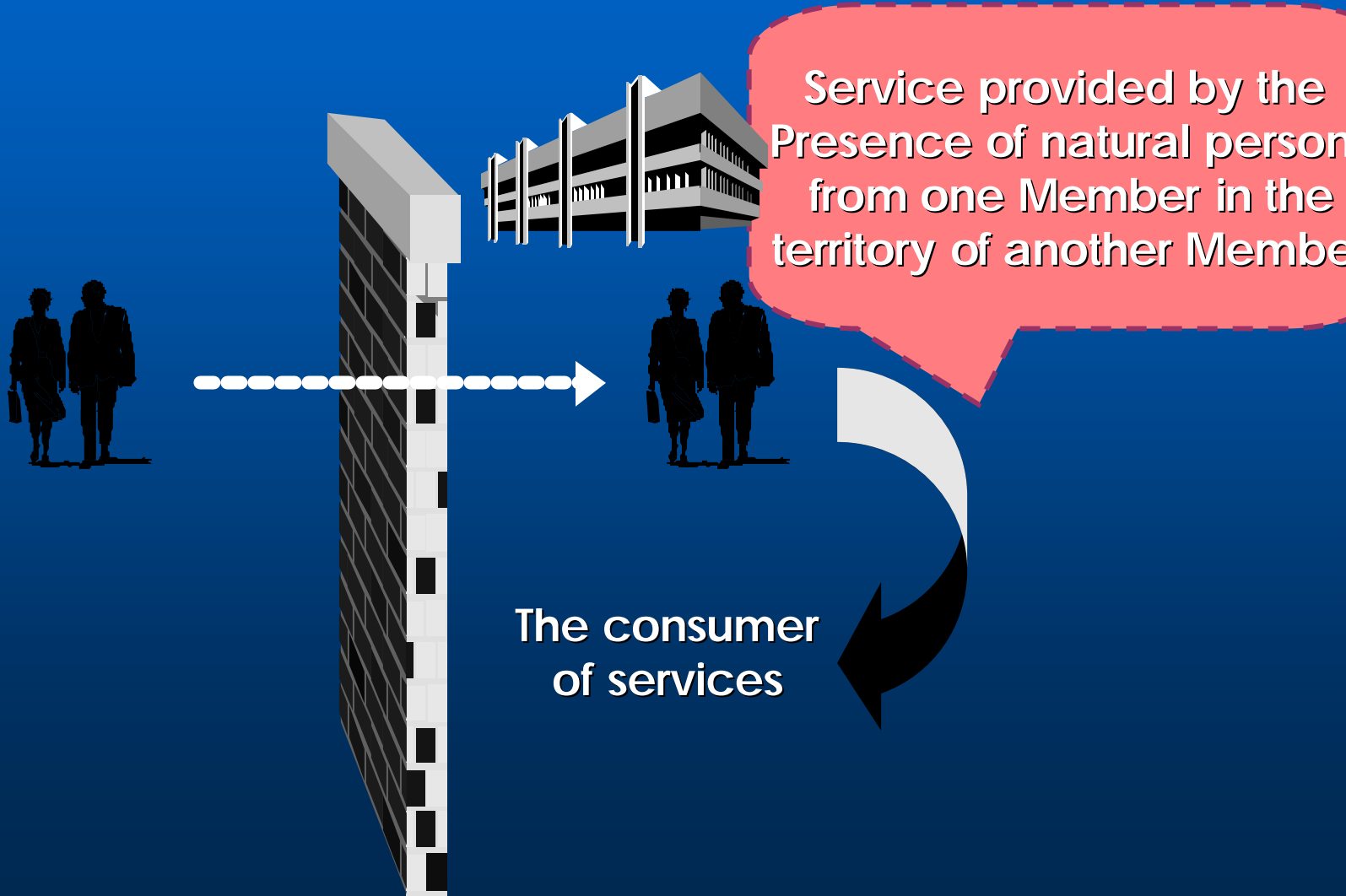
VI. 4 Modes of supply (Cont.)

