

## **SEMINAR IN INTERNATIONAL COMMERCE: DIGITAL TRADE RULES**

**Lecturer:** KIM, Hyerim & AHN, Dukgeun  
**Class Hour:** Wednesday 9:00~12:00 (On-line & Off-line combined)  
**Office Hour:** Wednesday 13:00~14:00 (Building 140-2, R310) or by appointment  
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### **COURSE DESCRIPTION**

This course examines the rapidly evolving field of digital trade law. It offers a rigorous foundation in digital trade and the regulatory architecture that governs it, spanning World Trade Organization (WTO) disciplines and the increasingly detailed rule sets embedded in preferential trade agreements (PTAs). Students will study core WTO principles including national treatment and most-favored-nation (MFN) treatment, along with general and security exceptions, and key disciplines relevant to the digital economy such as technical barriers to trade (TBT), trade in services, and intellectual property. The course also surveys major PTAs, including the CPTPP, USMCA, and the US-Japan Digital Trade Agreement, and analyzes how key stakeholders are positioned across the PTA landscape and within WTO plurilateral processes, including the Joint Statement Initiative on E-Commerce.

The course also considers the new generation of Digital Economy Agreements (DEAs) as a source of legal innovation and a novel model for international cooperation in a rapidly shifting technological environment. Although grounded in global trade law, the course highlights critical interfaces with national security, data privacy, data inequalities and the development implications of global digital rulemaking. Finally, it addresses evolving national approaches to artificial intelligence (AI) and assesses the continuing relevance of WTO rules and PTA provisions as regulatory frameworks adapt.

The class will be conducted in a hybrid format, combining both offline (in-person) and online sessions. Online classes will be held via Zoom and recorded for later access.

### **Instructional Methods**

The course consists of a combination of lectures and discussions. For the lecture component, PowerPoint slides will be prepared and made available on the ETL platform prior to each class.

### **Communication and Office Hours**

Students who have questions regarding course materials or related issues may arrange a Zoom meeting or communicate via e-mail with Prof. Kim. Alternatively, students may visit Prof. Ahn during designated office hours.

### **Assessment and Grading**

Student performance will be evaluated based on the following components:

- Presentation: **50%**
- Class participation: **30%**
- Attendance: **20%**

For student presentations, students will form teams of up to three members. Each week, two teams will deliver one-hour presentations on the topic, followed by a structured discussion and debate.

## **COURSE OUTLINE**

The assigned reading list for this course is primarily based on P. van den Bossche and Werner Zdouc, *Law and Policy of the World Trade Organization* (5th ed., 2021). Students with a strong interest in particular topics are encouraged to consult the materials listed in the recommended reading sections, which may not be covered in full during class sessions. In addition, occasional handouts will be distributed to supplement the assigned readings and to reflect ongoing developments in the international trading system.

Students are also strongly advised to remain informed about current developments in international trade. Useful sources include, inter alia, the “World Trade” section of the *Financial Times*, *The Economist*, and specialized trade publications such as *Inside U.S. Trade*.

### **1. Introduction to the International Trade Law: History, Structure, and New Challenges**

#### **REQUIRED**

- World Trade Organization, <<https://www.wto.org>>
- P. van den Bossche & W. Zdouc, Law and Policy of the World Trade Organization, Ch. 2.

#### **RECOMMENDED**

- N. Lamp, ‘How Should We Think about the Winners and Losers from Globalization? Three Narratives and their Implications for the Redesign of International Economic Agreements’, *European Journal of International Law*, 2019, 30(4), 1359-1397.
- A. Roberts, H. C. Moraes, and V. Ferguson, ‘Toward a Geoeconomic Order in International Trade and Investment’, *Journal of International Economic Law*, 2019, 22(4), 655-676.
- Ernst-Ulrich Petersmann, ‘Economic Disintegration? Political, Economic, and Legal Drivers and the Need for ‘Greening Embedded Trade Liberalism’, *Journal of International Economic Law*, 2020, 23(2), 347–370.
- Bernard M. Hoekman & Petros C. Mavroidis, ‘To AB or Not to AB? Dispute Settlement in WTO Reform,’ *Journal of International Economic Law* 23, (2020): 703-722.
- Cartland, Michel, Depayre, Gerard & Woznowski, Jan, ‘Is Something Going Wrong in the WTO Dispute Settlement?’, *Journal of World Trade* 46, no. 5 (2012): 979–1016.
- J. Bacchus and S. Lester, ‘The Rule of Precedent and the Role of the Appellate Body,’ *Journal of World Trade*, 2020, 54(2), 183-198.
- A.O. Sykes, ‘Comparative advantage and the normative economics of international trade policy,’ *Journal of International Economic Law*, 1998, 1(1), 49-82.
- D. Ciuriak et al., ‘Firms in International Trade: Trade Policy and Implications of the New Trade Theory,’ *Global Policy*, 2015, 6(20), 130-140.

