

SYNTHESIS OF THE POLICY OPTIONS

No. **17**

**RETHINKING SERVICES
IN A CHANGING WORLD**

Rethinking Services in a Changing World

Synthesis of the Policy Options*

January 2016

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NOTE

The policy options presented in this synthesis are the result of a collective process involving all members of the E15 Expert Group on Services. It draws on the active engagement of these eminent experts in discussions over multiple meetings as well as an overview paper and think pieces commissioned by the E15Initiative and authored by group members. Patrick Low was the author of the report. While a serious attempt has been made on the part of the author to take the perspectives of all group members into account, it has not been possible to do justice to the variety of views. The policy recommendations should therefore not be considered to represent full consensus and remain the responsibility of the author. The list of group members and E15 papers are referenced below.

The full volume of policy options papers covering all topics examined by the E15Initiative, jointly published by ICTSD and the World Economic Forum, and launched at the Forum's Annual Meeting at Davos-Klosters in 2016, is complemented with a monograph that consolidates the options into overarching recommendations for the international trade and investment system for the next decade.

E15 INITIATIVE

Jointly implemented by the International Centre for Trade and Sustainable Development (ICTSD) and the World Economic Forum, the E15Initiative was established to convene world-class experts and institutions to generate a credible and comprehensive set of policy options for the evolution of the global trade and investment system to 2025. In collaboration with 16 knowledge partners, the E15Initiative brought together more than 375 leading international experts in over 80 interactive dialogues grouped into 18 themes between 2012–2015. Over 130 overview papers and think pieces were commissioned and published in the process. In a fast-changing international environment in which the ability of the global trade and investment system to respond to new dynamics and emerging challenges is being tested, the E15Initiative was designed to stimulate a fresh and strategic look at the opportunities to improve its effectiveness and advance sustainable development. The second phase of the E15Initiative in 2016–17 will see direct engagement with policy-makers and other stakeholders to consider the implementation of E15 policy recommendations.

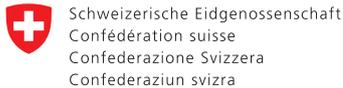
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OBJECTIVES AND OUTPUT

The E15 Expert Group on Services had three objectives

- Examine the challenges and opportunities associated with the increasingly important role of services in the evolving nature of international trade.
- In light of this context, identify possible areas for improvement in the governance of global trade.
- Propose specific options on how to adapt the global trading system to the new realities of services trade in order to make it more relevant and better able to contribute to sustainability and economic development.

Overarching questions and issues the Expert Group was tasked to consider

- Assess how the multilateral trading system could be improved to deal with the challenges of 21st century production, trade, and investment realities, which are driven by services.
- Investigate how the “servicification” of domestic and international transactions affects the patterns and opportunities of global trade, including through the enabling of value chains.
- Determine whether more accurate measurement of services in global trade calls for changes in trade governance frameworks.
- Outline the improvements and adaptations that are required in domestic and international regulatory frameworks to promote efficient services operation and facilitate global trade.
- Examine whether the existing separate frameworks for trade rules that segregate goods from services can be made more coherent to reflect the realities of integrated trade and investment flows in goods, services, and knowledge.
- Explore avenues to reconcile traditional trade policy instruments with the technological innovations that underpin services trade, including digital trade and data transfers.
- Assess whether services trade is better served by relying on soft law as opposed to negotiated outcomes.

Expert Group analysis and policy proposals were submitted in two forms

1. Critical issues studied through an overview paper and think pieces commissioned for the E15 Initiative. These papers are referenced on page 12 and can be accessed at <http://e15initiative.org/publications/>.
2. Policy options presented in this synthesis and compiled in the summary table. The options fall under six categories:
 - Services and the digitized economy
 - Services and SMEs
 - The role of soft law
 - Regulatory cooperation
 - Greater compatibility between rules governing goods and services
 - GATS modifications on temporary presence and scheduling disciplines

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FOREWORD

Services have gone from being viewed largely as a non-tradable sector with little or no influence on productivity growth to a transformational force in the global economy. The overview paper prepared by the Swedish National Board of Trade for the E15 expert dialogue process explains how services have become “in many ways the foundation of trade, without which trade would not happen,” but contrasts this with the fact that “the WTO General Agreement on Trade in Services (GATS) has not changed since 1997—at the time when the 56Kbps modems arrived and less than two percent of the world’s population had access to the Internet.” Since that time, less than two decades ago, increasing market complexity and an expanding global economy, driven in no small part by technological developments in transport and information and communications technology, have greatly expanded the contribution of services to economic activity.

Services continue to climb in importance in national economies and account for the major part of GDP and employment in nearly all countries. More than two-thirds of all new investment flows are directed into the services sector. Services are now at least as important as goods in international trade when measured in value-added terms. Services are the essential links in the global value chain networks, allowing for components of production to be dispersed around the world and brought together into final products in a cost-effective, timely manner. They also make a significant contribution to productivity growth. The growing dominance of services in our economies, often incorporated as part of a package with a good, is translated through the new term of “servicification.”



