



Национальный тренинг по
подготовке к переговорам о потенциальном ССТ в регионе ЦАРЭС

Сессия 2:

Торговля услугами в ССТ
Архитектуры положительных и отрицательных
СПИСКОВ

Алматы, Казахстан
Май, 2023 год



Краткий обзор

01

Подход ГАТС

02

Услуги и
преференциальная
либерализация

03

Подходы с
положительным
списком

04

Архитектуры
отрицательных
списков

Вводные замечания

01

Конкурирующие интересы, стоящие за переговорами по ГАТС

02

В результате получается двойная структура общих обязательств и конкретных обязательств

03

Конкретные обязательства и подход «положительного списка»

04

Противоположный подход «отрицательного списка»

01

**Режим наиболее благоприятствуемой нации
(НБН)**

02

Прозрачность

03

Региональная интеграция

04

Внутреннее регулирование

KAZAKHSTAN - LIST OF ARTICLE II (MFN) EXEMPTIONS

Sector or sub-Sector	Description of measure indicating its inconsistency with Article II	Country or countries to which the measure applies	Intended duration	Conditions creating the need for the MFN exemption
<p>2. Communication services Measures contained in existing and future agreements, concerning:</p> <p>D. Audiovisual services</p> <ul style="list-style-type: none"> - Production and distribution of television programmes and cinematographic works; - Production and distribution of television programmes and cinematographic works; - Production and distribution of audiovisual works through broadcasting or other forms of transmission to the public 	<p>Measures based upon co production agreements of audiovisual works, which confer National Treatment to audiovisual works covered by such agreements.</p> <p>Measures granting the benefit of support programmes to audiovisual works, and suppliers of such works meeting origin criteria.</p> <p>Measures which extend National Treatment to audiovisual works which meet certain origin criteria regarding access to broadcasting transmission.</p>	<p>All countries with whom cultural cooperation may be desirable</p> <p>All countries with whom cultural cooperation may be desirable</p> <p>All countries with whom cultural cooperation may be desirable</p>	<p>Indefinite.</p> <p>Indefinite.</p> <p>Indefinite.</p>	<p>The aim of these agreement is to promote cultural links between the countries concerned</p> <p>These programmes aim at preserving and promoting the cultural identity of countries with which Kazakhstan has a long-standing cultural links</p> <p>These measures aim, within the sector, to promote cultural values both within Kazakhstan, and with other countries, including in the region and also at promoting Kazakhstan cultural values and linguistic policy objectives toward the youth.</p>

Article V: Economic Integration

1. This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:

(a) has substantial sectoral coverage⁽¹⁾, and

(b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a), through:

(i) elimination of existing discriminatory measures, and/or

(ii) prohibition of new or more discriminatory measures,

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.

2. In evaluating whether the conditions under paragraph 1(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.

3. (a) Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, particularly with reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors.

(b) Notwithstanding paragraph 6, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.

4. Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement.

5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its Schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in paragraphs 2, 3 and 4 of Article XXI shall apply.

6. A service supplier of any other Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.

7. (a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article.

(b) Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the Council for Trade in Services on its implementation. The Council may establish a working party to examine such reports if it deems such a working party necessary.

(c) Based on the reports of the working parties referred to in subparagraphs (a) and (b), the Council may make recommendations to the parties as it deems appropriate.

8. A Member which is a party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Member from such agreement.

01 Конкретные обязательства

- 01 Доступ к рынку
- 02 Национальный режим
- 03 Дополнительные обязательства

Sector or Sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
4. DISTRIBUTION SERVICES			
Except in respect of the distribution of the following items: weapon and armament system; military equipment and military materials; explosive materials; equipment and devices for blasting and pyrotechnic items; waste precious metals, precious metals and stones; pharmaceuticals and psychotropic substances.			
A. Commission agents' services (CPC 621, CPC 61111; CPC 6113; CPC 6121)	(1) None. (2) None. (3) None, except the following: - commercial presence is allowed only in the form of a juridical person of the Republic of Tajikistan. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
B. Wholesale trade services (CPC 622, CPC 61111; CPC 6113; CPC 6121)	(1) None. (2) None. (3) None, except the following: - commercial presence is allowed only in the form of a juridical person of the Republic of Tajikistan. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
C. Retailing services (CPC 631+632, 61111, 61112, 6113, 6121, 613, including audio and video records and tapes CPC 63234)	(1) None. (2) None. (3) None, except the following: - commercial presence is allowed only in the form of a juridical person of the Republic of Tajikistan. - Unbound for establishments with a commercial surface of less than 6,000 m ² . (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) No less than 70% of the labour force (i.e. workers other than executives, managers and specialists, as defined in the horizontal section of this schedule) in retailing services must consist of citizens of the Republic of Tajikistan. (4) Unbound, except as indicated in the horizontal section.	
D. Franchising services (CPC 8929)	(1) None. (2) None. (3) None, except the following: - commercial presence is allowed only in the form of a juridical person of the Republic of Tajikistan. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None, except as indicated in the horizontal section. (4) Unbound, except as indicated in the horizontal section.	