### **2. WTO Dispute Settlement**

#### **REQUIRED**

- P. van den Bossche & W. Zdouc, Law and Policy of the World Trade Organization, Ch. 3.

## RECOMMENDED

- J. Jackson, 'Dispute Settlement and the WTO,' *Journal of International Economic Law*, 1998, 1(3), 329-351.
- E. U. Petersmann, 'The Dispute Settlement System of the World Trade Organization and the Evolution of the GATT Dispute Settlement System Since 1948,' *Common Market Law Review*, 1993, 31(6), 1157-1244.
- Bernard M. Hoekman & Petros C. Mavroidis, "To AB or Not to AB? Dispute Settlement in WTO Reform", *Journal of International Economic Law* 23, (2020): 703-722.
- Cartland, Michel, Depayre, Gerard & Woznowski, Jan, "Is Something Going Wrong in the WTO Dispute Settlement?", *Journal of World Trade* 46, no. 5 (2012): 979–1016.
- J. Bacchus and S. Lester, 'The Rule of Precedent and the Role of the Appellate Body,' *Journal of World Trade*, 2020, 54(2), 183-198.

## 3. Nondiscrimination

### REQUIRED

- P. van den Bossche & W. Zdouc, Law and Policy of the World Trade Organization, Ch. 4 &5.
- WTO, *Korea-Taxes on Alcoholic Beverages* (WT/DS75/R, WT/DS75/AB/R)
- WTO, *Turkey-Restrictions on Imports of Textile and Clothing Products* (WT/DS34/R, WT/DS34/AB/R)

### RECOMMENDED

- G. M. Grossman, H. Horn and P.C. Mavroidis, 'The Legal and Economic Principles of World Trade Law: National Treatment', IFN Working Paper No. 917 (2012).
- W. Zhou, 'The Role of Regulatory Purpose under Article III:2 and 4- Toward Consistency between Negotiating History and WTO Jurisprudence', *World Trade Review*, 2012, 11(1), 81-118.
- D. Neven and J. P. Trachtman, 'Philippines – Taxes on Distilled Spirits: Like Products and Market Definition', *World Trade Review*, 2013, 12(2), 297-326.
- J. Flett, 'WTO Space for National Regulation: Requiem for a Diagonal Vector Test', *Journal of International Economic Law*, 2013, 16(1), 37-90.
- G. Muller, 'National Treatment and the GATS: Lessons from Jurisprudence', *Journal of World Trade*, 2016, 50(5), 819-843.
- D. McRae, 'MFN in the GATT and the WTO,' *Asian Journal of WTO & International Health Law and Policy*, 2012, 7(1), 1-24.
- B. Hoekman & P. C. Mavroidis, 'MFN Clubs and Scheduling Additional Commitments in the GATT: Learning from the GATS', *European Journal of International Law*, 2017, 28(2), 387–407

## 4. General Agreement on Trade in Services (GATS)

### REQUIRED

- P. van den Bossche & W. Zdouc, Law and Policy of the World Trade Organization, Ch. 7.
- WTO, *Mexico-Measures Affecting Telecommunications Services* (WT/DS204/R).
- WTO, *US – Measures Affecting Cross-Border Supply of Gambling and Betting Services* (WT/DS285/R & WT/DS285/AB/R).

### RECOMMENDED

- Petros C. Mavroidis, *The Regulation of International Trade*, Vol. III (2020)
- WTO, *Guide to the GATS* (1999).
- Bernard Hoekman, Assessing the General Agreement on Trade in Services, in The Uruguay Round and Developing Countries (L. Martin & A. Winters, eds. 1996, Cambridge Univ. Press).
- ITC, Business Guide to the General Agreement on Trade in Services (1999).
- Jagdish Bhawati, Trade in Services and the Multilateral Trade Negotiations 282-306, in *Political Economy*

and International Economics (1991, MIT Press).