However, the complexities that underlie the role of services, the linkages between services and goods, and the resulting economic outcomes are often not fully understood.

This lack of understanding is also manifest in the international debate on services, which has failed to keep pace with the changes that services have created in world trade and with the technological developments that have allowed for the role that services now play in economic processes. There is still unfinished rule-making in the GATS, and services negotiations in the Doha Round have been at a standstill. This lack of forward movement at the multilateral level has created a gulf between the normative framework for services and the changes brought about by services for 21st century trade. As Patrick Low states as background to the policy options, “international regime building [on services] has been slow, incomplete, and fragmented.”

Progress on modernizing rules for services trade has occurred in some agreements at the regional level and continues to advance in mega-regional negotiating initiatives and the Trade in Services plurilateral negotiations, which have been ongoing in Geneva outside of the WTO since early 2013. However, there continues to be a great deal of variety in the structure and modalities adopted for services agreements, as well as the disciplines they contain. The lack of coherence is troubling for investors and services providers, and creates barriers and fragmentation in the world economy.

The policy options prepared by Patrick Low, arising from discussions in the Expert Group and think pieces commissioned for the E15 Initiative, address ways in which improvements in the disciplines and operation of trade



agreements and less formal procedures could enhance the effectiveness and impact of services in their ability to generate economic growth and facilitate trade. The paper sets out the *problématique* of services and how these have evolved in the global economy, underscoring how the digitization of global commerce has opened up opportunities for developing countries and small and medium-sized firms to participate in services trade. The analysis is forward-looking and discusses several areas of potential improvement in trade disciplines. It reviews policy proposals for less formal mechanisms through which services trade might be facilitated, among them the application of “soft law” procedures and the establishment of forms of regulatory cooperation involving countries on both the importing as well as the exporting side of services.

The recommendations also reflect the debate among the experts in the E15 Services Group on whether or not greater compatibility between rules governing goods and services could bring a more coherent approach to international trade. Expert views differed on whether the fundamental differences between goods and services make it necessary to have diverse sets of rules or if these should reflect instead the integrated nature of firm decision-making and behaviour. While there was no consensus, the paper underlines that it will be important to continue discussing this issue and suggests options on how these discussions can be framed.

The experts who participated in the discussions on services are thought leaders drawn from international organizations, government, academia, the private sector, and services industry associations. Throughout the lively debate that was generated on the above topics, the members of the Group at

times showed divided opinions between a more traditional focus on existing disciplines and more innovative approaches.

As co-convenors of the E15 Expert Group on Services, we are convinced of the need to provide organized and structured input into the policy and governance debate on international rule-making in services. The options that have resulted from this thought and dialogue process are offered to policy-makers and stakeholders alike, in the hope that they provide paths to effectively address the most pressing challenges and respond to policy imperatives of societies the world over. In a second phase of the E15 Initiative, we intend to engage policy-makers in advancing these options.

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RETHINKING SERVICES IN A CHANGING WORLD

TECHNOLOGY, THE GROWING “SERVICIFICATION” OF PRODUCTION, AND INCREASED TRADE DEPENDENCY, ACCOMPANIED BY INCOME GROWTH ASSOCIATED WITH ECONOMIC DEVELOPMENT AND ENHANCED PRODUCTIVITY, HAVE ALL COMBINED TO MAKE SERVICES AN EVER LARGER PART OF GLOBAL ECONOMIC ACTIVITY. YET FOR HISTORICAL REASONS SERVICES HAVE BEEN NEGLECTED BOTH IN ACADEMIC WORK AND POLICY DISCOURSE.

This neglect has not only meant that the value contribution of services has been understated, but the various functions of services in production, trade, and consumption have also been overlooked, along with the contribution of services to innovation and productivity growth. The invisibility of services and some of the ways in which they are produced and consumed have added a layer of complexity, and contributed to a paucity of data on services.

The unabated evolution of technology and international markets requires national policy-makers to rethink approaches to services in the context of trade competitiveness. National economies cannot function without access to competitive global networked services and trading platforms, all of which are powered and supported by trade in services—including computer, Internet, and digital services, telecoms services, delivery services, and financial services.

Against this backdrop, the E15 Expert Group on Services, convened by ICTSD in partnership with the World Economic Forum and supported by Sweden’s National Board of Trade, has engaged in critical analysis on issues relating to a deeper and more comprehensive regime for services in the global economy. The experts explored new thinking and put forward fresh ideas on opportunities for reform and reinvigoration of international services regimes, especially at the multilateral level. The Group has striven to arrive at a set of viable and pragmatic policy options for trade officials, trade policy-makers, and other stakeholders to consider, including for the WTO post-Nairobi agenda.