Пространство для политики

01

01 Исключение частей сектора или способа поставки

02 Ограничение доступа к рынку

03 Дискриминация иностранных поставщиков услуг

04 Дискриминация среди иностранных поставщиков услуг (освобождение от режима НБН или РТС)

05 Меньше обязательств, чем статус-кво

06 Предварительная приверженность будущей либерализации

07 Сохранение горизонтальных ограничений

01 Больше пространства для политики

01 Общие исключения и исключения в целях защиты

02 Изменение или отзыв обязательства в любое время по истечении 3 лет

03 Возможность (в будущем) экстренных защитных мер – в процессе переговоров

Краткий обзор

01

Подход ГАТС

02

Услуги и
преференциальная
либерализация

03

Подходы с
положительным
списком

04

Архитектуры
отрицательных
списков

01

Взрыв в ССТ

02

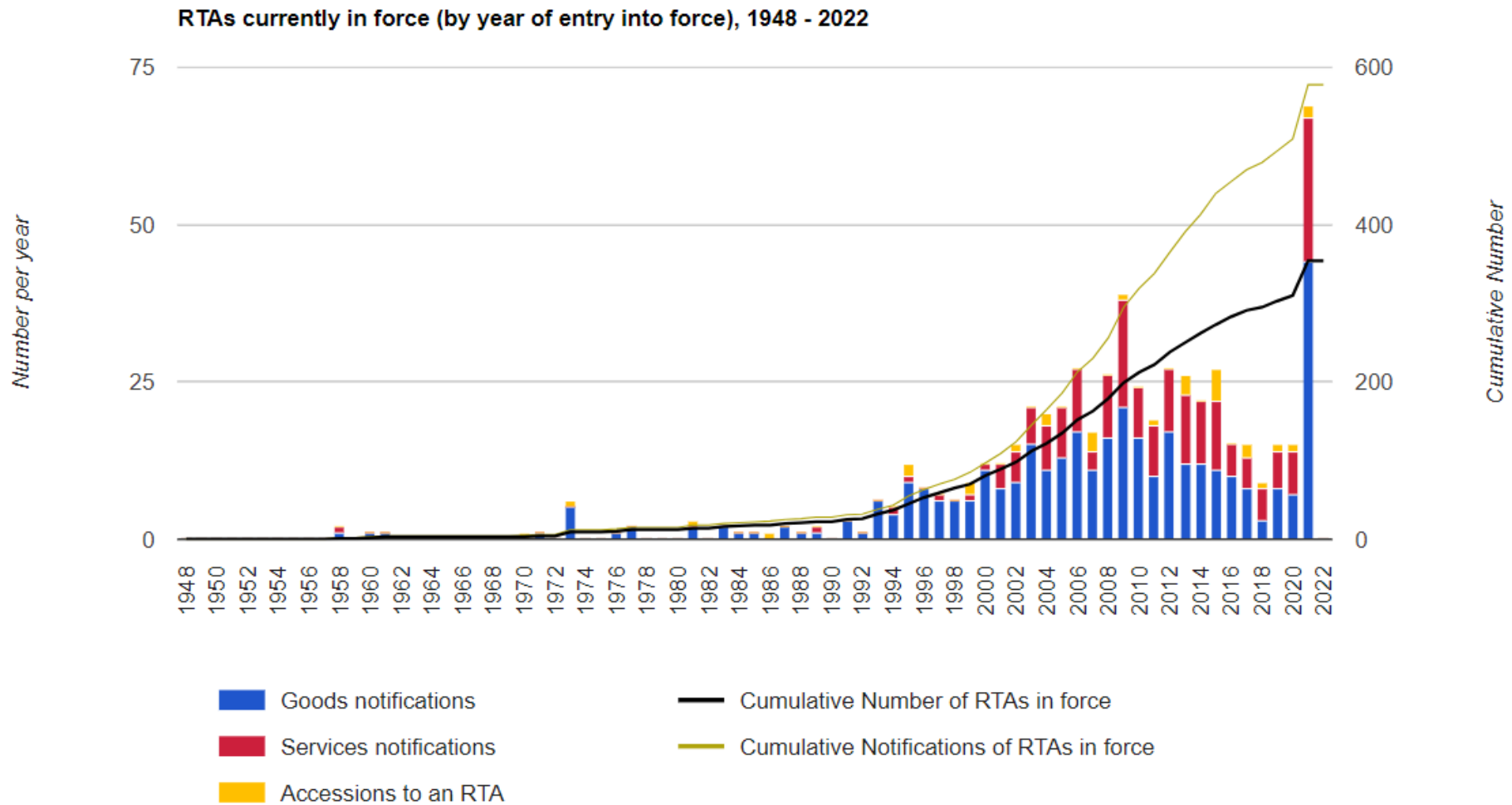
Тенденции, способствующие смещению акцента на услуги