Commercial presence: Mode 3



VI. 4 Modes of supply (Cont.)

Presence of natural persons: Mode 4



VII. Services “schedules”

- The GATS commits members governments to undertake negotiations on specific issues and to enter into successive rounds of negotiations to progressively liberalize trade in services
- Each WTO Member is required to have a Schedule of Specific Commitments which identifies the services for which the Member guarantees market access and national treatment and any limitations that may be attached
- The national schedules all conform to a standard format which is intended to facilitate comparative analysis

VII. Services “schedules” (Reservations: Previous work)

- Sectoral research at a national level
- Review of the domestic regulation
- Coordination and consultation with public entities
- Coordination and consultation with the private sector(COECE)
- Identification of sensitive sectors

VIII. Approaches to Liberalization of Trade in Services

Two major approaches toward the liberalization of trade in services had been used in international trade negotiations:

- “Positive List” or *“Bottom UP”*
- “Negative List” or *“Top Down”*

Making a decision on which approach will be used, mostly depends on three key factors:

- ✓ liberalization objectives (degree) of the agreement.
- ✓ level of transparency and predictability of commitments.
- ✓ availability of financial and human resources of the Parties.

IX. Positive List

- ❑ It is specified which sectors are covered by the provisions of the agreement.
- ❑ Countries undertake national treatment and market access commitments, indicating the type of access or treatment offered to services or service suppliers in scheduled sectors.
- ❑ A country will not be bound in those particular sectors and sub-sectors excluded from the schedules.

X. Negative List

- This is the so-called “*list or lose*” technique: all measures not set out in the relevant list of reservations are considered to be fully covered by the agreement and are, therefore, to be liberalized.
- Non-conforming measures are further liberalized by consultations or periodic negotiations.

XI. Top Down vs. Bottom Up

- Those who favor a maximum degree of liberalization generally argue for the negative list approach. On the contrary, those who are uncertain about the benefits that may flow from a liberalized policy on entry and establishment prefer the bottom-up, positive list approach.
- A top-down approach is better for areas of high regulatory density such as investment and services.
- It is more liberalizing because:
 - locks-in the regulatory *status quo* and guarantees the non-discriminatory nature of all future regulatory undertakings.

XI. Top Down vs. Bottom Up (Cont.)

- automatically provides national treatment and market access to new services.
 - It is generally accompanied by provisions (e.g. ratchet) that further liberalization efforts; thus, eliminating the need for future time and resource-consuming rounds of negotiations.
 - In short, it allows investment decisions to be made on the basis of commercial considerations by reducing entry controls that create barriers to the integration of production across borders.
- It is more transparent because governments must document all discriminatory and restrictive practices they maintain. Consequently, it is immediately obvious which sectors or activities are excluded from coverage.

XI. Top Down vs. Bottom Up (Cont.)

The equivalence between lists can be summarized as follows:

	POSITIVE LIST		NEGATIVE LIST	
SECTOR	MA	NT	MA	NT
1	Restriction 1	None	Restriction 1	(Not listed)
2	Restriction 2	Restriction 2	Restriction 2	Restriction 2
3	Unbound	Unbound	Annex II	Annex II
4	None	None	(Not listed)	(Not listed)
5	(Not listed)	(Not listed)	Annex II	Annex II

XII. Mexico's Experience

- ✓ The top-down mechanism has been the main guideline underlying Mexico's approach to liberalization of trade in services.
- ✓ The reason has been mainly that it entails a higher level of commitment between the Parties since it consolidates existing measures for the entire service sector while allowing for reservations in areas where national law is incompatible with basic principles.
- ✓ The major challenge we have faced has been the need to identify all national non-conforming measures before any agreement could be finalized.