The policy options that have arisen from this expert dialogue process confirm that much more work is required in the area of trade in services, and they suggest paths forward to address services at a multilateral and plurilateral level that may incubate new disciplines and approaches to negotiations. Twelve policy options are put forward for government action to develop an international services regime that addresses today’s economic and regulatory challenges, while fostering international cooperation and competition. Their unifying characteristic is that they are all recommendations that could change the framework for future trade policies and negotiations.

BACKGROUND TO INTERNATIONAL COOPERATION IN SERVICES

THE EVOLUTION OF SERVICES IN THE GLOBAL ECONOMY

Services have needed rethinking for a long time in our changing world. The role of services in production, consumption, and trade has evolved dramatically in the last few decades. Information-related and transport technologies have splintered production locationally and facilitated the separation of production and consumption over greater distances. At the same time, they have greatly shrunk space and time,

providing a platform for the explosive growth of international trade and investment.

By taking advantage of recently available data sets measuring trade in value-added instead of in gross terms, valuable new insights have emerged on the multiplicity of services entering trade. Much of this services-generated value addition tended to be mis-specified as value attributable to goods or misclassified within the services sector when data were only presented in gross terms (see Figure 1).

The extension of a value-added measure from the traditional GDP calculation to trade flows has reinforced awareness of the networked nature of economies. A revelation emerging from the value-added approach is that all services entering the production of goods or services for export are in principle tradable. Services that are non-tradable if supplied in isolation can be “bundled” with goods (or other services) and traded as a composite offering.

SERVICIFICATION

The growing reliance on services as a source of economic activity led to the coining of the term “servicification” by economists at the Swedish National Board of Trade. The definition given of servicification—“a process whereby non-services sectors (both agricultural and non-agricultural) in the economy buy and produce more services, and also sell and export more services, often as a package deal with the good” (Rentzhog and Anér 2015)—describes a core driver of the increasing share of services-generated value in the economy. However, the demand for services must not be seen only as derived from other activities in the non-services and services sectors. Services themselves are directly consumed and a combination of growing customization and rising global incomes has vastly increased demand in sectors such as travel, personal insurance and other financial services, retail distribution, and so on.

The evolution of services and servicification in the global economy has thus resulted in a new world where services

are recognized as a prominent source of economic activity and value creation. The world of policy is trying to catch up. Questions arise about the adequacy of arrangements for international cooperation in this domain. In particular, there is the question whether the WTO General Agreement on Trade in Services (GATS) and preferential services agreements are fit for purpose.

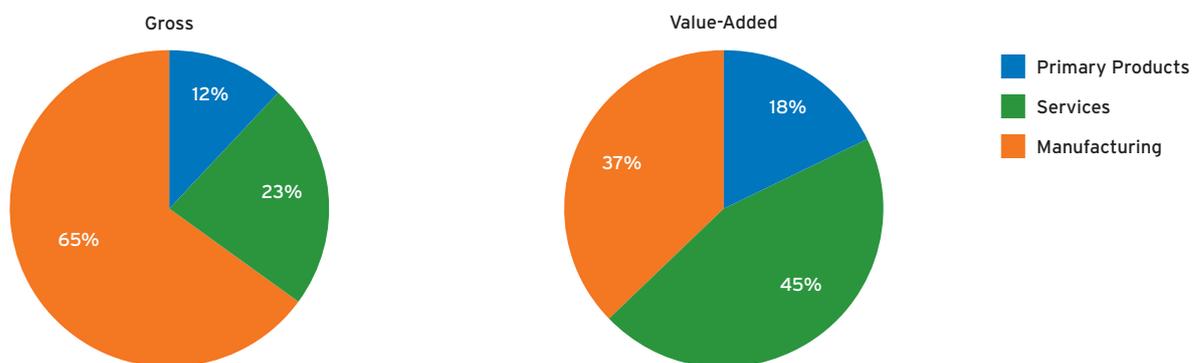
The unifying characteristic of the policy options is that they are all recommendations that could change the framework for future trade policies and negotiations.

INTERNATIONAL COOPERATION IN SERVICES

It was not until the 1980s that serious systematic consideration was given to the institutional setting for international cooperation in services. This started in a multilateral setting and eventually resulted in the establishment of the General Agreement on Trade in Services.¹ The GATS has been progressively complemented by preferential trade agreements (PTAs) in services, some of which have innovated with interesting variations on the currently prevailing structure of GATS schedules. The PTAs have often gone further in market opening than the GATS. This has not always been the case, however, as in certain instances PTAs have subtracted from GATS commitments. In many ways, refining international treaty frameworks—in the goods realm as well as services—and ensuring that they are relevant in a rapidly changing economic and business landscape will always be a work in progress.