- Aaditya Mattoo, A Handbook of International Trade in Services (2007).

## 5. TBT Agreement

### REQUIRED

- P. van den Bossche & W. Zdouc, Law and Policy of the World Trade Organization, Ch. 13.
- WTO, *EC – Trade Description of Sardines* (WT/DS231/R, WT/DS231/AB/R)

### RECOMMENDED

- UNCTAD, “Dispute Settlement: Technical Barriers to Trade”, 2003 < [https://unctad.org/system/files/official-document/edmmisc232add22\\_en.pdf](https://unctad.org/system/files/official-document/edmmisc232add22_en.pdf) >.
- S. Lester and W. Stemberg, ‘The GATT Origins of TBT Agreement Articles 2.1 and 2.2’, *Journal of International Economic Law*, 2014, 17(1), 215-32.
- P. C. Mavroidis, ‘Last Mile for Tuna (to a Safe Harbour): What is the TBT Agreement All About?’, *The European Journal of International Law*, 2019, 30(1), 279-301.
- M. Kim, ‘The ‘Standard’ in the GATT/WTO TBT Agreements: Origin, Evolution and Application’, *Journal of World Trade*, 2018, 52(5), 765-788

## 6. Intellectual Property Protection

### REQUIRED

- P. van den Bossche & W. Zdouc, Law and Policy of the World Trade Organization, Ch. 15.
- WTO, *Canada – Patent Protection of Pharmaceutical Products* (WT/DS114/R).

### RECOMMENDED

- *Special Issue: Trade-Related Aspects of Intellectual Property Rights*, *Journal of International Economic Law*, Vol.1, No.4 (December 1998).
- UNCTAD-ICTSD, *Resource Book on TRIPS and Development* (2005).
- Tim Wu, “The World Trade Law of Censorship and Internet Filtering,” *Chicago Journal of International Law* 7, no.1, pp. 263-288 (2006).

## 7. Exceptions

### REQUIRED

- P. van den Bossche & Zdouc, Law and Policy of the World Trade Organization, Ch. 8.
- WTO, [Rules and Environmental Policies: GATT Exceptions. World Trade Organisation](#)
- WTO, *United States – Import Prohibition of Certain Shrimp and Shrimp Products* (WT/DS58/R & WT/DS58/AB/R).
- WTO, *Russia – Measures Concerning Traffic in Transit* (WT/DS512/R).

### RECOMMENDED

- Dukgeun Ahn, “Environment Disputes in the GATT/WTO: Before and After US- Shrimp Case”, *Michigan Journal of International Law*, Vol.20, No. 4 (1999)
- S. Charnovitz, ‘Exploring the Environmental Exceptions in the GATT Article XX,’ *Journal of World Trade*, 1991, 25, 37-55.
- L. Bartels, ‘The Chapeau of the General Exceptions in the WTO GATT and GATS Agreement: A Reconstruction,’ *American Journal of International Law*, 2015, 109, 95-125.
- G. M. Duran, ‘Measures with Multiple Competing Purposes after EC-Seal Products: Avoiding a Conflict between GATT Article XX-Chapeau and Article 2.1 TBT Agreement,’ *Journal of International Economic Law*, 2016, 0, 1-29.
- P. Conconi and T. Voon, ‘EC – Seal Products : The Tension between Public Morals and International Trade Agreements’, *World Trade Review*, 2016, 15, 211-34.