XII. Mexico's Experience (Cont.)

- ✓ However, this exercise has been very useful because it has enabled us to identify areas where restrictions may be removed or reduced to the benefit of the domestic economy, as well as areas that must be reserved for reasons of national interest.
- ✓ Agreements negotiated by Mexico under a "negative list" approach includes the following elements:
 - coverage of all service sectors with limited exceptions;
 - consolidation of measures upon entry into force of the agreement; (standstill provision)

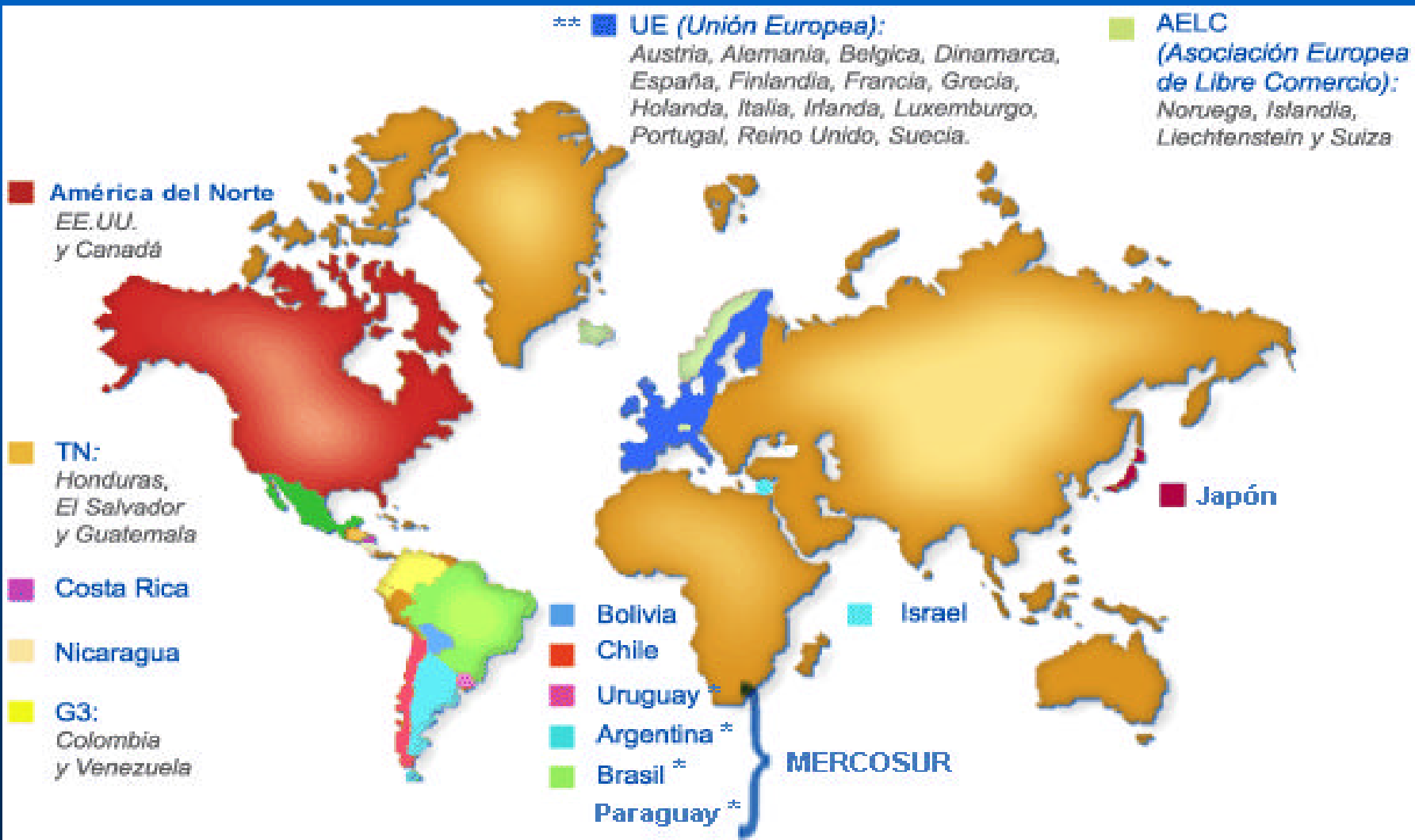
XII. Mexico's Experience

- annexes setting out reservations (non-conforming measures) listing: (i) domestic laws and regulations in which restrictions to the supply of services exist and that contravene the basic principles of the agreement; and, (ii) those activities or sectors in which countries may adopt future non-conforming measures.
- a ratchet clause by which a reservation once withdrawn may not be lodged anew. It preserves the degree of liberalization already achieved and promotes the progressive roll-back of restrictive measures.
- a phase out calendar, where specific future liberalization commitments are stated.