The Doha Round negotiations in services have not progressed significantly, not least because some WTO members have traded off a lack of what they regard as progress elsewhere with any effort to address a services agenda. This has resulted in the Trade in Services Agreement (TiSA) negotiations, which are currently taking place outside the

FIGURE 1 | Sectoral Contributions to Trade: Gross and Value-Added Measures (2008)



Source: WTO Secretariat estimates based on OECD-WTO data

WTO among countries that represent 70% of world trade in services. The systemic consequences of this unprecedented development, in terms of size and scope, remain uncertain and opinion is divided among observers as to how TiSA should be viewed. The final verdict will depend to a degree where the results ultimately sit in relation to the GATS and the multilateral framework.

POLICY OPTIONS: RETHINKING SERVICES TRADE

The Expert Group decided to focus particularly on a set of issues for which it commissioned think pieces by authors from within the Group (referenced below). These were on: services and digitization; small and medium-sized enterprises (SMEs) and services trade; the role of “soft law” in international agreements; regulatory cooperation; and, coherence issues arising in relation to the separate rules governing goods and services. Policy options were developed in relation to the written analysis and group discussion of it. In addition, the Expert Group engaged in detailed deliberations on: temporary access of people supplying services in host markets; scheduling techniques for recording specific commitments on market access and national treatment; the use of standardized nomenclatures for recording commitments; and, approaches to addressing the gap between what governments commit to with their trading partners and what policies they actually pursue in practice. Each of these areas is also subject to policy recommendations.²

The final verdict on the systemic consequences of the Trade in Services Agreement will depend to a degree where the results ultimately sit in relation to the GATS and the multilateral framework.

SERVICES AND THE DIGITIZED ECONOMY

The signal and growing importance of digitized commerce creates a strong interest among governments and other stakeholders in ensuring that data flows are as unencumbered and free as possible, subject to legitimate public policy concerns regarding privacy, law enforcement, taxation, and national security. These latter concerns should be accommodated through international cooperation and understandings among the relevant authorities, and with a view to inflicting minimum costs on users of digitized means of communication and exchange.

POLICY OPTION 1 - Guidelines for regulating cross-border data flows

- Short to medium term: Using existing disciplines, institutional trade forums, and ongoing bilateral and multilateral negotiations, governments should establish guidelines for regulating cross-border data flows, bearing in mind public policy concerns relating to law enforcement, privacy, and national security.

POLICY OPTION 2 - Regulatory disciplines on services trade delivered digitally

- Long term: Consider the development of regulatory disciplines, the elements of which could be used multilaterally or in regional trade agreements (RTAs), on international trade in services delivered digitally and data flows that would confirm existing disciplines or establish new ones and encourage digital trade.

SERVICES AND SMEs

Advances in information and communications technologies in recent years have opened up numerous opportunities for SMEs to engage in international commerce. Yet because these enterprises are small, they are disproportionately affected by trade costs associated with processes, procedures, regulations, and other technical burdens linked with cross-border trade.

POLICY OPTION 3 - Enhanced opportunities for SMEs

- Short term: Bearing in mind the new opportunities offered SMEs by the digitization of trade, consider actions to ensure that these opportunities can be realized. These should include, amongst others, single points of enquiry for cross-border services providers, interoperable single windows for customs and border compliance, and online single windows attending to licenses, permits, and other administrative requirements.

THE ROLE OF SOFT LAW

Broadly defined, soft law can take many forms. It can foster dialogue on issues relevant to services and the trading system more generally without any presumption that it is a precursor to hard law.³ Such dialogue can increase mutual appreciation of multidimensional issues and contribute to more productive cooperation. It might take the form of “best endeavours” provisions that can encourage certain kinds of beneficial but essentially voluntary actions, or it can cover for disagreements and become a source of misaligned expectations. Best endeavours provisions may also establish a path towards hard law.⁴

POLICY OPTION 4 - Reducing the deliberative deficit

- Short term: Within the limits of its mandate, encourage the WTO Secretariat to contribute in reducing the “deliberative deficit” by addressing current topics, suggesting topics for discussion, proposing ways of approaching issues, disseminating analysis and information, and developing dialogue with other international organizations dealing with relevant matters, including in the field of services. In this context, soft law developed outside the WTO should be studied to ascertain how it might inform domestic regulatory processes affecting trade in services.

POLICY OPTION 5 - Perfecting the role of best endeavours clauses

- Medium term: Explore ways of ensuring that best endeavours clauses play a positive role in international agreements. Best endeavours commitments should be accompanied by accountability duties, and when best endeavours provisions reflect a process of moving towards hard law commitments the nature of conditions justifying a soft law approach should be spelled out.

REGULATORY COOPERATION

Regulation and market access obligations both affect the conditions of competition in markets. Regulatory cooperation is essential not only for facilitating trade, but also for reassuring negotiators and regulators that the consequences of liberalization commitments will be predictable in terms of policy outcomes. In order to secure progress in liberalization, national regulatory institutions may need to be strengthened and mechanisms created for international regulatory cooperation. Since such cooperation will often take place between a subset of countries, it is also important to watch out for the excluded countries. More could also be done to strengthen international norms on regulation in the area of services.

