Policy Brief No-17



July 2025

# Realising The Hong Kong Ministerial Vision: Towards Deeper Mode 1 Liberalisation in Trade in Services

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## Introduction:

When the General Agreement on Trade in Services (GATS) entered into force in 1995, it was written for an analogue world. Its "request-offer" method allowed each member to choose which sectors and modes of supply to liberalise, reflecting two premises of the age. First, most cross-border trade in services still moved by physical presence (commercial presence or movement of natural persons). Second, reliable digital delivery was the exception, not the rule. The flexibility embedded in GATS helped convince developing countries to join, where they could shield sensitive sectors while opening export niche sectors.

A decade later, the Hong Kong Ministerial Declaration (2005) tried to reboot that architecture of GATS. The Hong Kong Ministerial Declaration (HKMD) Annex C on Services reaffirms the commitment of WTO Members to achieve a progressively higher level of liberalisation in services trade across the four modes, which are (1) cross-border trade; (2) consumption abroad; (3) commercial presence; and (4) movement of natural persons. Among these four modes of supply, Mode 1 stands out as a key enabler of equitable, efficient, and development-friendly integration into global services markets under HKMD.

The HKMD emphasised the need to give "particular attention to sectors and modes of supply of export interest to developing countries." It proposed changes in Mode 1 commitments, such that it asked developing countries in Mode 1 for "removal of existing requirements of commercial presence." This call was both prescient and strategic, anticipating the rise of digital trade and the interests of developed countries. Annex C of the HKMD urged members to table "high-quality" offers, to avoid blanket exclusions of any sector or mode, it also proposed changes in Mode 1 commitments such that it asked developing countries in Mode 1 for "removal of existing requirements of commercial presence," and also urged for improved commitments in Mode 4, i.e., the movement of natural persons that developing countries had long viewed as the quid pro quo for opening their markets.

Crucially, Hong Kong captured the first glimmer of the coming digital revolution. Negotiators recognised that cross-border, electronically delivered services (Mode 1) could no longer be treated as a marginal channel. By insisting on progressively higher levels of liberalisation "with no a priori exclusions," Annex C signalled that data-rich sectors like software, engineering design, and remote diagnostics would sit squarely on the negotiating table alongside the traditional mobility agenda of Mode 4.

### 1. Why Mode 1?

**Mode 1 offers a comparatively low-cost path** to export services without the need for foreign commercial presence or movement of natural persons. For developing countries, (i) it does not necessitate entry barriers such as visas, capital, or real estate requirements, i.e., service providers from developing countries to access global markets directly via digital channels, without having to establish a physical office or subsidiary abroad (commercial presence—Mode 3) or physically relocate staff internationally (movement of natural persons—Mode 4). As a result, providers bypass significant costs associated with securing foreign visas, investing large amounts of capital in foreign infrastructure, or incurring substantial real estate expenses abroad; (ii) it allows micro, small and medium-sized enterprises (MSMEs) to participate in trade; in the current day, we are seeing even the smallest of services firms, sole proprietors, are leveraging cross-border services, especially through the gig economy. With gig economy service providers can reach clients abroad through gig platforms such as Upwork, Fiverr, or Toptal. These marketplaces transform MSME service providers into instant

exporters, enabling them to invoice in hard currency, deliver work digitally, and receive payment without the need for visas, foreign offices, or large marketing budgets. As the gig economy scales, Mode 1 therefore becomes the main gateway through which millions of micro-entrepreneurs and small firms participate in global trade; and (iii) it empowers LDCs and landlocked countries by removing geographic disadvantages. As Paragraph 8 of Annex C notes, due consideration must be given to the "trade-related concerns of small economies." Mode 1 was expected to bridge capacity gaps without imposing heavy compliance burdens.

**With increasing digitalisation, Mode 1 has become integral** to the trade of IT, financial, education, and professional services. Liberalisation of Mode 1 is essential to (i) facilitate real-time cross-border digital transactions; (ii) promote e-commerce and digital trade for remote delivery of services; (iii) support technological upskilling and employment in high-value segments like software, accounting, legal, and telemedicine services.

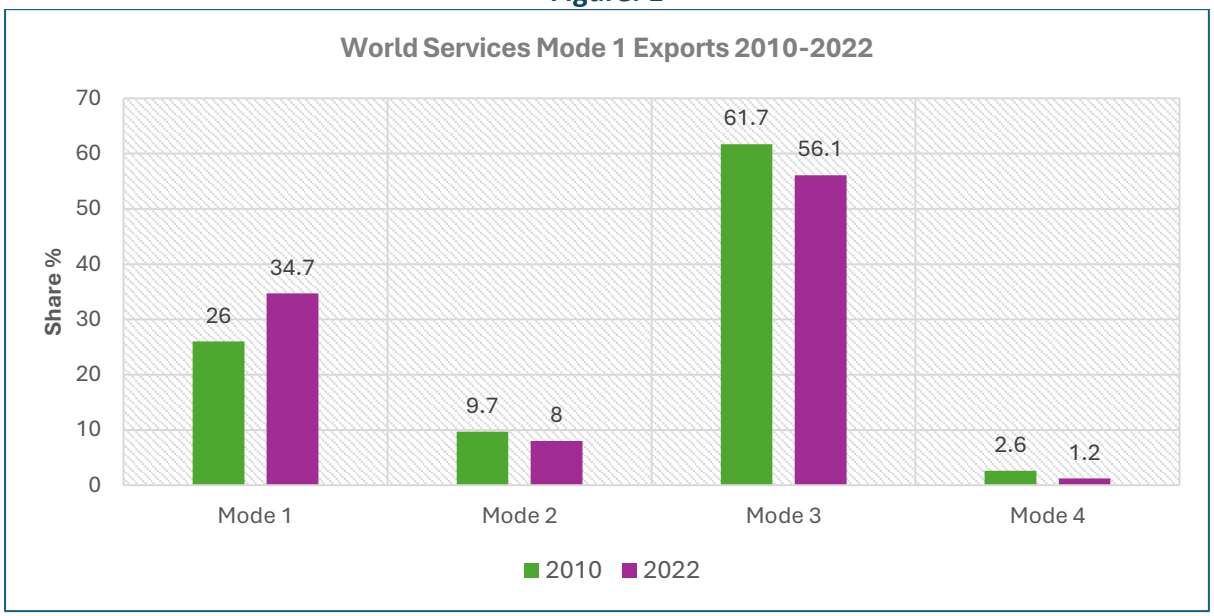
**Mode 1 allows for enhancing market access without migration pressures**. Unlike Mode 4, Mode 1 liberalisation avoids sensitive migration-related issues. It (i) ensures services market access without the physical movement of people; (ii) addresses political resistance to immigration in developed countries while still enabling service imports; (iii) reduces public policy concerns around labour markets, making it more politically viable.

