

SYNTHESIS OF THE POLICY OPTIONS

No.

5

**MAXIMIZING THE OPPORTUNITIES  
OF THE INTERNET FOR  
INTERNATIONAL TRADE**

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## Maximizing the Opportunities of the Internet for International Trade

Synthesis of the Policy Options\*

January 2016

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### NOTE

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The policy options presented in this synthesis are the result of a collective process involving all members of the E15 Expert Group on the Digital Economy. 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. Joshua P. Meltzer was this 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, the policy recommendations should not be considered to represent full consensus and remain the responsibility of the author. The list of group members and E15 papers are referenced.

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

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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.

For more information on the E15Initiative:  
[www.e15initiative.org](http://www.e15initiative.org)

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## OBJECTIVES AND OUTPUT

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### **The E15 Expert Group on the Digital Economy had three objectives**

- Examine the challenges and opportunities that growth of the digital economy creates for trade and development.
- Identify constraints and areas for improvement in the global trading system to enhance the benefits that can be derived from the digital economy.
- Propose specific options for governance of international trade in a digital economy.

### **Overarching questions and issues the Expert Group was tasked to consider**

- Recognize how the Internet has affected domestic economies and consider the nature and extent of digitization of economies across sectors and jurisdictions.
- Assess how consumers and businesses in the developing world are accessing and using the Internet and what this suggests for necessary and supportive policy measures—in general and most specifically with respect to cross-border trade.
- Evaluate the impact of the Internet on international trade in goods and services as well as investment.
- Review other forms of economic activity that the Internet has enabled, such as new types of digital businesses operating across borders and the expansion of e-commerce.
- Explore how the key technical, infrastructural, and policy barriers with implications for digital trade can be addressed.
- Consider options (i) to ensure that the regulation of information is not a disguised restriction on trade; and (ii) to establish regulatory practices that permit cross-border data flows and improved regulatory cooperation among countries.

### **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 13 and can be accessed at <http://e15initiative.org/publications/>.
2. Policy options presented in this synthesis and compiled in the summary table. The options are grouped under four categories:
  - Maximizing and updating WTO rules
  - Negotiating a digital trade agreement
  - Expanding and deepening regulatory cooperation on digital trade issues
  - Collaborating among stakeholders to support digital trade

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## FOREWORD

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The Internet has changed our lives in so many ways; from the manner we communicate and access information to the ways we innovate and work. It has spearheaded new areas of economic growth and opened new prospects for wealth creation and employment. The expansion of the Internet-based digital economy is often heralded as a 3rd industrial revolution in which manufacturing and services are increasingly shaped by digitization and where data flows are essential to business operations.

The digital economy, underpinned by the broad diffusion of information and communication technologies, and connected with the growing servicification of economic activity and the expansion of global supply chains, is having a transformative impact on trade. It brings new opportunities for businesses, particularly small and medium-sized enterprises, as well as individuals to engage in international trade. More significantly, the digital economy has placed data at the heart of international trade. Moving data across borders has become the lifeblood of many companies, big and small, around the world.

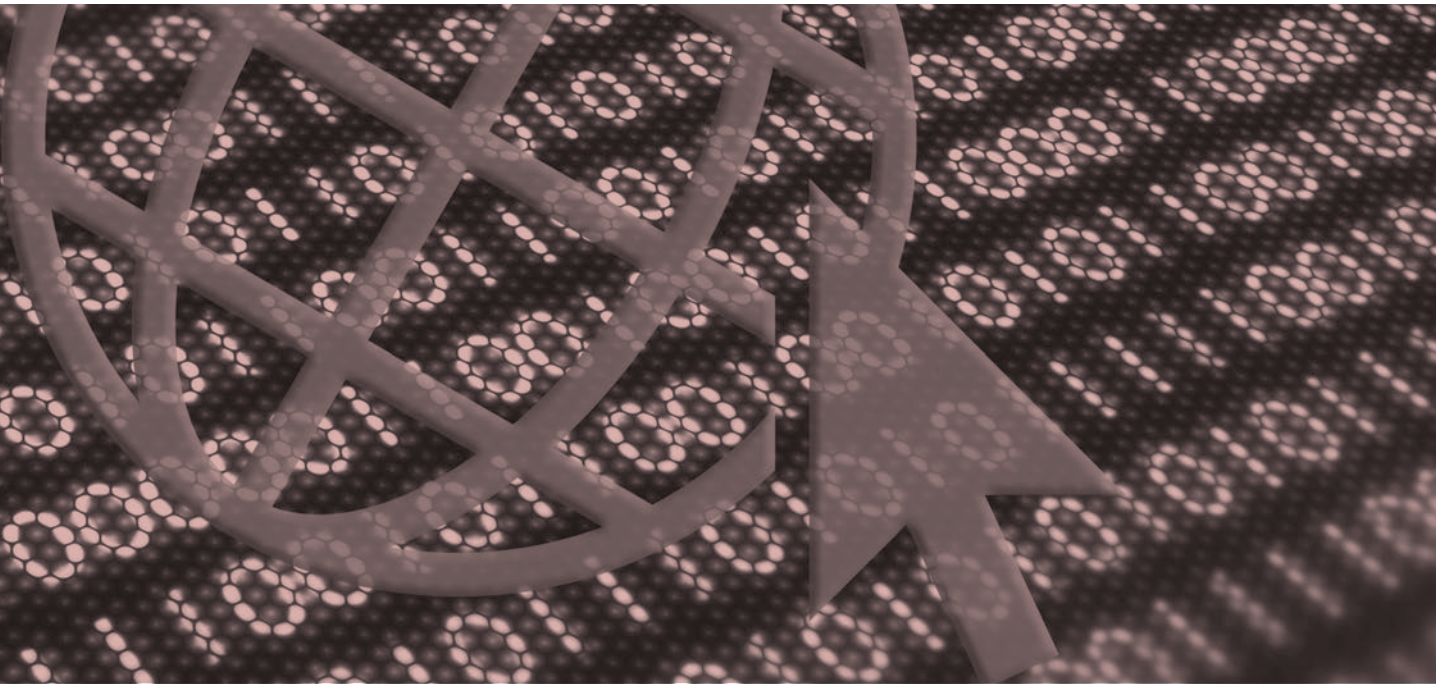
These developments have resulted in an explosion of cross-border digital trade over recent years. According to the McKinsey Global Institute report, *Global Flows in a Digital Age: How Trade, Finance, People, and Data Connect the World Economy*, “global online traffic across borders grew 18-fold between 2005 and 2012, and could increase eightfold more by 2025.” In less than a decade, cross-border e-commerce