POLICY OPTION 6 - Work programme on services liberalization

- Medium term: Undertake a work programme under WTO auspices and other relevant international and regional organizations to identify services sectors where the benefits of liberalization might be undermined by (i) weak national regulation, and (ii) inadequate international cooperation.

POLICY OPTION 7 - Addressing the risk of exclusion

- Medium term: Address the risk of exclusion created by regulatory cooperation among small groups of countries through a reaffirmation of relevant WTO provisions, a relaxation of exclusionary rules of origin, and appropriate technical support to close gaps in standards between developing and developed countries.

POLICY OPTION 8 - Strengthening regulatory provisions in services

- Medium term: Institute processes in the WTO and elsewhere to consider ways of strengthening regulatory provisions in services, along the lines already established in the Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) Agreements and some preferential agreements, including through greater reliance upon the work of other international standardizing bodies.

TOWARDS GREATER COMPATIBILITY BETWEEN RULES GOVERNING GOODS AND SERVICES

In a real world context where business decision-making involves joined up treatment of interdependent elements of trade and investment activities, questions arise as to the wisdom and utility of today’s parallel legal and institutional treatment of rules on trade and investment in goods and services. To a greater or lesser degree, this issue arises in both multilateral and preferential rule-making settings, though most explicitly in the WTO setting. Should governments try to rationalize fractured rule sets in order to render them more relevant and less distorting? Certain pointers as to where such action would be both feasible and useful are suggested here. While arguments regarding the technical or legal difficulties or willingness and interest among governments of acting on such an agenda must be taken seriously, they should not constitute an embargo on deliberation.

POLICY OPTION 9 - Analysing policy coherence across services, goods, and investment

- Short term: Call upon governments, with the assistance of the WTO, World Bank, UNCTAD, and OECD, to engage in analytical work, aiming at better understanding and raising awareness of the imperative of policy coherence across the areas of trade in services, trade in goods, and investment.

POLICY OPTION 10 - Reducing distortionary parallelism in goods and services rule sets

- Medium term: Constitute a working group open to all WTO members, or some other mechanism, to examine the desirability and feasibility of reducing distortionary parallelism in separate rule sets affecting goods and services in the domains of both trade and investment. This exercise should take account of possible lessons from alternative approaches adopted by preferential trade agreements.

OTHER SUGGESTIONS FOR MODIFICATIONS IN THE GATS

Opportunities exist for reaping greater benefits from trade involving the temporary movement of natural persons across frontiers to provide services. Realizing these benefits does not require any modification to nationally determined public policy priorities with respect to such activities. Rather they rely on greater legal clarity and procedural efficiency, combined with closer regulatory cooperation among governments.

POLICY OPTION 11 - Cross-border movement of people supplying services

- Short term: Launch a process to examine ways of accruing greater benefits from temporary cross-border movement of people supplying services. The experience of preferential agreements covering the temporary movement of persons should also be taken into account.

Finally, the Expert Group discussed a range of issues and possible options relating to GATS disciplines on scheduling and how to improve procedures and techniques in order to increase the consistency, depth, and clarity of scheduled commitments. As with many other aspects of the Group's discussions, no firm shared conclusions were reached. Nevertheless, the issues warrant further reflection.

POLICY OPTION 12 - Improving scheduling practices in the GATS

- Medium term: Call upon WTO members to examine various aspects of scheduling practices in the GATS, as well as alternatives deployed under preferential agreements, with a view to considering possible ways of improving existing arrangements.

NEXT STEPS

The recommendations arising from the E15 expert dialogue on services seek to offer guidance on a set of present and future priority areas for analysis, negotiation, and policy intervention. The policy options are presented over an indicative time horizon. The short-term options are mostly related to analytical and exploratory work that can be undertaken immediately whereas the medium and long-term options are of a more substantive nature and might require significant effort and consensus building.

While some of the options may seem rather technical in nature when gauged against the need for a comprehensive

response to the huge changes that are taking place in the world economy, policy-makers will benefit from the compilation of ideas and recommendations. The issues summarized herein are of increasing relevance to national economies at all levels of economic development.

Priority areas include work on identifying frameworks in the WTO and elsewhere that could better integrate rules on trade in goods, trade in services, and investment, examining positive approaches to services disciplines developed in different institutional settings, promoting an enhanced approach to soft law in the articulation of rules for services, creating mechanisms for improved international regulatory cooperation while addressing the risks of exclusion, and more structured policy responses to the profound transformations brought about by the digital revolution.

For trade policy to perform its function as a means of achieving growth and creating jobs, it needs to be effective, sustainable over the long term, enable business to prosper, and contribute to wealth creation. The task facing governments and other stakeholders is to find ways of rendering regimes for the regulation of services as relevant and supportive as possible to the challenges facing the global economy. Such arrangements must be equitable to gain acceptance, and contribute to sustainability, development, and growth. The policy options on rethinking services in a changing world seek to respond to these requisites.