**Mode 1 offers fewer barriers as compared to commercial presence** (Mode 3) related requirements that acts as a barrier. Annex C specifically targets the removal of commercial presence requirements (Para 1(a)(ii)). These requirements (i) create non-tariff barriers to entry, like foreign equity caps, joint-venture requirements, and mandatory local staffing. These constraints increase operational complexity, dilute managerial control, and raise compliance costs, which disproportionately impact smaller and developing-country firms; (ii) impose costs on service exporters, especially from developing countries; and (iii) they are inconsistent with the principles of efficiency and comparability in services scheduling (Annex C, Para 1(f)). Removing such requirements enables freer flow of services across borders, aligned with the WTO's mandate.

**Liberalising Mode 1 may help build confidence in the multilateral system**. As noted in the declaration, Members had been reluctant to make meaningful offers on services liberalisation, particularly under Mode 1. However, (i) evidence shows that cutting protection in services yields larger gains in real income than liberalising goods trade; (ii) liberalising Mode 1 can act as a confidence-building measure and catalyse progress in other areas; and (iii) it promotes a rules-based, transparent and predictable trade regime, reducing reliance on bilateral FTAs and ensuring consistency.

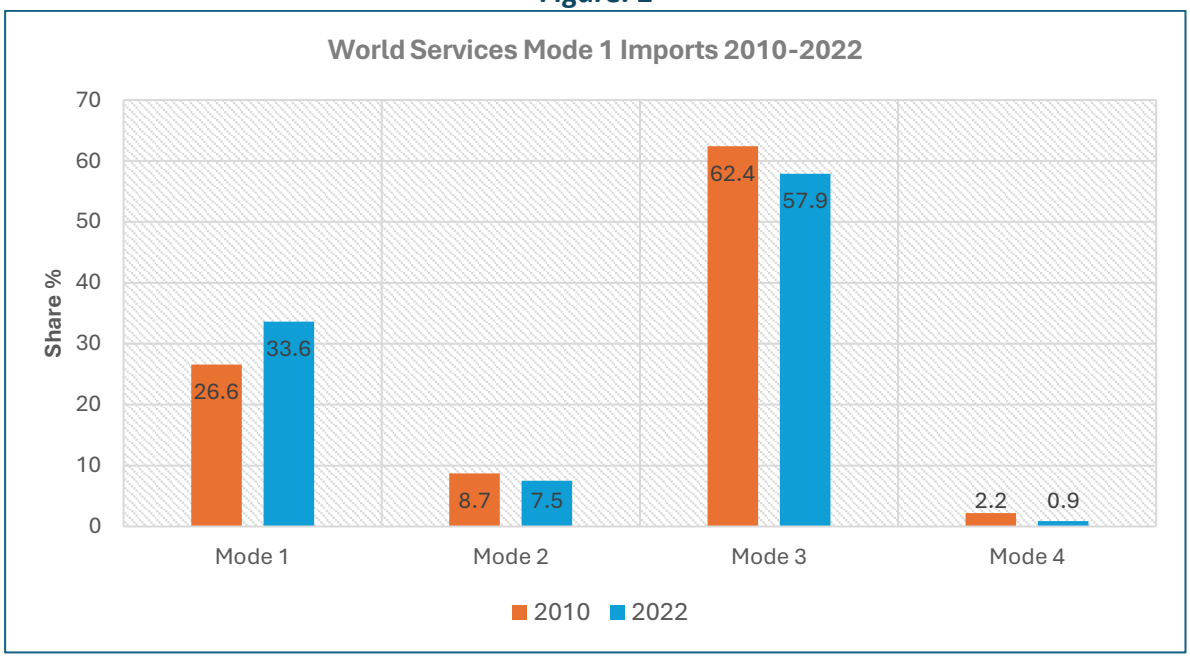
Reflecting these substantial advantages, Mode 1 has increasingly dominated global services exports, as clearly illustrated by comparing the world services export data from 2010 and 2022. As illustrated in **Figure 1** given below, the global share of Mode 1 exports expanded markedly, from one-quarter of all services shipments in 2010 to more than one-third by 2022. The global mix of services exports tilted decisively toward Mode 1. Mode 1's share jumped from 26 % to almost 35 % of world exports, while the traditional Mode 3 (commercial presence) fell from 62 % to 56 %. Mode 2 (consumption abroad) slipped modestly, and Mode 4 (movement of people) shrank to barely 1 %. Over the same period, the overall market expanded from USD 10.9 trillion to USD 17.6 trillion, so Mode 1 not only grew faster than other modes but captured a larger share, underscoring how digitalisation and remote delivery are reshaping international trade in services.