has grown to represent more than 10% of trade in goods.

Moreover, this unprecedented expansion of digital trade is taking place at a time when the huge potential impact of digitization, together with new modes of innovation, production, and distribution of goods and services, is only beginning to emerge. The impact of disruptive technologies, such as 3D printing for example, is not yet entirely clear. The Internet of Things—in which physical objects are embedded with electronics, software, sensors, and connectivity generating large amounts of data from diverse locations to achieve greater value—is developing at a fast pace.

This digitization of economic activity is unsettling many established regulatory frameworks whose foundations, principles, and rules predate the Internet era. International trade and investment frameworks are grappling with multiple and novel challenges in this digital economy, ranging from market access restrictions and data localization requirements to privacy, cybersecurity, taxation, intellectual property protection, and jurisdictional questions.

In view of these challenges, ICTSD and the World Economic Forum jointly convened the E15 Expert Group on the Digital Economy with the mandate to suggest a set of policy options for the governance of digital trade. The Group examined the opportunities and challenges that the growth of the digital economy creates for trade and development and identified possible areas for improvement in the global trading system



adapted to the transformations induced by the Internet. Joshua Meltzer from the Brookings Institution prepared the policy options based on Expert Group deliberations and think pieces authored by members.

The policy options emphasize that designing and maintaining a rules-based international trading system supportive of the digital economy is crucial. Yet they also recognize that domestic regulatory frameworks in many countries are in flux, especially concerning the treatment of data, and that collaborative approaches are thus proving difficult to reach. The proposals range from updating existing trade rules to facilitate the expansion of digital trade, to suggesting more innovative approaches and norms designed to take into account the unique specificities and characteristics of digital trade.

It is clear that the relevance and credibility of the multilateral trading system will partly hinge on its ability to engage with the new opportunities and challenges to have emerged with the expansion of digital trade. This is by no means an easy task, especially as it entails dealing with policy issues—such as privacy—that are outside of its traditional sphere and that remain deeply contested across different jurisdictions. In this regard, there continues to be a need for increased awareness and better understanding of the various facets of the trade and digital economy interface, not least because of the fast pace at which change is proceeding.

As conveners of the E15 Expert Group on the Digital Economy, we are convinced of the need to provide organized and structured input into the policy and governance debates on digital trade. The policy 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 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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Chief Executive, ICTSD

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Managing Director and Member of the Managing Board,  
World Economic Forum

# MAXIMIZING THE OPPORTUNITIES OF THE INTERNET FOR INTERNATIONAL TRADE

**T**HE LAST DECADE HAS WITNESSED REMARKABLE DEVELOPMENTS IN THE DIGITAL ECONOMY, CREATING NEW OPPORTUNITIES FOR CROSS-BORDER TRADE AND INVESTMENT AND THE EMERGENCE OF NEW ENTERPRISES—LARGE AND SMALL—OFTEN IN UNEXPECTED SECTORS OR REGIONS, AND WITH NEW BUSINESS MODELS. THE CONSEQUENCES OF ACCESS TO THE INTERNET, DATA, MOBILITY, AND DIGITIZATION ARE ALSO HAVING PROFOUND IMPACTS ON GOODS AND SERVICES DELIVERY, PRODUCTION, AND USE.

The integration of digital elements are giving rise to issues of characterization: goods once clearly thought to be “manufactured goods” can now embed or utilize a digital dimension that provides essential value-added to the product and transforms them into one that is both a good and a service.

**The importance of cross-border data flows has given rise to the intersection of the trade regime with still more areas of economic and regulatory policy, notably with respect to privacy and security.**

The transformation in the character of cross-border trade is also resulting from global value chains of goods and services, which is made possible by the flow of immense amounts of data across borders on both public and private networks. Cross-border data flows are both essential to global value chains and can be a by-product of their expansion. This has, in turn, given rise to the intersection of the trade regime with still more areas of economic and regulatory policy—notably with respect to data privacy and security policies. The Internet is both part of the global commons and part of every nation’s sovereign jurisdiction. Policies that implicate its use (especially around data) can therefore have significant externalities. This recognition is not new—it has been fundamental

to economic globalization and the development of rules underpinning the international trading system. Indeed, trade rules have increasingly shifted focus from border to internal measures because of the recognition that domestic practices have profound cross-border implications. Today, nowhere is this more important than with respect to digital trade and the regulation of data and information.