ENDNOTES

1. The definition of services trade under the GATS is four-pronged, depending on the territorial presence of the supplier and the consumer at the time of the transaction. The GATS covers services supplied (a) from the territory of one Member into the territory of any other Member (Mode 1 - Cross-border trade); (b) in the territory of one Member to the service consumer of any other Member (Mode 2 - Consumption abroad); (c) by a service supplier of one Member, through commercial presence, in the territory of any other Member (Mode 3 - Commercial presence); and (d) by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member (Mode 4 - Presence of natural persons). From: WTO Trade in Services Division. 2013. *The General Agreement on Trade in Services: An Introduction*.
2. The policy options are fleshed out in greater detail in terms of gaps and implementation in the summary table.
3. The distinction between hard and soft law turns on whether undertakings are enforceable through legal actions.
4. On the broad question of the role of soft law in the context of hard law frameworks, many participants in the Expert Group considered that trade in services, to a far greater extent than trade in goods, brings into prominence the question of how to articulate global rules with the sovereign right of governments to regulate. This raises the question of how to develop an enhanced approach to soft law.

TABLE SUMMARY OF MAIN POLICY OPTIONS

POLICY OPTION	TIMESCALE	CURRENT STATUS AND GAPS	HOW TO GET THERE
Services and the digitized economy			
1. Establish guidelines for regulating cross-border data flows	Short to Medium Term	<p>WTO Reference Paper on Telecommunications concluded in 1996 before Internet and cross border data flows became prominent in international trade.</p> <p>WTO Programme on E-Commerce has been unable to make recommendations on cross border data flows or to reach a definition on e-Commerce.</p> <p>Regional organizations and bodies have been able to go further and develop understandings on data privacy, but this has not been taken up at the multilateral level.</p> <p>There is little interoperability of privacy regimes for data internationally, which acts as a deterrent to trade flows. There is also no agreement on controls over the collection of personal data.</p> <p>Varying methods for data encryption exist between countries, complicating digital transactions.</p> <p>Several countries have recently enacted regulations for the localization of data servers, which restricts cross-border data flows and impedes international trade in efficiency terms.</p>	<p>Clarify existing GATS provisions, including most-favoured nation (MFN), national treatment, and the Annex on Telecommunications in terms of their application to cross-border data flows.</p> <p>Call upon WTO members to step up their efforts in deliberating those issues in the context of the WTO Work Programme on E-Commerce.</p> <p>Consider the possibility of adopting best practices relating to privacy, developed by agencies such as the OECD or Asia-Pacific Economic Cooperation (APEC), as part of an effort to draw a regulatory line between privacy and state access.</p> <p>Promote a maximum degree of interoperability internationally of privacy regimes.</p> <p>Agree on establishing adequate controls over the bulk collection of personal data.</p> <p>Focus on improving encryption and developing best practices to enhance the security of cross-border digital transactions.</p> <p>Engage in a process to assess the implications of requirements for data localization and cross-border restrictions on data flows in terms of their efficiency costs and effectiveness in attaining their stated objectives, including economic development, privacy protection, and national security.</p>
2. Consider the development of disciplines on trade in services delivered digitally and data flows	Long Term	<p>The digital revolution has been deeply transformative but the policy response has often been confused and contradictory.</p> <p>If technology and policy work together, viable solutions can be found to achieving a balance between public policy concerns and the benefits flowing from the digitized economy.</p>	<p>Build on the above.</p> <p>The elements of regulatory disciplines could be used multilaterally or in RTAs.</p> <p>Confirm existing disciplines or establish new ones and encourage digital trade.</p>
Services and SMEs			
3. Ensure that new opportunities offered SMEs by the digitization of trade can be realized	Short Term	<p>There is no single point of enquiry for cross border services providers, and the national enquiry points envisaged by the GATS are designed for use by government officials and not by services providers.</p> <p>To date, only 17 countries have ratified the Trade Facilitation Agreement (TFA). The lack of digital enabling single window for customs and border compliance currently disadvantages SME services providers to trade via Mode 1. The more countries that commit to this technological step, the more opportunities it would offer for SMEs from developing countries to export services.</p> <p>There are many different levels of <i>de minimis</i> customs levels for small packages in international trade. This varies country by country and discourages digitally enabled electronic commerce, especially from SMEs.</p>	<p>Call upon countries to provide comprehensive, online, single points of enquiry for cross-border services providers to learn about host country regulatory, licensing, and other administrative requirements.</p> <p>Recruit another international organization or an independent agency to rate and annually report on the progress of each country in this effort.</p> <p>Call upon countries implementing the TFA to adopt interoperable, digitally-enabled single windows for customs and border compliance, and release open application program interfaces (APIs) to allow developers to create digital platforms to services to seamlessly link SMEs to large numbers of country single windows.</p> <p>Encourage the establishment of online single windows for cross-border services providers in need of licenses, permits, and other administrative requirements and explore the provision of Aid for Trade to implement this project in developing countries.</p> <p>Encourage the establishment of higher standardized <i>de minimis</i> customs levels to facilitate cross-border flows of small packages supplied by Internet-enabled retail services providers.</p> <p>Explore the integration of national postal services into an interoperable, global, package-shipping network.</p>