- K. Plouffe-Malette, 'Public Morality Exception at the WTO: Much Ado About Nothing?', *Journal of World Trade*, 2021, 55, 453-476.
- P. Delimatsis, 'Protecting Public Morals in a Digital Age: Revisiting the WTO Rulings on US – Gambling and China – Publications and Audiovisual Products', *Journal of International Economic Law*, 2011, 14, 257-293.
- C. Delev, 'A Moral Stretch? US — Tariff Measures and the Public Morals Exception in WTO Law', *World Trade Review*, 21, 249-260.
- CRS, Section 232 Investigations: Overview and Issues for Congress, May 18, 2021.
- P. V. Bossche and S. Akpofure, 'The Use and Abuse of the National Security Exception under Article XXI(b)(iii) of the GATT 1994', WTI Working Paper No. 03, 2020.
- K. Claussen, 'Trade's Security Exceptionalism', *Stan. L. Rev.*, 2020, 72, 1097-1164.
- Ji Yeong Yoo & Dukgeun Ahn, "Security Exceptions in the WTO System: Bridge or Bottle-Neck for Trade and Security?", *Journal of International Economic Law*, Vol. 19, pp.417-444 (June 2016).
- A. Roberts, H. C. Moraes and V. Ferguson, 'Toward a Geoeconomic Order in International Economic Trade and Investment,' *Journal of International Economic Law*, 2019, 22(4), 655-676.
- J. B. Heath, 'The New National Security Challenges to the Economic Order,' *Yale Law Journal*, 2020, 129, 1020.
- M. Pinchis-Paulsen, 'Trade Multilateralism and U.S. National Security: The Making of the GATT Security Exceptions,' *Michigan Journal of International Law*, 2020, 41(1), 109-193.
- James Bacchus, "The Black Hole of National Security," (CATO Policy Analysis No.936, Nov. 2022).

## 8. Regional Trade Agreements

### REQUIRED

- P. van den Bossche & W. Zdouc, *Law and Policy of the World Trade Organization*, Ch. 4 &5.
- WTO, *Turkey-Restrictions on Imports of Textile and Clothing Products (WT/DS34/R, WT/DS34/AB/R)*

### RECOMMENDED

- Mark Wu, 'The Proliferation of Regional Trade Agreements: (Re-)Shaping the Trade Landscape with Multilateralism on Pause', *Proceedings of the Annual Meeting (American Society of International Law)*, 2013, 107, 447-65.
- E. Trost, 'Reconciling Regional Trade Agreements with the Most Favored Nation Principle in WTO-GATT,' *Macquarie Journal of Business Law*, 2008, 5, 43-72.
- Thomas Cottier, 'Challenges of Regionalisation and Preferential Relations in World Trade Law and Policy,' *European Foreign Affairs Review*, 1996, 1, 149-168.

## RESEARCH TOPICS AND DISCUSSION QUESTIONS

### 1. Regional Trade Agreements and Digital Trade

#### Discussion Questions:

- How does the CPTPP differ from earlier FTAs?
- What digital trade rules are new or distinctive in the CPTPP, and how have they influenced other trade agreements (USMCA, USJDT etc.)?
- What are the key differences between a traditional FTA (CPTPP, USMCA etc.) and a Digital Economy Partnership Agreement (DEPA)?
- How should we analyze China's potential application to join the CPTPP?
- How does CPTPP relate to RCEP? And how to account for China's participation in RCEP?

#### Recommended Readings:

- Benedict Kingsbury et al., 'TPP as Megaregulation,' in *Megaregulation Contested: Global Economic Ordering After TPP* (Oxford University Press, 2019), ch. 2.
- Pasha L. Hsieh, 'Introduction: New Asian Regionalism As a Global Paradigm Shift,' in Pasha L.

Hsieh, *New Asian Regionalism in International Economic Law* (Cambridge University Press, 2021), ch. 1.

- Benedict Kingsbury et al., 'Introduction: The Essence, Significance, and Problems of the Transpacific Partnership,' in *Megaregulation Contested: Global Economic Ordering After TPP* (Oxford University Press, 2019), ch. 1, 1–8.

- Pasha L. Hsieh, 'Signing the RCEP As a Milestone,' in Pasha L. Hsieh, *New Asian Regionalism in International Economic Law* (Cambridge University Press, 2021), ch. 3, 67–81.

- The White House, 'Fact Sheet: In Asia, President Biden and a Dozen Indo-Pacific Partners Launch the Indo-Pacific Economic Framework for Prosperity' (23 May 2022).

## 2. AI and Data Law in Trade Agreements

### Discussion Questions:

- What is the definition of "AI principles" (e.g., OECD, ISO/IEC, UNESCO, G7/G20), and how should "AI" be conceptualized from the perspective of international economic law?
- Which RTAs include AI-specific provisions?
- What kinds of AI-related rules are emerging?
- How should we analyze the legal characteristics of AI-specific provisions in these RTAs?
- How should flexible technological environments and AI-driven growth be regulated?