The mandate of the E15 Expert Group on the Digital Economy, convened by ICTSD in partnership with the World Economic Forum, was to propose options for the improved governance of international trade in a digital economy. To accomplish its mandate, the Group sought to address the following questions. What is the nature and extent of digitization of economies across sectors and jurisdictions? How are consumers and businesses accessing and using the Internet and what does this suggest for supportive policy measures? How should the key technical, infrastructural, and policy barriers that have implications for digital trade be addressed? Finally, how can regulatory practices be established that permit cross-border data flows and improve regulatory cooperation among countries? Based on this analysis, the experts identified a set of supportive trade policy measures to enhance the benefits of digitization globally. They further developed proposals on how policy-makers, business, and civil society can address existing constraints and help create an enabling environment to realize the opportunities of the Internet and cross-border data flows for growing digital trade.



## ENABLING DIGITAL TRADE AND DATA FLOWS

### INTERNET EXPANSION AND ITS IMPACT ON INTERNATIONAL TRADE

Statistics on the economic impact of the Internet and data flows on economic growth and international trade are limited. However, modelling and empirical studies all point towards a strong influence of the Internet on economic growth and trade. For instance, the World Bank has found that a 10% increase in broadband penetration results in a 1.38% rise in economic growth in developing countries and 1.21% in developed countries. The Internet is also creating opportunities for new and disruptive businesses, which are shifting employment patterns in some industries.

Traditional businesses are increasingly where the value and impact of the Internet on economic growth and trade is being realized. This includes using the Internet to manage supply chains, access inputs online such as software, utilize cloud technologies, and source professional services. Businesses are also using the Internet to grow R&D and design practices globally, combining greater access to information and data to drive innovation. The Internet of Things is another emerging area that is providing increasing amounts of data that businesses are using to improve productivity and competitiveness.

Consumer use of the Internet is also growing globally. Using Internet platforms and services, consumers can search for and purchase goods—often from geographically dispersed small and medium-sized enterprises (SMEs). This is opening up new possibilities for SMEs to sell their products online, engage in international trade, and become part of the global economy. The Internet is also overcoming barriers that previously made it costly for many businesses in developing countries to engage in international trade.

### AN ENABLING ENVIRONMENT FOR DIGITAL TRADE

Realizing the opportunities of the Internet and cross-border data flows for economic growth and international trade will require an enabling environment that comprises three elements.

- **Confidence in cross-border transactions:** regulations that give businesses and consumers confidence to use the Internet to engage in cross-border transactions. This includes greater certainty as to the application of consumer protection laws to digital trade, expanding access to dispute settlement mechanisms to settle disputes arising out of digital trade, enabling logistics networks to deal with the particular demands of digital trade (such as trade in low-value goods), access to international payment mechanisms,

and ensuring that governments and companies have the tools to protect the security of data online.

- **Data access and data flows:** commitments to ensure that online information can be accessed and data can flow freely across borders, recognizing that this will require security and regulatory oversight to engender assurance that confidential and private information will be protected. Governments should agree not to apply regulations such as data localization laws that require data to be kept within a particular jurisdiction. They should also reconsider policies that limit Internet access to some foreign businesses in order to shield domestic players from competition—a form of digital protectionism.

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**Modelling and empirical studies all point towards a strong influence of the Internet on economic growth and trade.**

- **Regulatory cooperation:** cooperation to address regulatory externalities that arise from digital trade and the incentives this can create for governments to restrict cross-border data flows. For example, the EU prevents the transfer of personal data to third countries that do not have an “adequate” level of privacy protection. Interoperable regulatory frameworks such as the Asia Pacific Economic Cooperation (APEC) Cross-Border Privacy Rules can be effective in protecting privacy on a cooperative basis with broader international coverage, while ensuring that data can continue to cross borders.

## POLICY OPTIONS TO MAXIMIZE TRADE IN THE DIGITAL ECONOMY

The world is still in the early phase of developing and exploiting the commercial and other consequences of the Internet. Further establishing and maintaining a rules-based international trading system supportive of the digital economy is crucial to safeguard and enhance the benefits that flow to both developed and developing countries from the Internet itself and the digital economy. This requires both short and long-term measures, actions by governments, firms, and private individuals, and continued examination of the existing rules frameworks within countries and at the international level. It also requires some new thinking and understanding about this dynamic area of economic change. The following options range from updating existing rules to innovative approaches tailored to the unique specificities of the digital economy and digital trade.

## MAXIMIZE AND UPDATE WTO RULES IN THE NEAR AND LONG TERM

### POLICY OPTION 1 - Implement and consider expanding the WTO Trade Facilitation Agreement (TFA) to support digital trade

The TFA supports digital trade in a number of important ways. It includes commitments to enhance transparency and accountability of customs procedures; it requires the publication of regulations and procedures affecting trade; and much of this information must be made available on the Internet. The agreement will also increase the speed with which goods move through customs by requiring WTO members to have procedures that allow submission of import documentation prior to arrival. (i) More explicit consideration of those dimensions of customs review and clearance that can be facilitated through digitization should be actively considered. This should include particular attention on the connectivity dimensions of these steps, such as requiring acceptance of digital submission of customs forms. (ii) The TFA fails to address the *de minimis* level of customs duties. For trade in lower value goods that the Internet is enabling, transaction costs such as customs declarations and duties account for a relatively large share of the total value, making it a serious trade barrier that could be reduced.