**Figure. 1**




***Source: WTO-TISMOS***

**Figure. 2**



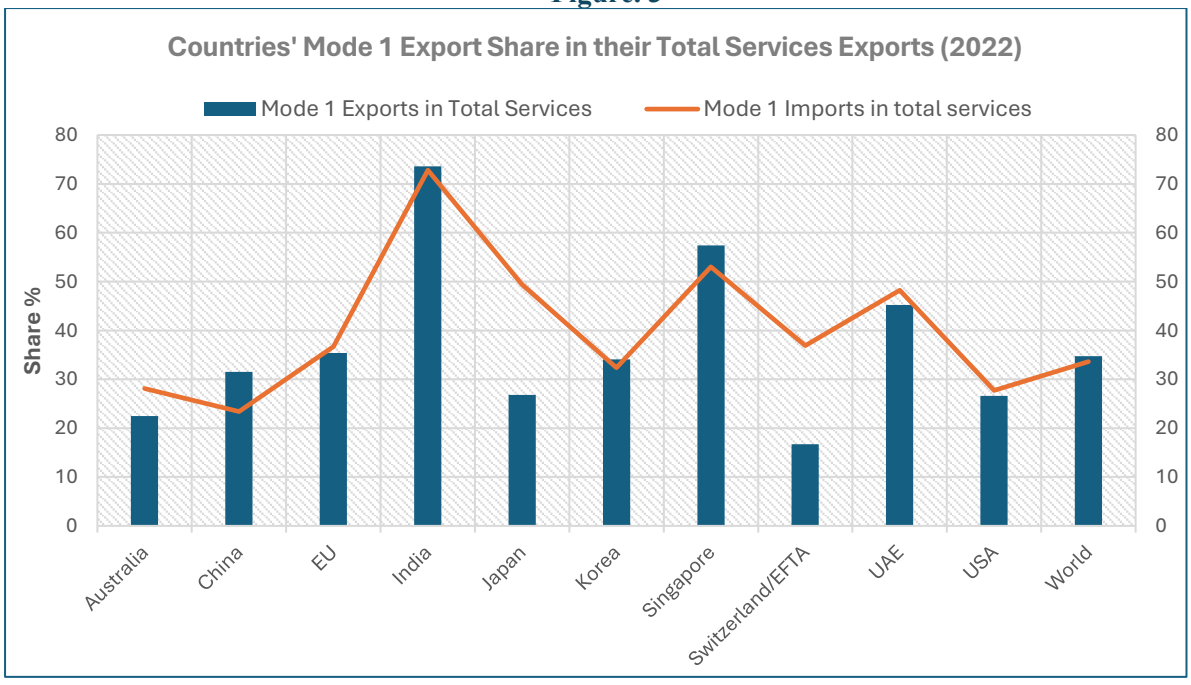

***Source: WTO-TISMOS***

Similarly, as illustrated in **Figure 2** given above, the global share of Mode 1 imports has also increased from one-quarter of all services shipments in 2010 to more than one-third by 2022. World services imports have shifted in parallel with exports: between 2010 and 2022, Mode 1 (cross-border delivery) claimed a far larger share, rising from 26.6 % to 33.6 %. Mode 3 (commercial presence) remains dominant, but its share slipped from 62.4 % to 57.9 %, while Mode 2 lost a full percentage point and Mode 4 fell by more than half to below 1 %. Because total import spending expanded from USD 10.8 trillion to USD 17.1 trillion over the period, the absolute value of cross-border purchases grew by some 80 %, underscoring how digital channels and remote consumption are now reshaping global demand, not just supply.

The WTO TISMOS data showing the sectoral breakdown of world services imports for 2022 confirms the structural swing toward Mode 1. Of the fifteen largest import categories (check Appendix ***Figure A and B*** for categories), eleven are now led by Mode 1, including wholesale-and-retail trade margins (USD 962 billion), sea-freight transport (USD 685 billion), professional services such as legal and accounting (USD 434 billion), computer services (USD 427 billion) and finance (USD 334 billion). Even insurance and R&D, traditionally relationship-intensive, show Mode 1 shares above 80 per cent. In contrast, Mode 2 is concentrated almost entirely in travel-related items – "other personal travel" and "business travel" together account for more than half of Mode 2 imports but only 12 per cent of the overall services bill, reflecting the lingering pandemic drag and the substitution of virtual for physical presence. Mode 4 has shrunk, surfacing only in specialised niches such as engineering or scientific services, where it seldom exceeds 5 per cent of the subsector total.

Two forces explain Mode 1's ascendancy. First, digitalisation has slashed transaction costs for data-rich activities, from logistics intermediation to cloud-based design, making remote supply the default. Second, multinationals have re-optimised their value chains: instead of establishing costly commercial affiliates (Mode 3), they purchase specialised inputs online, billing them as cross-border imports. The result is an import structure in which intangible, tech-enabled services dominate, travel-dependent Mode 2 stabilises at a smaller share, and labour-mobility-driven Mode 4 becomes marginal.

**Figure. 3**




***Source: WTO-TISMOS***

Like the global figures, India's services-import profile is also overwhelmingly digital. As shown in the **Figure. 3** given above, in 2022, Mode 1 accounted for nearly 73 % of the country's USD 320 billion import bill, far surpassing Mode 3 (18 %), Mode 2 (8 %) and Mode 4 (1 %). Figure 5 shows that India's Mode 1 export share (73 %) is the highest among the comparator economies, well above the world average of about 35 %. India imports a sizable share of services via Mode 1, reflecting two-way digital trade in areas such as cloud hosting, software licences, and R&D support. In contrast, digitally advanced hubs like Singapore and the EU display balanced Mode 1 shares on both the export and import sides, while countries such as Australia and Japan remain more reliant on non-digital modes. The juxtaposition underscores India's dual role as a major provider and consumer of cross-border digital services,

highlighting the importance of policies that keep data flows open and minimise frictions in Mode 1 supply.

Switzerland/EFTA and the United States continue to rely heavily on affiliate sales abroad, so Mode 1 still makes up only a quarter or less of their services exports. Even so, both economies import far more digitally than they export, roughly one-third of their total services imports arrive via Mode 1 channels, cloud services, IP licensing, and back-office support, making them quietly dependent on open cross-border data flows despite an outward business model that remains anchored in Mode 3.

The United Arab Emirates sits at the opposite end of the spectrum. Close to half of its services earnings and a comparable share of its purchases are delivered digitally, reflecting Dubai's emergence as a regional hub for fintech, e-commerce and digital media. Taken together, these three economies illustrate a continuum, mature affiliate-centred models (Switzerland, US) that nonetheless need smooth inbound digital supply, and an export-platform model (UAE) that is both a large buyer and seller of Mode 1 services, underscoring why robust, transparent rules for cross-border delivery now matter to structurally different players alike.

## 2. Bilateral FTA Commitments V/S GATS Commitment

When the GATS entered into force in 1995, most members inscribed only a narrow set of Mode 1 commitments, reflecting the still-embryonic state of digital delivery. Over the past two decades, however, cloud computing, high-capacity broadband and generative AI have transformed Mode 1 into the default channel for everything from software engineering and graphic design to remote diagnostics and education. Mode 1 delivery of digitally-transferred services is, at present, governed far more by each economy's autonomous regime (AR) than by the bindings it has scheduled at the WTO. Concerning India, a study by Banerjee, Mukherjee and Srishti (2024)[1] notes that there exists an export-oriented but largely unbound regime, where India already allows almost every IT, ITES and professional service to be supplied remotely; this openness underpins the "global delivery model" used by firms such as TCS and Infosys. Yet India has scheduled very few hard Mode 1 commitments at the WTO and therefore sees value in converting the existing liberty into treaty-based rights before other Members erect new barriers.

India is not an exception; overall, various countries have responded by liberalising bilaterally. Modern FTAs now contain far deeper and broader Mode 1 schedules than their signatories lodged at the WTO. **Table 1.1,** given below, illustrates the gap between multilateral (GATS) and bilateral (FTA) liberalisation in Mode 1 services for key economies, comparing the number of services subsectors scheduled under GATS and the respective FTAs. Table 1.1 reveals the following country-wise scenarios:

- **Australia:** Australia similarly shows greater liberalisation in bilateral FTAs, listing 136 subsectors under the Australia–India ECTA compared to only 84 subsectors in its GATS schedule, a difference of 52 subsectors.
- **EFTA:** EFTA exhibits a minor difference between its GATS which are 79, and FTA (92) commitments, showing a liberal bilateral and multilateral stance in Mode 1.