TABLE SUMMARY OF MAIN POLICY OPTIONS (continued)

POLICY OPTION	TIMESCALE	CURRENT STATUS AND GAPS	HOW TO GET THERE
The role of soft law			
4. Encourage the WTO Secretariat to contribute in reducing the “deliberative deficit”	Short Term	WTO members traditionally emphasized deliberation through negotiation, with limited exchanges outside of this. This has stymied the ability of the WTO to advance understanding and discussion on key trade issues, including those involving services and regulatory processes.	Address current topics, suggest areas for discussion, propose ways of approaching issues, disseminate analysis and information, and develop dialogue with other international organizations dealing with relevant matters, including in the field of services. Soft law developed outside the WTO should be studied to ascertain how it might inform domestic regulatory processes affecting trade in services.
5. Explore ways of ensuring that best endeavours clauses play a positive role in international agreements	Medium Term	The WTO currently has no mechanism for assessing the relationship between best endeavours provisions and hard law obligations.	Where best endeavours, provisions reflect a process of moving towards hard law commitments, the nature of the economic or other conditions justifying a soft law approach should be spelled out, and in appropriate cases technical assistance should be a component in a transition from soft law towards hard law. Best endeavours commitments should be accompanied by accountability duties, involving specific notification and monitoring provisions, especially if they risk creating misaligned expectations as to the effect of commitments contained in soft law texts.
Regulatory cooperation			
6. Undertake a work programme to identify services sectors where the benefits of liberalization might be undermined by (i) weak national regulation, and (ii) inadequate international cooperation	Medium Term	These initiatives should build on existing arrangements in areas like financial, telecommunications and transport services in order to establish a framework for mechanisms that ensure meaningful international cooperation in services sectors. The work programme should be undertaken under the auspices of the WTO and other relevant international and regional organizations.	Establish mechanisms for diagnosing and remedying domestic regulatory inadequacies in these sectors, especially in developing countries. Develop country- and sector-specific recommendations on the appropriate sequence of regulatory reform and liberalization, and credibly commit assistance for the former where necessary. Ensure greater coherence between international regulatory forums and trade negotiations, and that technical support is available to permit the participation of developing countries in regulatory cooperation activities. Develop country- and sector-specific recommendations on the appropriate sequence of international regulatory cooperation and liberalization.
7. Address the risk of exclusion created by regulatory cooperation among small groups of countries	Medium Term	If regulatory cooperation occurs through harmonization and standards are too stringent, the costs for some countries, especially developing countries, may be prohibitive. If cooperation takes place through mutual recognition, exclusion arises through rules of origin. Part of this problem results from a tendency for members to notify mutual recognition agreements under the “closed” GATS Article V exception for regional agreements rather than under the “open” GATS Article VII on recognition.	Reaffirmation of relevant WTO provisions, relaxation of exclusionary rules of origin, and appropriate technical support to close gaps in standards between developing and developed countries. Aspects of the exclusion issue could be addressed through Aid for Trade activities or other technical assistance initiatives at both the multilateral and regional levels.
8. Institute processes to consider ways of strengthening regulatory provisions in services	Medium Term	There is an absence of a clear and comprehensive necessity test in GATS Article VI. References to international standards in GATS are minimal. The GATS provision offers a weak incentive to apply such standards and only with respect to limited areas.	This could be done along the lines already established in the TBT and SPS Agreements and some preferential agreements, including through greater reliance upon the work of other international standardizing bodies.