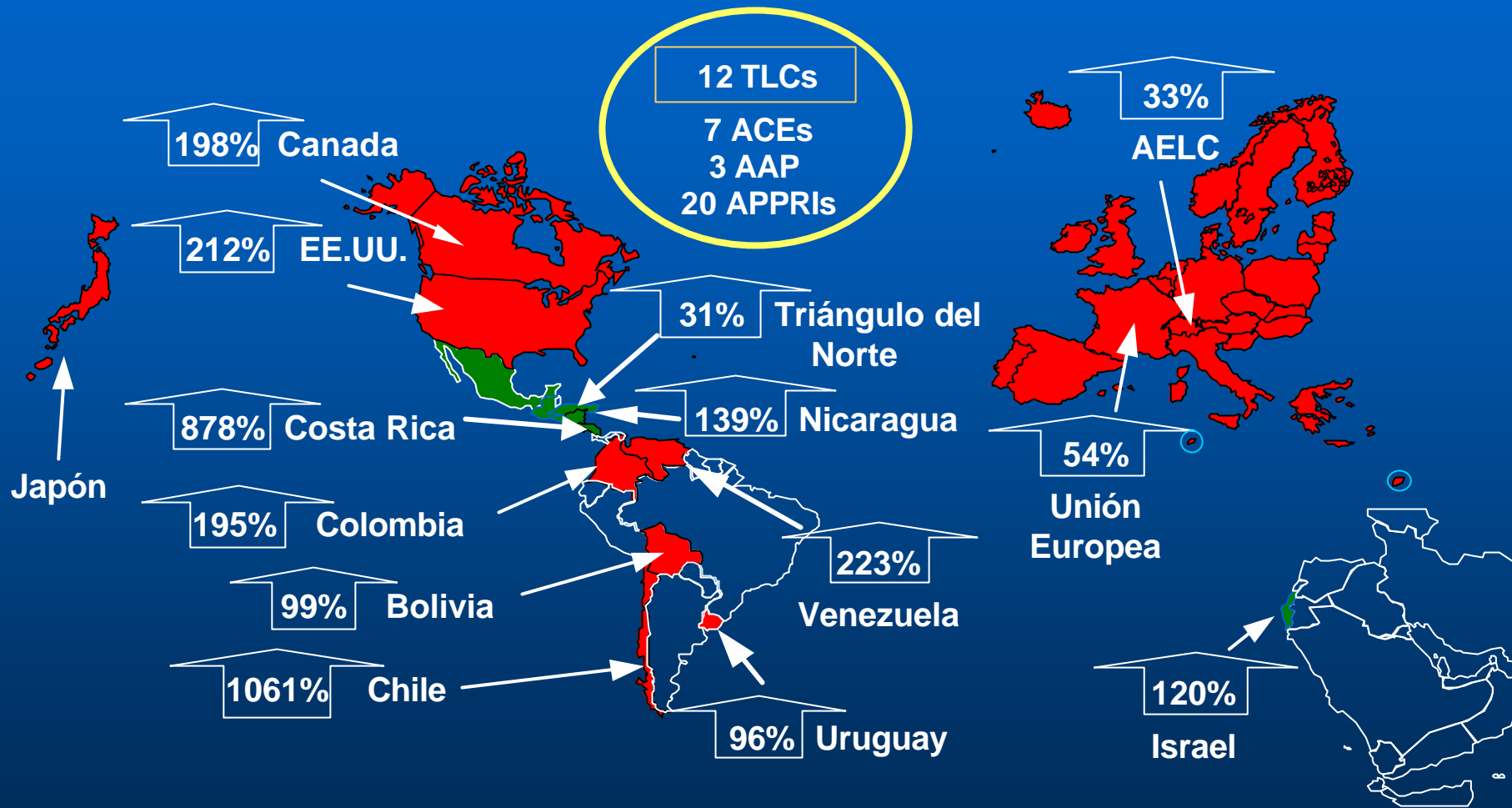
XIII. Mexico's Experience in FTA's

- **In all the FTA's signed by Mexico, with exception of Israel, a chapter of services has been negotiated.**
- **The FTA's comply with the general principles of the international system of trade: most favoured nation and national treatment.**
- **Other ongoing processes of different nature: WTO, APEC, FTAA.**

XIII. Mexico's Experience in FTA's (Cont.)



XIII. Mexico's Experience in FTA's (Cont.)



Fuente: SE con datos de *BANXICO*.
 Periodo de crecimiento, 2004 vs.1991: Chile; 1993: EE.UU. y Canadá; 1994: Bolivia, Colombia, Costa Rica y Venezuela;
 1997: Nicaragua; 1999: UE e Israel; 2000: Triángulo de Norte y AELC; y 2003: Uruguay.

XIII. Mexico's Experience in FTA's (Cont.)

Annual growth of trade
Average 1990-2003 (%)



Fuente: SE con datos de OMC

1/ Sin México

2/ Hong Kong, Taiwán, Corea, Singapur

3/ Suiza, Noruega, Islandia, Liechtenstein

XIV. The Market Access Negotiations in the WTO: Mexico's Initial Offer

- Negotiation with universal coverage (all sectors) / No a priori exclusion of any services sector;
- Gradual elimination of all restrictions in the Members Schedules;
- Disposition to extend its offer of market access commitments and even to bind the autonomous liberalization in some sectors, only if other Members provide the same access to Mexican exports.

XIV. The Market Access Negotiations in the WTO: Mexico's Offers (Cont.)

The Mexican initial offer includes new commitments in the following sectors:

- Horizontal / Mode 3
- Business Services:
 - ✓ Professional services,
 - ✓ Computer and related services,