[1] Banerjee, P., Mukherjee, A., & Srishti, A. (2024). E-commerce in trade agreements: India's strategies and options (Asia-Pacific Research and Training Network on Trade Working Paper No. 244). United Nations Economic and Social Commission for Asia and the Pacific.

- **EU:** The EU displays a notable increase in Mode 1 commitments through FTA, with bilateral schedules containing 48 subsectors more than its respective GATS commitments.

- **China:** Like EFTA, China's commitments also show minor expansion under bilateral agreements. It has scheduled 65 subsectors under GATS, while 77 subsectors are committed under the China-NZ FTA, reflecting an increase of 12 subsectors.

- **Korea:** Korea demonstrates a substantial gap between multilateral and bilateral liberalisation. Under GATS, Korea has scheduled only 55 Mode 1 subsectors, whereas its bilateral FTA with the USA covers 141 subsectors, an increase of 86 subsectors.

**Table 1.1**

**Mode 1 Commitments by Countries Across GATS and Selected FTAs**

| Countries | | Commitments | | |
|---|---|---|---|---|
| **Countries** | **FTAs** | **GATS** | **FTAs** | **Difference** |
| Australia | Australia-India ECTA | 84 | 136 | 52 |
| China | China-New Zealand | 65 | 77 | 12 |
| EFTA | EFTA-India | 79 | 92 | 13 |
| EU | EU-UK | 100 | 148 | 48 |
| Japan | Japan-CPTPP | 73 | 146 | 73 |
| Korea | Korea-USA | 55 | 141 | 86 |
| Singapore | Singapore-CPTPP | 51 | 127 | 76 |
| UAE | UAE-India CEPA | 43 | 73 | 30 |
| US | USMCA | 96 | 153 | 57 |

*Source: Author's Calculation*

- **Singapore:** Singapore exhibits a notable gap, recording 76 more subsectors under its bilateral FTAs than under its GATS schedules, underscoring its stronger inclination towards deeper bilateral liberalisation in Mode 1 services.

- **Japan:** Japan's commitments significantly expand under bilateral agreements. While Japan scheduled 73 subsectors under GATS, it has committed to 146 subsectors under the CPTPP, reflecting an increase of 73 subsectors.

- **UAE:** The UAE displays a notable increase in Mode 1 commitments through FTA, with bilateral schedules containing 30 subsectors more than its respective GATS commitments.

- **USA:** The USA displays considerable expansions in Mode 1 commitments through FTA, with bilateral schedules containing 57 subsectors more than its respective GATS commitments.

The data indicate that more liberal commitments are being undertaken outside the WTO regime and underline the urgent need for multilateral harmonisation under Mode 1 to avoid legal fragmentation. This systematic expansion in Mode 1 commitments under FTAs reflects countries' willingness to liberalise bilaterally, even though their multilateral commitments remain shallow. The data sends a clear message: the multilateral system is lagging behind the reality of digital trade liberalisation.

**These numbers reveal an important legal asymmetry**. If a country is willing to accord liberal treatment to foreign suppliers in 130 or more subsectors within an FTA, its domestic regulatory framework is already open: licences, capital-equity caps, data-processing approvals and tax rules have been adjusted to accommodate foreign digital operators. In practice, therefore, the national regime operates on an MFN basis; once a platform or consultancy has established the right to serve local consumers through the cloud, it is difficult, and commercially costly, to impede comparable suppliers from third countries. What is missing is the multilateral binding. The same openness has not been inscribed in the GATS so that all WTO members can rely on it. The result is legal fragmentation. Firms from treaty partners enjoy security of access; firms from other jurisdictions remain vulnerable to discretionary changes, even when operating under identical market conditions.

From a systemic perspective, the gap matters because Mode 1 commitments, unlike Mode 3 or Mode 4 concessions, demand little infrastructure investment or sensitive labour-market adjustments. They hinge mainly on clear, non-discriminatory rules for data flows, e-authentication, taxation and consumer protection, rules most governments have already enacted to foster their own digital ecosystems. Binding those rules multilaterally would merely export what is already domestic practice, but it would generate immediate network benefits, particularly for smaller developing economies whose digital exporters cannot afford to replicate compliance costs across dozens of bilateral treaties.

Annex C of the HKMD (2005) tried to nudge members toward that outcome by calling for "*progressively higher levels of liberalisation with no a priori exclusion of any service sector or mode of supply."* Two decades later, Annex C looks modest. Artificial-intelligence workloads are distributed across global cloud regions, software products update in real time, and remote design teams work seamlessly across jurisdictions. The commercial reality has moved far beyond the commitments members were willing to record at the WTO. A *"Hong Kong plus"* initiative, anchoring MFN treatment for digital services, protecting cross-border data flows, prohibiting discriminatory localisation requirements and preserving regulatory space for legitimate privacy and security objectives- would align multilateral law with the market structures that already exist.

For developing countries, the upside is twofold. First, Mode 1 openness locks in demand for their increasingly sophisticated digital exports, business-process management, coding, animation, and fintech support, without forcing concessions in politically sensitive areas such as low-skilled labour mobility. Second, multilateral disciplines reduce the regulatory fragmentation that raises the cost of entering multiple markets, allowing smaller firms to scale more easily. In the age of AI and cloud computing, most governments already let foreign digital services flow freely under their own rules and in recent FTAs (Schweitzer & Saccomanno, 2024). Therefore, committing the same openness in Mode 1 in their GATS schedules would not hand over anything new; it would just lock in what they are already doing. That formal guarantee would give tech and service firms the certainty that overseas markets will stay open, encouraging them to invest and expand. The pattern of FTA schedules shows that the substantive liberalisation has already happened; the task before negotiators is to extend that certainty to all members and prevent the digital economy from splintering into competing blocs of preferential access.

## 3. Bilateral Momentum and Stand-Alone Treaties on Digital Deliverance

The past decade has seen a significant rise in stand-alone digital economy agreements, as shown in **Table 1.2** given below, including Australia-Singapore SADEA, U.S.–Japan DTA, Korea-Singapore DPA, EU-Singapore DTA, and others, all of which lock in Mode 1 market access through rules on data flows, paperless trade, source-code protection and a ban on customs duties for electronic transmissions, even though they have lower Mode 1 GATS and/or FTA commitments as shown in **Table. 1.1** earlier.

- **Australia**: It has actively pursued bilateral digital economy agreements, notably the Australia-Singapore SADEA (2020), embedding disciplines on data flows, source-code protection, and paperless trade. Also, Australia's FTA schedule binds significantly more Mode 1 subsectors (136) in its FTA compared to its WTO GATS schedule (84), indicating greater bilateral liberalisation.
- **China:** It has been historically cautious but is now updating the ASEAN-China FTA (3.0, 2025) to include digital trade and pursuing accession to DEPA, signalling a shift toward greater bilateral openness in Mode 1.