03

Технология и «сервисизация»

04

Компании также трансформировались



Note: Notifications of RTAs: goods, services & accessions to an RTA are counted separately. The cumulative lines show the number of RTAs/notifications currently in force.

Source: WTO Secretariat - August 4, 2022



Как вы думаете, почему правительства обратились к преференциальной либерализации для торговли услугами?

01

ССТ могут предложить улучшения по сравнению с ГАТС

02

Многие РТС выходят за рамки ГАТС в режиме 4

03

Секторное распределение обязательств

04

Первоначальная чувствительность из ГАТС сохраняется

Ступени или камни преткновения?

01

**Преференциальная либерализация услуг и
корыстные интересы**

02

**РТС и политическая поддержка дальнейшего
открытия многосторонних рынков**

03

РТС и последовательность открытия рынков

04

РТС и их влияние на переговоры ВТО

Краткий обзор

01

Подход ГАТС

02

Услуги и
преференциальная
либерализация

03

Подходы с
положительным
списком

04

Архитектуры
отрицательных
списков

Agreement between Japan and Mongolia for an Economic Partnership (2015)

- Chapter 7 Trade in Services
- ✓ Article 7.1 Scope
 - ✓ Article 7.2 Definitions
 - ✓ Article 7.3 National Treatment
 - ✓ Article 7.4 Most-Favored-Nation Treatment
 - ✓ Article 7.5 Market Access
 - ✓ Article 7.6 Additional Commitments
 - ✓ Article 7.7 Schedule of Specific Commitments
 - ✓ Article 7.8 Domestic Regulation
 - ✓ Article 7.9 Recognition
 - ✓ Article 7.10 Monopolies and Exclusive Service Suppliers
 - ✓ Article 7.11 Business Practices
 - ✓ Article 7.12 Payments and Transfers
 - ✓ Article 7.13 Restrictions to Safeguard the Balance of Payments
 - ✓ Article 7.14 Transparency
 - ✓ Article 7.15 Denial of Benefits
 - ✓ Article 7.16 Sub-Committee on Trade in Services
 - ✓ Article 7.17 Review of Commitments

11. TRANSPORT SERVICES					
A. Maritime Transport Services					
a), b) International maritime transport services (including services of passenger transportation and freight transportation) (CPC 7211, 7212)	SS	1)	(a) Liner Shipping: None ³⁰	1)	(a) Liner Shipping: None ³⁰
			(b) Bulk, tramp, and other international shipping, including passenger transportation: None ³⁰		(b) Bulk, tramp, and other international shipping, including passenger transportation: None ³⁰
		2)	None	2)	None
		3)	(a) Establishment of a registered company for the purpose of operating a fleet flying the flag of Japan: None except that there is a nationality requirement ³¹ for a ship to fly the flag of Japan.	3)	(a) Establishment of a registered company for the purpose of operating a fleet flying the flag of Japan: None except that there is a nationality requirement ³¹ for a ship to fly the flag of Japan.
			(b) Other forms of commercial presence for the supply of international maritime transport services (as defined in paragraph 1 of Note below): None		(b) Other forms of commercial presence for the supply of international maritime transport services (as defined in paragraph 1 of Note below): None
		1)	(a) Ships' crews: None except that foreign nationals employed by Japanese juridical persons, except for the seafarers referred to in the relevant official notification, may not work on the vessels flying the Japanese flag.	1)	(a) Ships' crews: None except that foreign nationals employed by Japanese juridical persons, except for the seafarers referred to in the relevant official notification, may not work on the vessels flying the Japanese flag.
			(b) Key personnel employed in relation to a commercial presence as defined under 3) (b) above: None		(b) Key personnel employed in relation to a commercial presence as defined under 3) (b) above: None
					The following services will be made available to international maritime transport suppliers on reasonable and non-discriminatory terms and conditions:
					(a) Pilotage services;
				(a)	Pushing and towing services;
				(b)	Provisioning, fueling and watering services;
				(c)	Garbage collecting and refuse disposal services;
				(a)	Port captain's services;
				(a)	Navigation aids services;
				(b)	Shore based operational services essential to ship operations, including communications, water and electrical supplies;
				(h)	Emergency repair services; and
				(i)	Anchorage, berths and berthing services.