### Recommended Readings:

- World Trade Organization, *Trading with intelligence: How AI shapes and is shaped by international trade* (WTO Publications, Geneva, 2024), available at: [https://www.wto.org/english/res\\_e/booksp\\_e/trading\\_with\\_intelligence\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/trading_with_intelligence_e.pdf).

- WTO, *Making Trade and AI Work Together for the Benefit of All* (WTO: World Trade Report, 2025), available at: [https://www.wto.org/english/res\\_e/publications\\_e/wtr25presentation\\_e.pdf](https://www.wto.org/english/res_e/publications_e/wtr25presentation_e.pdf).

- Mira Burri, María Vásquez Callo-Müller and Kholofelo Kugler, The Evolution of Digital Trade Law: Insights from TAPED, *World Trade Review* 23 (2024), 190–207, available at: <https://doi.org/10.1017/S1474745623000472>.

- Mira Burri, The International Economic Law Framework for Digital Trade, *Zeitschrift für Schweizerisches Recht* 135 (2015), 10–72, available at: <https://ssrn.com/abstract=2602817>

- Mira Burri and Anupam Chander, What Are Digital Trade and Digital Trade Law?, *AJIL Unbound* 117 (2023), 99–103, available at: <https://ssrn.com/abstract=4448664>

## 3. National Security (US v. China)

### Discussion Questions:

- Explain major background, legal issues, and implication of the *China – Rare Earths* (DS431/432/433) case.
- Why are rare earths important for national security and semiconductor supply chain?
- How do export quotas and export duties operate as a strategic tool compared to tariffs, subsidies, or investment screening?
- If states reframe the justification as "national security," how does the legal battleground shift from Article XX to Article XXI (security exceptions)?
- Should the WTO develop clearer disciplines for critical minerals and strategic supply chains, or would that be politically impossible and push states further toward unilateralism?

### Recommended Readings:

- WTO, *China - Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum* (WT/DS431/AB/R, WT/DS432/AB/R and WT/DS433/AB/R) and the Panel reports, WT/DS431/R, WT/DS432/R and WT/DS433/R and WT/DS431/R/Add.1, WT/DS432/R/Add.1 and WT/DS433/R/Add.1 (adopted on 29 Aug. 2014).

- Chad P. Bown and Dan Wang, 'Semiconductors and Modern Industrial Policy,' *Journal of Economic Perspectives* 38, no. 4 (Fall 2024): 81–110.

- Chad P. Bown, 'How the United States Marched the Semiconductor Industry into Its Trade War with China,' Peterson Institute for International Economics (PIIE) Working Paper 20-16 (December 2020).

- Mark Wu, 'China's Export Restrictions and the Limits of WTO Law,' *World Trade Review*. 2017;16(4):673-691. doi:10.1017/S147474561700026X.

- Alex Capri, *Techno-Nationalism: How It's Reshaping Trade, Geopolitics and Society* (John Wiley & Sons, 2024).

- Nigel Cory and Akanksha Sinha, 'The Case for US Leadership on Global Data Governance', Hinrich Foundation, White paper (30 September 2025), available at: <https://www.hinrichfoundation.com/research/wp/tech-digital-trade/the-case-for-us-leadership-on-global-data-governance>.

- Stewart Paterson, 'AI as a Trade Weapon in the Great Power Contest, Hinrich Foundation', White paper (27 January 2026), available at: <https://www.hinrichfoundation.com/research/wp/tech-digital-trade/ai-as-a-trade-weapon-in-the-great-power-contest>

- Tianyu Fang and Tim Hwang, 'The Rise of Techno-Nationalism', New America Open Technology Institute, Report (9 November 2023), available at: <https://www.newamerica.org/oti/reports/the-rise-of-techno-nationalism>.

#### 4. Data Privacy

Discussion question:

- Explain the background of EU-U.S. Privacy Shield framework, European Commission's privacy shield decision and Court of Justice of the European Union (CJEU) decision in *Schrems II* case.
- What were the European Commission's key legal findings in its adequacy decision, and on what grounds did the CJEU invalidate Privacy Shield in *Schrems II*?
- Does data localization actually solve the surveillance problem *Schrems II* identifies, or does it merely relocate the problem (and potentially increase local surveillance risk)?
- If data localization is a policy response, should it be treated as a legitimate privacy measure or a disguised restriction on trade?
- How should digital trade agreements draft privacy exceptions to preserve regulatory autonomy without turning privacy into a blanket "escape hatch"?