The policy options range from updating existing rules to innovative approaches tailored to the unique specificities of the digital economy and digital trade.

### POLICY OPTION 2 - Make permanent the moratorium on customs duties on electronic transmissions

WTO members have agreed a moratorium on imposing customs duties on the electronic transmission of products. An extension of this moratorium through to 2017 was reaffirmed at the WTO Nairobi Ministerial Conference in December 2015. A permanent moratorium should be the aim, as it would increase business certainty and further support digital trade.

### POLICY OPTION 3 - Empower the WTO to further conceptualize how the digital economy can be supported and expand the organization's information functions on digital trade

At the 2013 WTO Bali Ministerial, members instructed the General Council to substantially invigorate the Work Programme on Electronic Commerce. The Nairobi Ministerial reaffirmed this programme. The WTO bodies responsible—the Goods, Services, and TRIPS (intellectual property) Councils, and the Trade and Development Committee—have met a number of times since 2013, but little progress appears to have been made. (i) WTO members should provide more specific direction on what this work programme should address. (ii) The WTO should consider establishing an external group of experts to recommend steps that could be taken to support digital trade. (iii) This could include a platform in the WTO that would act as a repository of information and insight about the digital economy and its relationship to the international trade system, rules, and agreements. (iv) The WTO can enhance analytical work and assemble relevant information on regional and plurilateral agreements by identifying those portions that specifically address the digital economy.

### BOX 1 Existing Digital Trade Rules in US Trade Agreements

Some digital trade rules exist in the WTO and these have been expanded on in various free trade agreements (FTAs) that the US is a party to. The recent US-Korea (KORUS) FTA provides the most up-to-date set of digital trade rules that are in force. Key KORUS digital trade rules are as follows:

- To allow financial institutions to transfer information across borders for data processing where such processing is required in the ordinary course of business;
- To “endeavor to refrain from imposing or maintaining unnecessary barriers to electronic information flows across borders.” This commitment is subject to the GATS Article XIV exceptions, which includes measures related to the protection of privacy;
- Not to impose customs fees on trade in digital products;
- Not to discriminate in favour of domestic digital products over “like” imported digital products;
- Rules to encourage use of digital signatures;
- To promote cooperation among national consumer protection authorities on the prevention of deceptive practices in electronic commerce;
- Commitment to a set of digital trade principles; and
- Internet intermediary liability protection.

The Trans-Pacific Partnership (TPP) expands on KORUS digital trade rules and includes commitments on the free flow of data across borders subject to exceptions, as well as disciplines on data localization requirements.

**POLICY OPTION 4 - Convene a working group to better understand the scope for WTO law to support digital trade**

WTO rules in a number of areas already provide a strong foundation in support of the digital economy and digital trade. Several cases that have gone through dispute settlement have addressed selective digital trade issues. (i) Rather than move forward on a case-by-case basis, a WTO working group could be established to consider how the needs of digital trade are covered under the existing rules framework, identifying those areas where coverage is robust and those where it is either inadequate or ambiguous. (ii) The working group (or external expert group) should also consider the principles and rules that have been developed in bilateral/regional fora that support digital trade. (iii) The Trade Policy Review Mechanism (or group of experts) should be tasked with investigating whether WTO members have adopted measures that affect digital trade and might be inconsistent with their WTO commitments.

**POLICY OPTION 5 - Conclude and then expand the Information Technology Agreement**

The Nairobi Ministerial sealed a deal on the expanded Information Technology Agreement (ITA-II), a plurilateral among 53 WTO members accounting for about 90% of global trade in information and communication technology products. Greater geographical coverage (India, Brazil, Mexico, and South Africa are not parties to the expansion) should be a priority.

**POLICY OPTION 6 - Update the WTO Telecoms Reference Paper to ensure competition over the Internet as well as traditional networks**

The WTO Telecoms Reference Paper includes pro-competitive regulatory principles for the telecommunications sector, designed to ensure that former monopoly operators do not use their market power—such as control of access to infrastructure—to undermine competitive opportunities for new market entrants. It has been an important tool underpinning the move towards greater competition in telecommunications. However, the Reference Paper is not fully self-explanatory and has only once been litigated in the WTO. Members of the WTO should seek to clarify the application of the Paper to ensure the preconditions for competition over the Internet as well as traditional networks and update where necessary.

**POLICY OPTION 7 - Clarify the application of WTO member commitments to digital trade in the General Agreement on Trade in Services (GATS)**

The convergence among basic and value-added telecom services has rendered the scope of GATS commitments increasingly unclear. WTO members should clarify the extent that GATS liberalizes relevant sectors for digital trade and where further market access is needed.