Excerpt from Japan's Schedule of Specific Commitments in Services

30 Restriction or prohibition of a) entry in Japanese ports and b) loading or unloading of cargoes in Japanese ports for a designated period may be imposed as a countermeasure on operators of vessels who belong to the country in which interests of Japanese operators continue to be substantially damaged, in spite of prior notification of taking such measure, under unfavorable treatment imposed on them by that country or by local authorities or similar entities of that country.

31 In this sector, the term "nationality requirement" means that the ship must be owned by:
 (a) a natural person having Japanese nationality; or
 (b) a juridical person established under Japanese law, with all representatives ("daihyosha") and not less than two-thirds of executives administering the affairs of the juridical person ("gyomu-wo-shikkosuru yakuin") having Japanese nationality.

Характеристики подхода «положительного списка»

01

Максимизирует гибкость

02

Способствует прозрачности

03

Постепенная либерализация

04

Повышает транзакционные издержки для будущей либерализации

Краткий обзор

01

Подход ГАТС

02

**Услуги и
преференциальная
либерализация**

03

**Подходы с
положительным
списком**

04

**Архитектуры
отрицательных
списков**

Механика планирования отрицательного списка

03

01



Напомним, что при использовании положительного списка Сторона должна четко («положительно») перечислить те секторы и подсекторы, в которых она берет на себя обязательства.

02



На втором этапе Сторона перечисляет все исключения или условия для этих обязательств.

03



При использовании отрицательного списка Сторонам необходимо пройти только второй шаг.

04



Это делается путем внесения несоответствующих требованиям мер и оговорок.

05



Сторона обычно использует два разных приложения для внесения своих оговорок в отрицательный список.

06



Положение о статус-кво и положение об усилении мер.


Архитектуры отрицательного списка

04

Соглашение о региональном экономическом партнерстве (ВРЭП – 2020 год)

Статья 8.1: Определения

Статья 8.2: Область применения

Статья 8.3: Планирование обязательств 

Статья 8.4: Национальный режим

Статья 8.5: Доступ к рынку

Статья 8.6: Режим наиболее благоприятствуемой нации

Статья 8.7: Графики конкретных обязательств 

Статья 8.8: Графики несоответствующих требованиям мер

Статья 8.9: Дополнительные обязательства

Статья 8.10: Список прозрачности

Статья 8.11: Местное присутствие

Статья 8.12: Переходный период

Статья 8.13: Изменение графиков

Статья 8.14: Прозрачность

Статья 8.15: Внутреннее регулирование

Статья 8.16: Признание

Статья 8.17: Монополии и эксклюзивные поставщики услуг

Статья 8.18: Деловая практика

Статья 8.19: Платежи и переводы

Статья 8.20: Отказ от льготах

Статья 8.21: Защитные меры

Статья 8.22: Субсидии

Статья 8.23: Расширение участия Сторон из числа наименее развитых стран, являющихся государствами-членами АСЕАН

Статья 8.24: Обзор обязательств

Статья 8.25: Сотрудничество

Article 8.3: Scheduling of Commitments

1. Each Party shall make commitments under Article 8.4 (National Treatment) and Article 8.5 (Market Access) in accordance with either Article 8.7 (Schedules of Specific Commitments) or Article 8.8 (Schedules of Non-Conforming Measures).
2. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment) and Article 8.5 (Market Access), and shall also make commitments under either Article 8.6 (Most-Favoured-Nation Treatment) or Article 8.10 (Transparency List). A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) may also make commitments under Article 8.9 (Additional Commitments).
3. A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), and Article 8.11 (Local Presence). A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) may also make commitments under Article 8.9 (Additional Commitments).
4. Notwithstanding paragraph 2, Least Developed Country Parties which are Member States of ASEAN making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) are not obliged to make commitments under either Article 8.6 (Most-Favoured-Nation Treatment) or Article 8.10 (Transparency List). These Parties may, however, do so on a voluntary basis.