POLICY OPTION	TIMESCALE	CURRENT STATUS AND GAPS	HOW TO GET THERE
Greater compatibility between rules governing goods and services			
9. Engage in analytical work on policy coherence across the areas of trade in services, trade in goods, and investment	Short Term	WTO rules were created with separate bodies of rules for goods and services and a lack of multilateral disciplines on investment. This structure does not reflect how businesses invest, produce, and trade in the 21st century.	The WTO, World Bank, UNCTAD, and OECD should provide assistance to governments in this analytical work aimed at the understanding and awareness of the imperative of policy coherence.
10. Constitute a working group (or other mechanism) to examine the desirability and feasibility of reducing distortionary parallelism in separate rule sets affecting goods and services in the domains of trade and investment	Medium Term	<p>Closer integration of goods and services regimes may not be as technically infeasible, nor the differences between goods and services as stark, as is sometimes argued. Further work is needed to tease out the details of what fusion would amount to in practice and what advantages would flow from it.</p> <p>The conditions may not exist for attempting significant architectural experiments; however, an exploratory exercise among governments, as well as other stakeholders, of arguments for augmenting compatibility between the two policy sets and practical ways this could be brought about would be worthwhile.</p> <p>This exercise should take account of possible lessons from alternative approaches adopted by preferential trade agreements.</p>	<p>The working group might start its work by considering the following possibilities in which there is an identified gap.</p> <ul style="list-style-type: none"> Identifying areas of trade law where the playing field might not be level between goods and services firms. Bringing together international rules on investment in goods and services, as well as rules on the movement of people, taking into consideration the implications this would have in terms of extending multilateral disciplines to investment and people movement beyond those existing for services under GATS. Bearing in mind possible risks associated with splintering trade rules along sectoral lines, consider the possibility—as has already emerged in the procurement field—of including both goods and services in some stand-alone agreements such as the International Technology Agreement, the TFA, and an agreement dealing with environmental products as well as in possible future agreements in areas like cross-border data flows and e-commerce.
Other suggestions for modifications to the GATS			
11. Launch a process to examine ways of accruing greater benefits from temporary cross-border movement of people supplying services	Short Term	<p>GATS rules on the temporary presence can be strengthened.</p> <p>Currently, temporary movement of persons under Mode 4 has not been the object of liberalizing commitments to the same degree as the other three modes. Governments have been reluctant to touch upon issues such as visas and work permits in the framework of a multilateral trade organization.</p> <p>The experience of PTAs covering temporary movement of persons should be taken into account.</p>	<p>Call upon WTO members to clarify GATS provisions in relation to how the Agreement covers processes and procedures related to visas and work permits.</p> <p>Improve transparency in relation to national conditions, procedures, and processes for issuing visas and work permits.</p> <p>Strengthen regulatory cooperation between governments for managing the entry and stay of natural persons for the supply of services.</p>
12. Call upon WTO members to examine various aspects of scheduling practices in the GATS with a view to improving existing arrangements	Medium Term	Improvements can be made on issues relating to GATS disciplines on scheduling as well as procedures and techniques in order to increase the consistency, depth, and clarity of scheduled commitments.	<p>Areas to assess the desirability of change include:</p> <ul style="list-style-type: none"> Progressively switching to the adoption of negative listing in GATS schedules of specific commitments. Working on a more standardized system of nomenclature for the scheduling of specific commitments. Establishing a “roll-back and standstill” negotiating modality that could be applied horizontally to align items listed in schedules of specific commitments with <i>status quo</i> policy in order to eliminate “water” in commitments.

EXPERT GROUP PAPERS AND THINK PIECES

The papers commissioned for the E15 Expert Group on Services can be accessed at <http://e15initiative.org/publications/>.

Bieron, Brian, and Usman Ahmed. 2015. *Services, International Rulemaking, and the Digitization of Global Commerce*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Low, Patrick. 2016. *Rethinking Services in a Changing World*. E15 Expert Group on Services – Policy Options Paper. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

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Mattoo, Aaditya. 2015. *Services Trade and Regulatory Cooperation*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

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Rentzhog, Magnus, and Emilie Anér. 2015. *The New Services Era – Is GATS up to the Task?* E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Sauvé, Pierre. 2015. *To Fuse or not to Fuse? Assessing the Case for Convergent Disciplines on Goods and Services Trade*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

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E15 INITIATIVE: EXPERT GROUPS AND TASK FORCES

In the quest for effective responses to the challenges faced by the global economy at this time, foremost experts were invited to contribute to 15 thematic groups as well as three task forces addressing horizontal issues. The groups met regularly between 2012 and 2015 with the goal of delivering a set of policy options on the occasion of the WTO's 20th anniversary. These options are intended to animate discussions and feed the present and future international trade and investment policy agenda for sustainable development. The full volume of policy options papers, jointly published by ICTSD and the World Economic Forum, and launched at the Forum's Annual Meeting in Davos-Klosters in 2016, is complemented with a monograph that consolidates the options into overarching recommendations for the international trade and investment system for the next decade. The second phase of the E15 Initiative in 2016–17 will see direct engagement with policy-makers and other stakeholders to consider the implementation of E15 policy recommendations.

E15 INITIATIVE THEMES

- 1 – Agriculture and Food Security
- 2 – Clean Energy Technologies
- 3 – Climate Change
- 4 – Competition Policy
- 5 – Digital Economy
- 6 – Extractive Industries
- 7 – Finance and Development
- 8 – Fisheries and Oceans
- 9 – Functioning of the WTO
- 10 – Global Trade and Investment Architecture*
- 11 – Global Value Chains
- 12 – Industrial Policy
- 13 – Innovation
- 14 – Investment Policy
- 15 – Regional Trade Agreements
- 16 – Regulatory Coherence
- 17 – Services
- 18 – Subsidies

* Policy options to be released in late 2016

Implemented jointly by ICTSD and the World Economic Forum, the E15 Initiative convenes world-class experts and institutions to generate strategic analysis and recommendations for government, business and civil society geared towards strengthening the global trade and investment system for sustainable development.



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