## **NEGOTIATE A DIGITAL TRADE AGREEMENT**

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**POLICY OPTION 8 - Negotiate digital trade rules in the Transatlantic Trade and Investment Partnership (TTIP), the Trade in Services Agreement (TiSA), and develop a plurilateral digital trade agreement at the WTO**

Critical areas of examination are the evolving national and international frameworks that impact cross-border data flows. Data has become central to innovation and essential to global value chains, and regulation on data can be a disguised restriction on trade. There is a need to develop greater consensus or critical mass around core concepts regarding cross-border data flows. Rules and principles to support and expand digital trade are being inserted in some trade agreements such as the TPP. This should be expanded to more jurisdictions. The US and EU, in the TTIP, and the countries negotiating TiSA should build on these rules. In addition, digital trade principles have been agreed in the OECD and bilaterally. This work provides a basis for developing a specific agreement on digital trade that should be negotiated at the WTO on a plurilateral basis—with consideration given to applying any such agreement on a most-favoured-nation basis.

**POLICY OPTION 9 - Expand services market access commitments that can be delivered online and implicate cross-border data flows**

The potential for the Internet to enhance services trade makes addressing services trade barriers particularly important. This is included in the agenda of the WTO Doha Round but progress remains slow. In the meantime, services liberalization is being pursued in FTAs, the most important being TiSA, the TPP, and TTIP. These negotiations should be the immediate focus for expanding market access commitments for services trade.

**POLICY OPTION 10 - Allow for the free flow of data across borders subject to an exceptions provision based on GATS Article XIV and a tightly constrained national security exception**

Currently there are only limited commitments specific to cross-border data flows, although restrictions on such flows may implicate a variety of WTO commitments (e.g. financial services, cross-border computer and related services, access to information in telecoms). More binding disciplines may be necessary to facilitate the flow of data, subject to GATS Article XIV exceptions, which include measures necessary for protecting the privacy of individuals as well as a national security exception.

#### **POLICY OPTION 11 - Commit to not require data localization**

Trade agreements should include commitments to not require data to be stored locally. The TPP Agreement will be the first to include disciplines in this area once it has been ratified. At the same time, governments, the private sector, and NGOs should work to address the concerns and goals that motivate data localization laws. These includes (i) reform of mutual legal assistance treaties (which provide a framework for a law enforcement agency to request information being stored in another jurisdiction); (ii) commitments regarding data encryption, which would give consumers greater confidence that their data will not be accessed without a valid subpoena; and (iii) cooperation on data privacy regulation (see below).

#### **POLICY OPTION 12 - Promote balanced intellectual property (IP) systems and develop as safeguards appropriate protections from intermediary liability**

A balanced IP regime with effective enforcement measures, clear limitations and exceptions such as fair use, and appropriate protections from intermediary liability will help promote the new forms of digital trade enabled by the Internet. The TPP, for example, calls on parties to “achieve an appropriate balance” in their copyright systems. The liability of intermediaries such as Internet service providers (ISPs) and online platforms for international trade is an area that has yet to be addressed in the WTO. The challenge is to balance the need to protect IP rights while enabling Internet services to grow as channels for creativity, innovation, and expression. Some rules in this area are already being developed in FTAs. The TPP requires parties to establish a system of copyright safe harbours for Internet services, and prohibits parties from making these safe harbours contingent on ISPs monitoring their systems for infringing activity. Similar rules that provide a balanced set of IP rules as well as a safe harbour could be included in other agreements such as the TTIP and TiSA.

### **EXPAND AND DEEPEN REGULATORY COOPERATION ON DIGITAL TRADE ISSUES**

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#### **POLICY OPTION 13 - Develop regulatory cooperation in areas affected by digital trade**

There are a number of areas where regulatory cooperation could address barriers to digital trade. Priority areas include: (i) *Privacy*: Privacy of personal data online is an important and growing issue that underpins trust in digital trade. Lower levels of privacy protection in one country can have consequences in trade and economic relations between nations. The recent decision of the European Court of Justice—which invalidated the European Commission’s adequacy decision under the US-EU Safe Harbour—calls into question the

effectiveness of the Safe Harbour for enabling the transfer of personal data, and underscores the need for transnational regulatory cooperation that supports data flows and the achievement of other regulatory goals such as privacy.

(ii) *Consumer protection*: Cooperation among consumer protection agencies can help raise confidence and willingness to engage in digital trade. This is also a regulatory agenda for which commitments could be included in trade agreements. (iii) *Rules on online contract enforcement and formation*: The US includes commitments in its FTA e-commerce chapters that go some way towards addressing the absence of common rules on contract formation online. Other approaches could see countries seeking to agree on ways to mutually recognize their laws on electronic signature and authentication methods. (iv) *Transparency and due process*: This is less a matter of cooperation among regulators than a set of reforms that regulators can undertake domestically. The main reforms would require regulators to consider *ex ante* the digital trade effects of regulation.

#### **POLICY OPTION 14 - Improve the regulation of digital payment services**

Realizing the benefits of digital trade calls for international payment systems that enable consumers to purchase goods and services online. Elements to be addressed include: (i) new services commitments in trade agreements that remove restrictions on financial flows across borders; (ii) regulation tailored for international payment providers that enables innovation consistent with the systemic risk from such entities; (iii) commitment to the free flow of data which allows banks and credit card companies to verify and authorize payments; (iv) the current absence of risk profiles for many developing country businesses that leads to higher costs of capital; and (v) transparent and easily accessible requirements on banks and non-financial institutions for reporting suspected illegal activities such as money laundering and terrorist financing.