Article 8.8: Schedules of Non-Conforming Measures

1. For a Party making commitments in accordance with this Article, Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), and Article 8.11 (Local Presence) shall not apply to:
 - (a) any existing non-conforming measure that is maintained by that Party at:
 - (i) the central level of government, as set out by that Party in List A of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment);
 - (ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment); or
 - (iii) a local level of government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); and
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), or Article 8.11 (Local Presence).
2. Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), and Article 8.11 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities set out in List B of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment).

ANNEX III

SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR SERVICES AND INVESTMENT

MALAYSIA

Non-Conforming Measures

Reservations

LIST A

EXPLANATORY NOTES

LIST B

EXPLANATORY NOTES

1. This List sets out, pursuant to Article 8.8 (Schedules of Non-Conforming Measures) and Article 10.8 (Reservations and Non-Conforming Measures), Malaysia's existing measures that are not subject to some or all of the obligations imposed by:
 - (a) Article 8.4 (National Treatment) or Article 10.3 (National Treatment);
 - (b) Article 8.5 (Market Access);
 - (c) Article 8.6 (Most-Favoured-Nation Treatment) or Article 10.4 (Most-Favoured-Nation Treatment);
 - (d) Article 8.11 (Local Presence);

1. This List sets out, pursuant to Article 8.8 (Schedules of Non-Conforming Measures) and Article 10.8 (Reservations and Non-Conforming Measures), the specific sectors, subsectors, or activities, for which Malaysia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:
 - (a) Article 8.4 (National Treatment) or Article 10.3 (National Treatment);
 - (b) Article 8.5 (Market Access);
 - (c) Article 8.6 (Most-Favoured-Nation Treatment) or Article 10.4 (Most-Favoured-Nation Treatment);
 - (d) Article 8.11 (Local Presence);

Non-Conforming Measure

8.	Sector	:	Education services
	Subsector	:	-
	Level of Government	:	Central
	Obligations Concerned	:	National Treatment (Article 8.4 and Article 10.3) Market Access (Article 8.5) Most-Favoured-Nation Treatment (Article 8.6 and Article 10.4) Local Presence (Article 8.11) Prohibition of Performance Requirements (Article 10.6)
	Description	:	<u>Trade in Services and Investment</u> Education services, skill training centres, and vocational institutions can only be provided by education services suppliers that are registered and established in Malaysia, and with authorisation.
	Measures	:	<i>Education Act 1996 [Act 550]</i> <i>Private Higher Education Institutions Act 1996 [Act 555]</i> <i>National Skills Development Act 2006 [Act 652]</i> Administrative Guidelines

Reservation

11.	Sector	:	Gambling and Betting
	Subsector	:	-
	Obligations Concerned	:	National Treatment (Article 8.4 and Article 10.3) Market Access (Article 8.5) Local Presence (Article 8.11) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7)
	Description	:	<u>Trade in Services and Investment</u> Australia reserves the right to adopt or maintain any measure with respect to gambling and betting.
	Existing Measures	:	Legislation and Ministerial Statements, including the <i>Interactive Gambling Act 2001</i> (Commonwealth).

Плюсы и минусы разных подходов

01

Ни один из подходов не влияет на право партнера РТС на недискриминационное регулирование.

02

Никакой чистой традиционности между подходами.

03

Возможны гибридные подходы.

04

Присущий либерализирующий эффект подходов с отрицательным списком очевиден.

Обобщение и выводы

01



Способ, которым цели правительства в отношении либерализации услуг трансформируются в договорные обязательства, является технически сложным.

02



Хотя подход с положительным списком, как правило, предпочтительнее из-за его привычности и присущей осмотрительности, будущее – за архитектурой отрицательного списка.

03



Торговые официальные лица и все, кто занимается регулированием услуг, должны понимать, какие обязательства налагают на них международные соглашения.



Спасибо!