- **EFTA:** Signed the EFTA–Singapore Digital Economy Agreement in 2025. EFTA has lower commitments in its GATS (79) schedule versus its FTA commitments (92) in Mode 1. The signing of ES-DEA indicates growing bilateral openness, contrasting with its restrained WTO GATS schedule.

**Table 1.2**
**Selected Stand-Alone Digital Economy Agreements/MoUs**

| Country / Bloc | Key Agreements | Year Signed /Entered into Force (EIF) |
|---|---|---|
| Australia | Australia–Singapore Digital Economy Agreement (SADEA) | Signed 12 Aug 2020 – EIF 8 Dec 2020 |
| China | China accession to DEPA (accession protocol under negotiation) | Accession talks launched 1 Nov 2021 |
| EFTA | EFTA–Singapore Digital Economy Agreement (ES-DEA) | Signed 10 Jul 2025 (pending EIF) |
| European Union | EU–Singapore Digital Trade Agreement | Signed 25 Jul 2024 – EIF Jan 2025 |
| | EU–Korea Digital Trade Agreement | Signed 10 Mar 2025 (pending EIF) |
| Japan | United States–Japan Digital Trade Agreement | Signed 7 Oct 2019 – EIF 1 Jan 2020 |
| Korea | Korea–Singapore Digital Partnership Agreement (KSDPA) | Signed 21 Nov 2022 – EIF 14 Jan 2023 |
| Singapore | Digital Economy Partnership Agreement (DEPA) – Chile, NZ, Singapore | Signed 12 Jun 2020 – EIF 7 Jan 2021 |
| United Arab Emirates | UAE accession to DEPA (accession protocol under negotiation)<br><br>India-UAE MoU on Digital Infrastructure | Accession talks launched 28 Jun 2025<br><br>14 Feb 2024 |
| United States | United States–Japan Digital Trade Agreement (see Japan row) | 2019 / 2020 |

***Source: Author's Compilation***

- **EU:** It has embedded comprehensive Mode 1 disciplines within recent FTAs and digital-only treaties, notably EU-Singapore and EU–Korea digital agreements. This highlights a gap compared to its GATS commitments (100), and somewhat to its FTA commitments (148), which remain relatively limited.

- **Japan:** It entered the U.S.–Japan DTA (2019), embracing Mode 1 disciplines on cross-border digital trade. Also, its FTA Mode 1 commitments (146) significantly exceed its GATS commitments (73), underscoring greater liberalisation at the bilateral level in CPTPP.

- **Korea:** It concluded the Korea–Singapore DPA (2023) and EU-Korea Digital Trade Agreement (2025), considerably expanding Mode 1 liberalisation. Like Japan, Korea also exhibits a significant difference between its bilateral Mode 1 commitments (141) in the Korea-US FTA and its GATS commitments (55).

- **Singapore**: It leads globally in standalone digital agreements, including the SADEA with Australia, digital treaties with EFTA and the EU, and participation in DEPA. Its Mode 1 subsector commitments under CPTPP (127) substantially exceed its WTO GATS schedule (51).

- **UAE:** It is shifting towards digital liberalisation through DEPA accession and actively exploring Mode 1 commitments, marking a strategic pivot toward digital openness at bilateral and plurilateral levels. Its GATS commitments (43) as well as FTA commitments (73) both remain low.

- **United States:** It committed digitally in the U.S.–Japan Digital Trade Agreement (2019), emphasising open data flows and prohibitions on electronic transmission duties. Mode 1 commitments in bilateral FTA commitments (156) significantly surpass those under the original GATS schedules (96), reflecting readiness for bilateral digital liberalisation but hesitation at the multilateral level.

At the multilateral level, governments remain locked into relatively shallower schedules they lodged under the 1995 GATS. The reason is not regulatory incapacity; FTAs prove the regimes are ready, but the political calculus of WTO consensus. Multilateral commitments cannot be tailored or traded one-for-one; they apply *erga omnes*[2], raising fears of irreversible concessions without reciprocal gains from all 160-plus members. The result is a widening "commitment gap," i.e., de facto openness delivered through bilateral treaties, *de jure caution*[3] at the WTO.

**This gap now carries economic costs**. Without a proper legal certainty that could come through an FTA or equivalent trade deal, small firms and online platforms must navigate unclear rules, extra paperwork, and fragmented standards for data protection and cybersecurity laws in every new market they enter. The burden is heaviest on smaller developing economies that lack the negotiating mass to

[2] **erga omnes** is a Latin expression meaning "toward all." In international law it denotes obligations or rights that a state (or other subject) owes universally, not just to a specific treaty partner. Within the WTO system, an MFN-bound commitment, such as a tariff ceiling or a Mode 1 market-access schedule, operates erga omnes, which is, once recorded in a member's schedule, the concession must be extended on identical terms to every other WTO member, without discrimination

[3] **de jure caution** refers to restraint or conservatism in the formal, legally binding commitments a government records in treaties or statutes, even when its practical, day-to-day policies are more liberal. In trade-negotiation context it means keeping one's official schedule of concessions narrow or shallow (the de jure position) while operating a more open market in practice (de facto openness), thereby limiting legal exposure while preserving policy flexibility.

secure bespoke digital chapters with every major market. It also erodes the MFN principle, for instance, a Filipino e-learning firm is assured access to Japan only because of CPTPP, while a Kenyan fintech faces discretionary barriers, even though Tokyo's domestic rules are already liberal.

The technology landscape, including AI inference in distributed clouds, cross-border SaaS, and remote medical diagnostics, makes the status quo increasingly untenable. The logical remedy is to multilateralise what has become standard practice, i.e., adopt a WTO-level package that embeds the core disciplines already found in modern digital pacts (free data flows, no localisation, e-authentication, moratorium on e-transmissions) while preserving legitimate public-policy safeguards. Such an HKMD-plus outcome would convert existing bilateral openness into MFN certainty, reduce regulatory fragmentation, and give developing countries automatic, legally secure access to the global digital marketplace without having to negotiate twenty different FTAs.

## 4. A Case for Multilateral Mode 1 Commitments in the Digital Era

GATS was drafted for a largely analogue world. Its schedules were negotiated in the early 1990s, when only a handful of sectors, financial information, engineering blueprints, and some consultancy work, could be delivered electronically. Today, cloud computing, real-time collaboration platforms and generative-AI services have turned Mode 1 into the dominant conduit for international trade in knowledge-intensive activities. Governments have responded bilaterally – stand-alone digital pacts such as the Australia–Singapore Digital Economy Agreement (SADEA) and the U.S.–Japan Digital Trade Agreement lock in free data flows, prohibit localisation requirements and guarantee duty-free electronic transmissions.