 - ✓ Research and development services,
 - ✓ Real state services,
 - ✓ Rental/leasing services without operators,
 - ✓ Other business services (i.e. market research technical testing translation washing etc.)

XIV. The Market Access Negotiations in the WTO: Mexico's Offers (Cont.)

- Communication Services (Audiovisual)
- Construction and related engineering Services
- Distribution Services
- Environmental Services
- Financial Services
- Health and Social Services
- Tourism and travel related Services
- Recreational, cultural and sporting Services
- Transport Services

XIV. The Market Access Negotiations in the WTO: Mexico's Offers (Cont.)

The Mexican revised offer includes improvements in the following sectors:

- Horizontal / Modes 3 and 4**
- Business Services**
- Telecommunications Services**
- Construction and related engineering Services**
- Distribution Services**
- Private Educational Services**

XIV. The Market Access Negotiations in the WTO: Mexico's Offers (Cont.)

- Environmental Services
- Financial Services
- Health and Social Services
- Tourism and travel related Services
- Transport Services

among others.....

XV. Other important issues for Mexico in the WTO Services Negotiations

- Domestic regulation: horizontal disciplines related to the five elements of article VI.4 of the GATS (qualification requirements, qualification procedures, licensing requirements, licensing procedures and technical standards).
- Subsidies: horizontal disciplines in order to address trade distortive subsidies.

Mexico does not support negotiations related to Emergency Safeguards Mechanism and Government Procurement.