#### **POLICY OPTION 15 - Develop a dispute settlement mechanism for digital trade**

A dispute settlement process that can respond in a timely and cost-effective way to issues that arise in the context of digital trade is needed. There are already some efforts to develop dispute settlement mechanisms for digital trade and these should be expanded on. For example, the OECD Recommendations on Consumer Dispute Resolution and Redress emphasize the need for states to encourage businesses to establish voluntary, effective, and timely mechanisms for handling and settling complaints from consumers, including “private third party alternative dispute resolution services, by which businesses establish, finance, or run out-of-court consensual processes or adjudicative processes to resolve disputes between that business and consumers.” Additionally,

the United Nations Commission on International Trade Law has established a working group to develop model rules on alternative dispute resolution processes which “are intended for use in the context of cross-border, low value, high volume transactions conducted by means of electronic communication.” In the private sphere, eBay has developed a settlement mechanism for disputes arising on its platform. Indeed, this is an area where public-private sector cooperation is needed to develop an approach that is effective and responds to the needs of digital traders globally.

## **GOVERNMENTS, BUSINESS, AND NGOs WORKING TOGETHER TO SUPPORT DIGITAL TRADE**

### **POLICY OPTION 16 - Improve data gathering and metrics concerning digital trade**

The absence of quantitative data on the extent of digital trade and importance of the Internet and data flows for economic growth and jobs remains a key limit on understanding the scale of the issue and what it implies from a policy perspective. Government statistics agencies need to take the lead in collecting data on the digital economy and digital trade. International organizations such as the OECD and the World Bank could also play a role. Business can be more active in this space, as the private sector often has access to aggregate data that can help shed light on the economic impact of digital trade and data flows.

### **POLICY OPTION 17 - Enhance government and private sector cooperation on digital trade issues**

Many of the E15 recommendations for new trade rules would be enhanced with parallel work and engagement by the private sector and NGOs. (i) Private sector initiatives in developing dispute settlement mechanisms for digital trade, for example, are outlined in policy option 15. (ii) Another area ripe for engagement and work by the private sector is on data security. Ensuring security of the network is one of the key issues that affects consumer and business confidence in addition to the direct costs that security breaches have on individual businesses. (iii) The private sector could also take a lead role in building on and expanding acceptance of principles, such as openness, that help drive a global consensus on the value of the digital economy and that can guide government regulation of the Internet. This could involve private sector input in economic fora such as APEC and the OECD.

### **POLICY OPTION 18 - Expand financing of digital infrastructure in developing countries**

Governments, the private sector, and NGOs should build on the importance assigned to Internet access in the Sustainable Development Goals. This could include developing innovative

financing models to expand broadband infrastructure and to reduce the cost of access to Internet-enabled devices in developing countries. Official development assistance and financing from international financial institutions (including the newly established Asian Infrastructure Investment Bank) is particularly relevant here as a way of reducing the risk of such investments and using public balance sheets to crowd-in private sector finance. As a corollary, the World Bank should consider updating its Ease of Doing Business methodology to include in its Trading Across Borders section the ease of cross-border data flows.

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**Many of the E15 recommendations for new digital trade rules would be enhanced with parallel work and engagement by the private sector and civil society.**

## **CONCLUDING NOTE**

Data is increasingly central to how governments, businesses, and people conduct their affairs. The ability to move data across borders also underpins the globalization of the Internet, global supply chains, and foreign investment. Companies are using data to reach consumers, innovate, and develop new business models. Businesses and consumers in developing countries, as well as SMEs, are using access to the Internet to become part of the global economy in ways that were not previously possible. As a result, the Internet and international data flows are creating new opportunities for more inclusive growth and employment.

At the same time, governments are grappling with some of the challenges presented by the ability to rapidly and seamlessly move large quantities of data overseas. Domestic regulatory frameworks with respect to security and privacy, for example, are in flux in many countries and thus international arrangements are particularly hard to develop. Current international trade and investment rules and norms often navigate between competing goals and do not adequately support an open Internet or the flow of data across borders.

The policy options put forward by the E15 Expert Group on the Digital Economy provide a range of proposals for action by governments, businesses, and NGOs to engage in new forms of regulatory cooperation as well as the learning and sharing of experience. They are all feasible—even if over the long term in some instances given the complex range of political economy and institutional challenges. The objective is to develop a set of international trade rules and frameworks that seek to ensure that the opportunities of the Internet and global data flows are fully realized.