The pattern is systematic. Countries that bind barely half their sectors under GATS, Korea (55), Singapore (51), and Japan (73), bind more than twice as many in modern FTAs (as shown in **Table 1.1**). De facto, their domestic regimes are already open on an MFN basis; what is missing is the multilateral binding that would extend legal certainty to all WTO members. In the era of AI-enabled services, a consolidated WTO package, an "HKMD-plus" commitment that builds on Hong Kong's Annex C but adds digital-trade disciplines drawn from recent FTAs, would reduce fragmentation, lower compliance costs for SMEs and restore the MFN principle to the centre of services governance.

Moreover, the swift expansion of digitally delivered trade is beginning to expose **fault lines** in long-standing multilateral rules as articulated in a study by Banerjee et al. (2025)[4]. Governments whose labour markets feel pressured by offshore professional work increasingly view the vintage 1990s schedules lodged under the GATS as inadequate. A first risk is the temptation to reopen those schedules on the argument that cloud-based bookkeeping, algorithmic trading or AI-enabled medical diagnostics constitute "new" services never formally bound. If such relisting were accepted, the legal certainty that underpins many existing contracts would evaporate, enabling selective re-regulation that mirrors domestic political concerns rather than commercial realities.

Fiscal pressures provide a second vector for restriction. Several jurisdictions have already explored digital services taxes aimed at large platforms; a logical extension is higher VAT rates on remotely delivered consultancy or interactive education, or the imposition of payroll-equivalent levies to offset perceived losses in social-security contributions. While framed as neutral tax measures, such

[4] Banerjee, P., Vartul., Mandal, S., & Dua, D. (2025, March 26). Negotiating for digitally delivered services: Framework for a comprehensive approach (CRIT/CWS Working Paper Series No. 82). Centre for WTO Studies & Centre for Research in International Trade, Indian Institute of Foreign Trade.

instruments effectively penalise cross-border supply by eroding the pricing advantage of remote delivery.

Professional licensing and qualification requirements offer a subtler tool. Regulators can insist that a remote architect, lawyer or therapist hold an on-shore license or complete local practical training—obligations that can rarely be met without relocating. When combined with complex or discretionary application procedures, these measures can sterilise the commercial value of Mode 1 commitments while nominally preserving them.

Data-localisation mandates and cross-border data-access restrictions threaten the technical foundations of Mode 1. By compelling firms to process or store data within national borders, such rules negate the very efficiencies that underpin global cloud deployment, fragmenting supply chains and raising compliance overheads for smaller vendors. Even ostensibly narrow sectoral localisation (for example, in health or financial data) can spill over, because modern AI-based services rely on integrated, multi-sector datasets.

A related strategy is to require foreign suppliers to establish a local commercial presence or submit to additional due diligence audits before they may serve domestic customers. This shifts the transaction from Mode 1 to Mode 3, neutralising cross-border advantages and expanding regulatory reach. For micro-exporters and app developers in emerging economies, the capital and administrative burden of incorporation abroad is prohibitive, effectively closing the market. Finally, the global-delivery model still depends on occasional in-person visits for installation, client workshops or troubleshooting. When visa categories do not accommodate stays of a few days or weeks, or when processing times stretch to months, the cost and unpredictability of these trips can deter clients from contracting remote suppliers in the first place. Visa frictions thus act as an indirect but potent brake on digitally enabled trade. Collectively, these emerging measures could reverse much of the de facto openness that fuelled the first generation of digital services offshoring. Anticipating them requires a mix of updated multilateral commitments, disciplines on behind-the-border taxation and licensing practices and streamlined mobility regimes that match the just-in-time logic of the digital economy.

## 5. India Towards Realising Deeper Mode 1 Liberalisation

India is among the largest Mode 1 exporters. Services receipts reached roughly USD 341 billion in 2023-24, powered by IT, business-process management and an expanding array of digital platforms. A new multilateral baseline for Mode 1 would lock in predictable access for Indian firms to markets where they currently depend on preferential FTAs or ad-hoc licences. It would also widen the customer base for emerging Indian capabilities in AI model training, health-tech, online education and fintech. The challenge is domestic policy coherence. India's Digital Personal Data Protection Act 2023 permits cross-border transfers but allows the government to blacklist destinations, creating uncertainty for counterparties. India has also taken a defensive stance on the WTO e-commerce moratorium, warning that permanent duty-free treatment may erode customs revenue. Reconciling data-sovereignty objectives with the market-access goals of its export sector, and ensuring robust consumer and cyber-security safeguards, will be essential if India is to champion higher Mode 1 bindings without compromising regulatory autonomy.

All major economies gain from openness in Mode 1. Developed economies want access to large emerging digital markets like India for their cloud services and content providers, while India wants market access across the board in digitally delivered services; by arguing that effective access for Mode 1 services needs to include commensurate Mode 4 improvements related to service delivery. Such Mode

4 provisions include simpler visas and transparent licensing for AI specialists, cloud-architecture engineers and creative teams. Also, India has been consistent that while it does not want to restrict data flows across borders that help digital innovation and digital trade, countries should have the right to restrict flows for legitimate public-policy grounds. This is reflected in its provisions in both the India-UK and India-UAE FTAs.

In India, Mode 1 delivery sits at the heart of India's services strategy. IT and IT-enabled services are already exported mainly under Mode 1, while Modes 3 and 4 are used only as supporting tools in a "global-delivery model" that keeps the bulk of value-added at home. Major partners. Most advanced economies still leave digitally delivered services (DDS) largely untaxed and license-free, relying on their pre-Internet GATS schedules. That liberal "autonomous regime" is what lets Indian firms reach clients in the United States, the EU, Japan, Australia and others; but it is not yet bound in new commitments, so it can be reversed at any time. The plurilateral efforts, such as the G20/G7 project on "Data Free Flow with Trust" and the WTO e-commerce JSI, address only fragments of the DDS agenda (e.g., data transfers or online consumer protection) and offer no systematic pathway for Mode 1 trade.

## 6. Policy Implications and Conclusion

The empirical gap between multilateral and bilateral practice is stark. The comparison table shows Korea, Singapore and Japan binding barely half their service subsectors for Mode 1 in their WTO schedules while locking in more than twice that number in modern FTAs; Australia's list rises from 84 subsectors under GATS to 136 in the Australia–India ECTA, and similar spreads appear for the EU and the United States. Standalone digital-economy agreements, SADEA, the U.S.–Japan Digital Trade Agreement, the Korea–Singapore Digital Partnership Agreement, the EU-Singapore and EFTA-Singapore pacts, go further still, guaranteeing data flows, banning localisation and cementing duty-free electronic transmissions. In effect, governments are comfortable liberalising Mode 1 on a reciprocal or plurilateral basis but have not multilateralised those concessions, leaving non-party firms facing legal uncertainty and higher compliance costs.