#### Recommended Readings:

- Murphy, Maria Helen, 'ASSESSING THE IMPLICATIONS OF SCHREMS II FOR EU-US DATA FLOW', *International and Comparative Law Quarterly*, 71 (2022), 245–62  
<http://dx.doi.org/10.1017/S0020589321000348>.

- Anupam Chander, Is Data Localization a Solution for *Schrems II*?, *Journal of International Economic Law*, Volume 23, Issue 3, September 2020, Pages 771–784, <https://doi.org/10.1093/jiel/jgaa024>.

- Elisa M. Pineda and Chris Linebaugh, *EU Data Transfer Requirements and U.S. Intelligence Laws: Understanding Schrems II and Its Impact on the EU-U.S. Privacy Shield*, Congressional Research Service Report R46724, January 21, 2021, <https://www.congress.gov/crs-product/R46724>.

- Joshua P. Meltzer, *The Court of Justice of the European Union in Schrems II: The Impact of GDPR on Data Flows and National Security*, Brookings Institution, August 5, 2020, <https://www.brookings.edu/articles/the-court-of-justice-of-the-european-union-in-schrems-ii-the-impact-of-gdpr-on-data-flows-and-national-security/>.

#### 5. Global digital tax

Discussion question:

- Explain the OECD's global digital tax discussions and compare the major countries' unilateral digital tax measures (including digital services tax). What problem is each approach trying to solve—nexus, profit allocation, or enforcement?
- Explain the background and legal rationale for the U.S. Trade Representative's Section 301 investigations into several countries' digital services taxes. What triggers Section 301 in this context, and what counts as "unreasonable" or "discriminatory" under U.S. law?
- USTR frames DSTs as discriminatory, unreasonable and burdensome to U.S. commerce. To what extent do these claims map onto WTO legal tests—especially GATS MFN and national treatment—and where do they not translate cleanly?
- In the DST context, does Section 301 function primarily as (i) law enforcement, (ii) bargaining leverage to shape OECD negotiations, or (iii) industrial policy? What are the systemic costs for WTO dispute settlement legitimacy and for the broader rules-based trading system?

#### Recommended Readings:

- Noonan, Chris, and Victoria Plekhanova. 'Taxation of Digital Services Under Trade Agreements.' *Journal of international economic law* 23.4 (2020): 1015–1039.

- Pirlot, Alice, and Henri Culot. ‘When International Trade Law Meets Tax Policy: The Example of Digital Services Taxes.’ *Journal of world trade* 55.Issue 6 (2021): 895–920.
- The OECD/G20 Pillar 1 and Digital Services Taxes: A Comparison. Congressional Research Service (CRS), Report R47988. <https://www.congress.gov/crs-product/R47988>.

## Course Schedule

- 3/4 Introduction to the WTO law  
Evolution from GATT to WTO  
Digital trade challenges in the WTO system
- 3/11 WTO dispute settlement  
Unilateral v. multilateral  
WTO dispute settlement crisis
- 3/18 Non-discrimination principle  
NT and MFN in GATT, GATS, TRIPS
- 3/24 Guest Lecturer**  
**[12:30-2:00]**
- 4/1 General Agreement on Trade in Services (GATS)  
Trade in services  
Rules for financial services  
Rules for telecommunication services  
Services market liberalization in FTAs
- 4/8 TBT Agreement and Trade Facilitation  
Technical barriers to trade  
Standards
- 4/15 Intellectual Property Rights  
Intellectual property protection
- 4/22 Exceptions  
General exception  
Security exception
- 4/29 Regional Trade Agreements  
How countries can enter into FTAs in WTO
- 5/6 Student research & presentations  
Topic: Regional Trade Agreements and Digital Trade
- 5/13 Student research & presentations  
Topic: AI and Data Law in Trade Agreements
- 5/20 Student research & presentations  
Topic : Techno-nationalism (US v. China)

5/27 Student research & presentations  
Topic : Data privacy

6/3 Student research & presentations  
Topic : Global digital tax