**TABLE SUMMARY OF MAIN POLICY OPTIONS**

POLICY OPTIONS	TIMESCALE	CURRENT STATUS	GAP	STEPS	PARTIES INVOLVED
<b>Maximize and update WTO rules in the near and long term</b>					
1. Implement and consider expanding the WTO Trade Facilitation Agreement (TFA) to support digital trade	Short-Long term	TFA will enter into force when two thirds of WTO membership will ratify it	TFA does not sufficiently take into account digitization and the specific characteristics of digital trade It fails to address the <i>de minimis</i> level of customs duties	Measures could be introduced in TFA to: <ul style="list-style-type: none"> <li>Require acceptance by customs of digital submission of customs forms</li> <li>Reduce transaction costs for goods of small value</li> </ul>	WTO members
2. Make permanent the moratorium on customs duties on electronic transmissions	Short Term	The WTO moratorium on imposing customs duties on electronic transmission of products has been renewed six times at WTO Ministerial Conferences	The moratorium has never been made permanent and legally binding	The moratorium should be made permanent as such a move would increase certainty amongst businesses and further support digital trade	WTO members
3. Task the WTO to set forth an ambitious E-Commerce Work Programme	Short Term	At the 2013 WTO Bali Ministerial, Members instructed the General Council to substantially invigorate the E-Commerce Work Programme  The Nairobi Ministerial in December 2015 reaffirmed this programme	Little progress has been made in substantive discussions in this area	<ul style="list-style-type: none"> <li>Provide more specific direction on what the E-Commerce Work Programme should address</li> <li>The WTO should consider establishing an external group of experts to recommend steps that could be taken to support digital trade</li> <li>This could include establishing the WTO as a repository of information and insight about the digital economy and its relationship to the international trading system and agreements</li> </ul>	WTO members
4. WTO bodies such as the Trade Policy Review Mechanism or an outside group of experts should be tasked with evaluating the extent to which Members' digital-trade-related measures are consistent with their existing WTO commitments	Medium Term	WTO rules in a number of areas provide a strong foundation in support of the digital economy and digital trade	There are a number of areas where the coverage by WTO rules of the digital trade needs might be ambiguous or inadequate	A WTO working group or body could consider <ul style="list-style-type: none"> <li>How the needs of digital trade are covered under the WTO existing rule framework</li> <li>Report on current digital protectionism measures around the world on an annual basis</li> <li>Evaluate the extent to which members' digital-trade-related measures are consistent with their existing WTO commitments</li> </ul>	WTO members
5. Conclude expansion of the Information Technology Agreement (ITA) and increase its signatories	Short-Medium Term	The ITA is a plurilateral agreement involving 75 WTO members representing 97 percent of world trade in ICT products. It has reduced tariffs to zero on a range of ICT goods	The ITA needs to be updated to include IT goods developed over the last 15 year. However, progress agreeing on an expanded list of goods has been slow. Finally, on 24 July 2015, an expanded list of tariff lines was agreed that would be subject to duty elimination	<ul style="list-style-type: none"> <li>Countries should build on the conclusion of ITA-II agreed at the WTO ministerial in Nairobi</li> <li>Expansion of the number of countries in ITA (India, Brazil, Mexico and South Africa are not members of this new expansion) should be a priority post-Nairobi</li> </ul>	WTO members

POLICY OPTIONS	TIMESCALE	CURRENT STATUS	GAP	STEPS	PARTIES INVOLVED
6. Consider updating the WTO Telecoms Reference Paper to ensure competition over the Internet	Long Term	The WTO Telecoms Reference paper outlines a number of principles that are designed to regulate competition in telecommunications	The Reference Paper is not fully self-explanatory and has been litigated and used in the WTO context infrequently	WTO members should seek to clarify the application of the Reference Paper to ensure the preconditions for competition over the Internet as well as traditional networks and update where necessary	WTO members
7. Clarify the application of WTO members' GATS commitments to digital trade	Medium Term	The GATS commitments were originally made for basic telecommunications services	The convergence amongst basic and value added telecommunication services have rendered the scope of GATS commitments increasingly unclear	WTO members should clarify the extent that GATS liberalizes relevant sectors for digital trade and where further market access is needed	WTO members
<b>Negotiate a Digital Trade Agreement</b>					
8. Negotiate digital trade rules in TTIP, TiSA and conclude a plurilateral digital trade agreement at the WTO	Medium Term	Regulation around data can be a disguised restriction on trade	There is a need to develop greater consensus or a critical mass around core concepts regarding cross-border data flows	<ul style="list-style-type: none"> <li>The US and the EU in TTIP and the countries negotiating TiSA should build on new rules for digital trade such as those in TPP</li> <li>Develop a specific agreement on digital trade to be negotiated at the WTO on a plurilateral basis, with consideration given to applying any such agreement on an MFN basis to all WTO members</li> </ul>	TTIP parties TiSA parties WTO members
9. Expand services market access commitments that implicate cross border data flows	Medium Term	The potential for the Internet to grow services trade makes addressing services trade barriers important	Reducing barriers to services is part of the WTO Doha Round but progress remains slow	TiSA, the TPP, and the TTIP negotiations should be the immediate focus for expanding market access commitments for services trade	TTIP parties TiSA parties
10. Allow for the free flow of data across borders subject to an exceptions provision based on GATS Article XIV and a tightly-constrained national security exception	Medium Term	Currently there are only limited commitments specific to cross-border data flows, though restrictions on cross-border data flows may implicate a variety of WTO commitments	There is need for firm commitments to allow cross border data flows	More binding commitments are needed to ensure the free flow of data across borders subject to an exceptions provision based on GATS Article XIV and a tightly-constrained national security exception	WTO members
11. Commit to not require data localization	Medium Term	Trade agreements do not currently include a binding rule to not require data localization	Regulation around data can be a disguised restriction on trade with unintended consequences for employment growth and innovation	<ul style="list-style-type: none"> <li>Trade agreements should include firm commitments to not require data localisation</li> <li>Governments, the private sector, and NGOs should work to address the concerns and goals that motivate data localization laws</li> </ul>	TTIP parties TiSA parties
12. Include a balanced set of intellectual property (IP) rules and intermediary liability protections – including enforcement measures, limitations and exceptions such as fair use, and appropriate protections from IP and non-IP intermediary liability	Medium Term	A balanced IP regime with effective enforcement measures, clear limitations and exceptions such as fair use, and appropriate protections from intermediary liability facilitates digital trade	The liability of Internet intermediaries such as ISPs and Internet platforms for international trade is an area that has yet to be addressed in the WTO. Some rules in this area are being developed in FTAs such as TPP	Include a balanced set of IP rules and intermediary liability protections in trade agreements	WTO members TTIP parties TiSA parties