The point is to convert this fragmented openness into an MFN baseline by binding the status quo in "Hong-Kong-plus" chapters, where partners could lock in their existing digital-trade policies, bar any future discriminatory taxes or data-localisation demands and write these commitments into bilateral or open plurilateral agreements (Banerjee et al, 2025). To give regulators confidence without forcing commercial presence, a Trusted Digital Services Provider (TDSP) scheme modelled on customs Authorised Economic Operator programmes would certify firms that meet strict data-security and consumer-protection standards, with mutual recognition across jurisdictions. A standing Committee on Trade in Digital Services would keep service classifications current, develop shared data-handling protocols and monitor licensing trends, shifting problem-solving from litigation to continuous regulatory cooperation.

Because digital supply chains rely on a seamless mix of remote delivery, investment in cloud points of presence and occasional on-site troubleshooting, the paper recommends comprehensive, multimodal schedules that grant market access and national treatment across Modes 1, 3 and 4. Contract-linked, firm-based short-term visas tied to the value of export contracts and backed by financial bonds would replace blunt labour-market tests, preserving genuine temporariness while easing client servicing. Taken together, these measures could potentially multilateralise the liberalisation already embedded in bilateral digital accords, reduce the risk of protectionist rollback, and give

developing-country exporters predictable scale in the rapidly evolving AI-driven services landscape. This would translate the de facto openness it already enjoys in key partner markets into binding commitments that cannot be rolled back when political winds shift.

But achieving these objectives in a multilateral framework might be challenging. National regulators have genuine concerns related to abuse of open regimes for cross-border data transfers. Similarly, there are legitimate concerns about the misuse of short-term visas for foreign nationals to provide business services to clients. Countries might not be comfortable making commitments available to all WTO member states and restrict such commitments to trusted trade partners through FTAs.

As discussed in Banerjee et al. (2025), by embedding Trusted-Digital-Services-Provider (TDSP) disciplines in its next generation of FTAs, India could seek to lock in cross-border data flows and non-discriminatory treatment for vetted exporters, while giving host regulators the assurance they need on cybersecurity and consumer protection. India, therefore, has the option of pushing for binding multilateral commitments on Market Access and National Treatment for cross-border delivery (Mode 1) that ensures the existing levels of de facto openness for cross-border delivery across member states, covering a wide range of services sub-sectors.

It can simultaneously push for more innovative ideas in its FTAs. This could include disciplines that ensure effective market access for cross-border delivery of services by including associated Modes essential to meeting the customers' needs, i.e., movement of personnel to client site from time to time (Mode 4), and if need be, establishing operational presence in client locations abroad (Mode 3). Disciplines that prevent discriminatory taxation or impose restrictions on the cross-border flow of data could be part of this overall package. Over time, when such disciplines gain greater acceptance, the option to broad based them through obligations under GATS would always be a future option.

The crux remains that India should push strongly for championing this rules-based template in services trade and position itself as a norm-setter for other emerging economies. Smaller exporters in South Asia, Africa and Latin America face the same vulnerability to behind-the-border data and tax measures. An Indian-led coalition for multilateral Mode 1 disciplines would thus serve both national interest and broader development goals, reinforcing India's role as a leading voice for the Global South in the evolving digital-trade order. India's innovations in FTAs will also provide a template for other emerging economies as they engage with industrialised economy counterparts.

***References***


1. An Overview of the WTO's 6th Ministerial Meeting in Hong Kong. (March 2006). Competition News. https://www.compcom.co.za/wp-content/uploads/2020/02/March-06-Newsletter.pdf

2. Banerjee, P., Vartul, Mandal, S., & Dua, D. (2025, March 26). Negotiating for digitally delivered services: Framework for a comprehensive approach (CRIT/CWS Working Paper Series No. 82). Centre for WTO Studies & Centre for Research in International Trade, Indian Institute of Foreign Trade.

3. Banerjee, P., Mukherjee, A., & Srishti, A. (2024). E-commerce in trade agreements: India's strategies and options (Asia-Pacific Research and Training Network on Trade Working Paper No. 244). United Nations Economic and Social Commission for Asia and the Pacific.

4. Cernat, Lucian. (May 2024). The Big Shift in Global Trade in Services: A Tale of Five Modes of Supply. European Centre for International Political Economy. https://ecipe.org/blog/the-big-shift-in-global-trade-in-services-a-tale-of-five-modes-of-supply/

5. Hong Kong Ministerial Conference: Bottom Lines for Developing Countries in the GATS Negotiations. (October 2005). South Centre. https://www.southcentre.int/wp-content/uploads/2013/07/AN_SV1_Hong-Kong-Ministerial-Conference-GATS-negotiations_EN.pdf

6. Ministerial Declaration. (18 December 2005). World Trade Organisation. https://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm

7. O'Farrell, R., & Montagnier, P. (2019). Measuring Platform-Mediated Workers (OECD Digital Economy Papers, No. 282). OECD Publishing. https://doi.org/10.1787/170a14d9-en (oecd.org, oecd.org)

8. Schweitzer, F. J. and Saccomanno, I.(2024). The Rise of Artificial Intelligence, Big Data, and the Next Generation of International Rules Governing Cross-Border Data Flows and Digital Trade–Part 1. The Global Trade LJ, 1, 103.

9. Text of the 'July package' — the General Council's post-Cancún decision. World Trade Organisation. https://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm#annexc

10. Trade in services by mode of supply dataset. World Trade Organisation. https://www.wto.org/english/res_e/statis_e/gstdh_mode_supply_e.htm

11. WTO Negotiations on Trade isn Services (a backgrounder) (20 October 2014). https://commerce.gov.in/wp-content/uploads/2020/03/backgrounder_services-1.pdf

12. WTO-ITP Services. WB-WTO. World Trade Organisation. https://itip-services-worldbank.wto.org/default.aspx

*Appendix*

**Figure A**

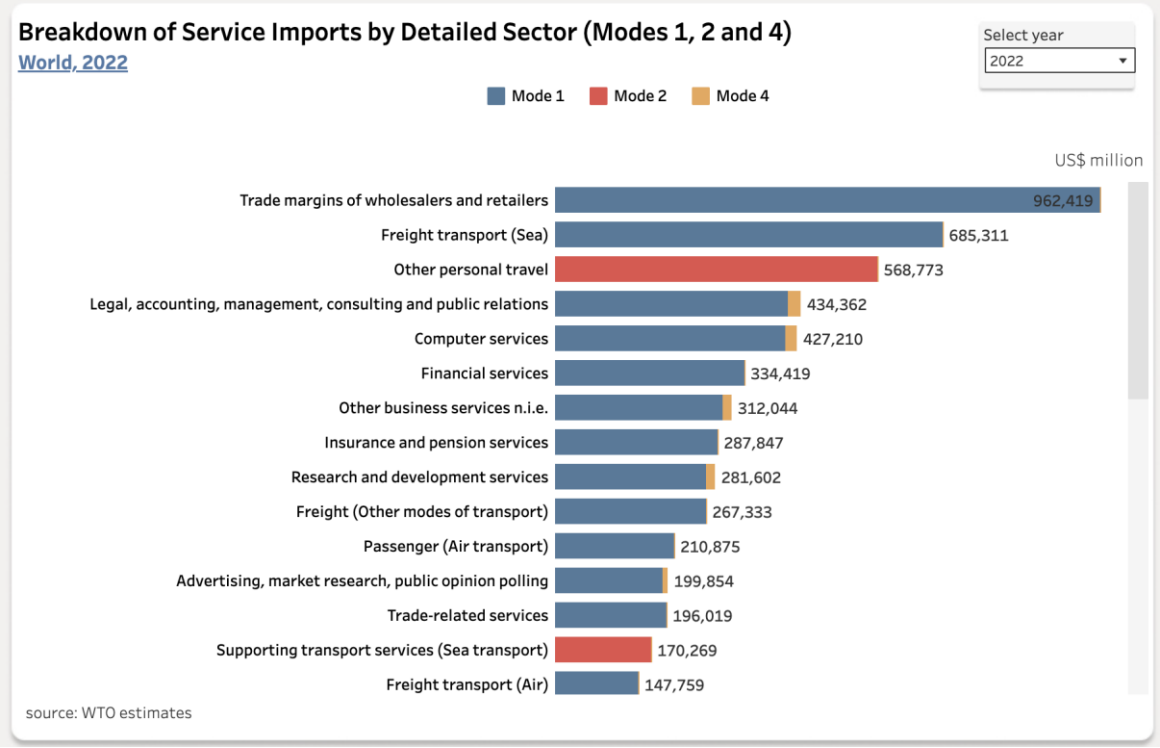
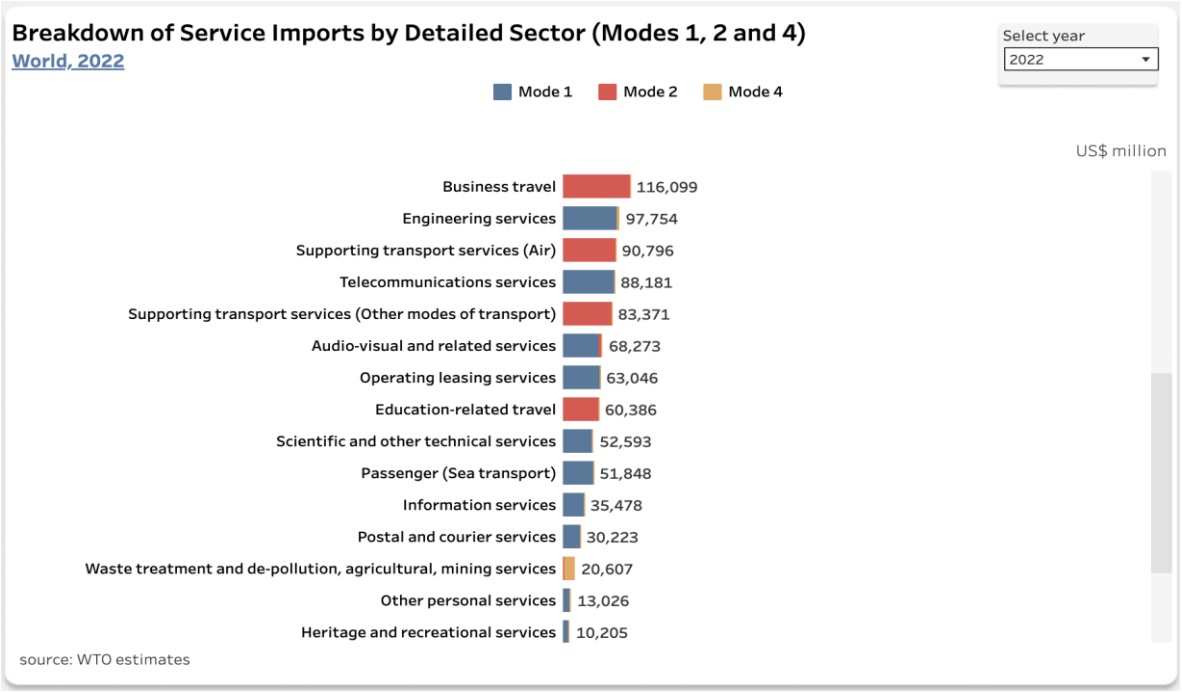



**Figure B**



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## About CRIT

India's Foreign Trade Policy (FTP) Statement 2015-20 suggested a need to create an institution at the global level that can provide a counter-narrative on key trade and investment issues fromthe perspective of developing countries like India. To fill this vacuum, a new institute, namelythe Centre for Research on International Trade (CRIT), was set up in 2016. The vision and theobjective of the CRIT were to significantly deepen existing research capabilities and widen them to encompass new and specialised areas amidst the growing complexity of the process of globalization and its spill-over effects in domestic policymaking. Secondly, enhancing the capacity of government officers and other stakeholders in India and other developing countriesto deepen their understanding of trade and investment agreements.

## About CWS

The Centre for WTO Studies which is a constituent Centre of CRIT, pre-dates the CRIT since it was created in 1999 to be a permanent repository of WTO negotiations-related knowledge and documentation. Over the years, the Centre has conducted a robust research program with a series of papers in all spheres of interest at the WTO. It has been regularly called upon by the Government of India to undertake research and provide independent analytical inputs to help it develop positions in its various trade negotiations, both at the WTO and other forums such as Free and Preferential Trade Agreements and Comprehensive Economic Cooperation Agreements. Additionally, the Centre has been actively interfacing with industry and Government units as well as other stakeholders through its Outreach and capacity-building programs by organizing seminars, workshops, subject-specific meetings, etc. The Centre thus also acts as a platform for consensus- building between stakeholders and policymakers. Furthermore, the inputs of the Centre have been sought after by various international institutions to conduct training and studies.

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