**TABLE SUMMARY OF MAIN POLICY OPTIONS (continued)**

POLICY OPTIONS	TIMESCALE	CURRENT STATUS	GAP	STEPS	PARTIES INVOLVED
<b>Expand and deepen regulatory cooperation on digital trade issues</b>					
13. Develop regulatory cooperation in areas affected by digital trade	Medium Term	The lack of regulatory cooperation in areas such as privacy, consumer protection, and transparency can hinder digital trade	Lower levels of privacy protection in one country can have consequences in trade and economic relations between nations	There is a need to develop regulatory cooperation in areas affected by digital trade	WTO members TTIP parties TiSA parties
14. Improve the regulation of digital payment services	Medium Term	Maximising the benefits of digital trade requires international payments systems that allow consumers to purchase goods and services online	There are multiple barriers to access international payments mechanisms which are a crucial underpinning of all forms of digital trade	To address these barriers, countries should consider: <ul style="list-style-type: none"> <li>■ New services commitments in trade agreements to remove restrictions of financial flows across borders</li> <li>■ Developing regulations tailored for international payment providers that enables innovation consistent with the systemic risk from such entities compared with financial institutions</li> <li>■ Commitment to the free flow of data so banks and credit card companies can verify and authorize payments</li> <li>■ Countries should make transparent and easily accessible their requirements on banks and non-financial institutions for reporting suspected illegal activities such as money laundering and terrorist financing</li> </ul>	WTO members TTIP parties TiSA parties Private sector
15. Develop a dispute settlement mechanism for digital trade	Medium Term	The impact of the Internet on international trade raises new challenges for disputes settlement	There is currently no global dispute settlement mechanism capable of resolving digital trade disputes in a timely or cost-effective way	Develop a dispute settlement mechanism that is quick, cost effective and globally available and enforceable  Public-private sector cooperation is needed in this area to develop an approach that is effective, responds to the needs of digital traders and that can be enforced globally	Governments Private Sector
<b>Governments, business, and NGOs working together to support digital trade</b>					
16. Improve data gathering & metrics concerning digital trade	Medium Term	There is a need to Improve data gathering and metrics concerning digital trade	The lack of quantitative data on the extent of digital trade for economic growth and jobs remains an important limit on understanding the scale of the issue	<ul style="list-style-type: none"> <li>■ Government statistics agencies and international organizations such as the OECD and the World Bank should take the lead in collecting data on the digital economy and digital trade.</li> <li>■ Business can also play a more active as the private sector often has access to aggregate data that can help shed light on the economic impact of digital trade</li> </ul>	Governments OECD World Bank Private sector
17. Enhance government/private sector cooperation on digital trade issues	Medium Term	The private sector plays a leading role in digital trade	A global framework on digital trade should effectively address to the needs of the private sector and digital traders	The private sector can play a leading role in: <ul style="list-style-type: none"> <li>■ Developing dispute settlement mechanisms for digital trade</li> <li>■ Ensuring data security given its importance for consumer and business confidence in digital trade</li> <li>■ Expanding acceptance globally of digital trade principles on the importance of the Internet and data flows for trade and investment</li> </ul>	Governments Private sector
18. Expand financing of digital infrastructure in developing countries	Medium-Long Term	The role of Internet access and ICTs as a development outcome is recognized in the post-2015 Sustainable Development Goals (SDGs). However, Many countries lack a robust digital infrastructure to be able to fully reap the benefits of digital trade	Accessing financial resources to build the digital infrastructure in developing countries remains challenging	<ul style="list-style-type: none"> <li>■ There is a need for innovative financing models for building out broadband and reducing the cost of access to Internet-enabled devices in developing countries</li> <li>■ The World Bank should consider updating its Ease of Doing Business methodology to include in its Trading across Borders part, the ease of cross-border data flows</li> <li>■ Governments, business, and NGOs should build on the importance of Internet access in the SDGs</li> </ul>	Donor countries ODA agencies World Bank Regional development banks



## EXPERT GROUP PAPERS AND THINK PIECES

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

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Abdel Latif, Ahmed. 2015. *Revisiting the WTO Security Exceptions in a Globalized Digital Economy*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Ahmed, Usman, and Grant Aldonas. 2015. *Addressing Barriers to Digital Trade*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Ahmed, Usman, and Anupam Chander. 2015. *Information Goes Global: Protecting Privacy, Security and the New Economy in a World of Cross-border Data Flows*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Enders, Alice, and Amy Porges. 2015. *Cross-Border Data Flows and their Governance*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Kariyawasam, Rohan. 2015. *New WTO Trade Rules for Bits and Bytes?* E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Lund, Susan, and James Manyika. 2015. *How Digital Trade is Transforming Globalization*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Meltzer, Joshua P. 2015. *A New Digital Trade Agenda*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Meltzer, Joshua P. 2016. *Maximizing the Opportunities of the Internet for International Trade*. E15 Expert Group on the Digital Economy – Policy Options Paper. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

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The experts all participated in their personal capacity. The analysis and policy recommendations are not attributable to any institution with which members of the E15 Expert Group are associated.

## E15 INITIATIVE: EXPERT GROUPS AND TASK FORCES

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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

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- 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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