

Digital Trade Law

Semester: Spring semester

ECTS: 2 - Root Number 487849

Lecturer: Prof. Mira Burri, University of Lucerne, Switzerland

Dates: 11 April 2024, 18 April 2024, 25 April 2024, and 2 May 2024

Time: 9.30–12.00

Room: Silva Casa Auditorium, World Trade Institute

Audience:

- Master of Advanced Studies of International Law and Economics (MILE) students, Elective.
- Joint LL.M. / Diploma of Advanced Studies Trade and Investment Law (TRAIL+) students – World Trade Institute / Faculty of Law, University of Bern, Elective.
- Master Level students, University of Bern – Elective.
- Certificate of Advanced Studies / Diploma of Advanced Studies in International Law and Economics (CAS ILE & DAS ILE) students - World Trade Institute, University of Bern – Elective.

Course Overview

Class	Date	Day	Time	Hours	Lecturer	Topic
1	11.04	Thursday	9.30 – 12.00	2.5	Mira Burri	Introduction to digital trade law; Introduction to WTO law relevant to digital trade
2	18.04	Thursday	9.30 – 12.00	2.5	Mira Burri	Digital trade rulemaking in preferential trade agreements (PTAs)
3	25.04	Thursday	9.30 – 12.00	2.5	Mira Burri	Interfaces with digital trade law and other legal domains (incl. digital trade and privacy; digital trade and human rights; digital trade and sustainability)
4	02.05	Thursday	9.30 – 12.00	2.5	Mira Burri	Wrap-up (with a deep dive on selected topics) and outlook

Course Description

The course explores the dynamic field of digital trade governance. It offers a deep understanding of the topic of digital trade, as well as of the emergent regulatory framework that governs it. This includes the rules of the World Trade Organization (WTO) and the detailed framework of rules developed in preferential trade agreements (PTAs). The course covers in this latter sense major agreements, such as the CPTPP, the USMCA and the EU-UK Trade and Cooperation Agreement and gives a clear sense of the positioning of the key stakeholders within the preferential trade landscape and under the WTO plurilateral negotiations under the Joint Initiative on E-Commerce. It also explores the new generation of Digital Economy Agreements (DEAs) as legal innovation in the domain of digital trade regulation and as a new model of international cooperation in a technologically fluid environment. While the focus of the course is on global trade law, it also explores the important interfaces with domestic data governance regimes and the contestations around digital trade and privacy; digital trade and human rights; digital trade and sustainability, as well as data inequalities and the development dimension of global digital trade rulemaking.

Learning Outcomes

At the end of the course, students will have comprehensive knowledge about the contemporary landscape of global digital trade rulemaking. They will understand the pertinent issues of digital trade and of digital trade law and be able to frame new issues and give well-informed opinions. They will understand not only the issues of law but also how these are affected by geopolitical positions and what the path of international cooperation in this important field of international economic law may be.

Lecturer



Mira Burri

Mira Burri is Professor of International Economic and Internet Law at the Faculty of Law of the University of Lucerne, Switzerland. She teaches international intellectual property, media, internet and trade law. Mira's current research interests are in the areas of digital trade, culture, copyright, data protection and data governance. Mira is the principal investigator of the project 'Trade Law 4.0' (ERC Consolidator Grant 2021–2026; <https://digitaltradelaw.ch/>). She consults the European Parliament, UNESCO, ASEAN, the WEF and others on issues of digital trade and data-driven innovation. Mira is also a member of the Research Council of the Swiss National Science Foundation. Mira has edited the publications *Trade Governance in the Digital Age* (Cambridge University Press 2012) and *Big Data and Global Trade Law* (Cambridge University Press 2021). Mira's publications are available at: <http://ssrn.com/author=483457>.

Assessment:

- Participants' knowledge will be assessed on the basis of a take home exam which needs to be completed on an individual basis.
- Participants will need to submit a short essay (1.000 – 2.000 words) based on a selection of questions made available by the lecturer. The assessment will be communicated in the afternoon of Thursday May 2, 2024. Participants have to submit their essays until Sunday May 5, 2024 until 20h00 (CET) to masters@wti.org.

SESSION 1: 11 APRIL 2024

Subject

Session one provides an introduction to the topics of digital trade and digital trade law. It examines the contemporary policy discussions around digital trade and recent trends, such as global value chains, servicification, and the critical importance of data. It then explores the law of the World Trade Organization and its relevance for digital trade regulation, with a deep dive on the rules of the General Agreement on Trade in Services (GATS) and pertinent GATS case-law. Finally, the session covers the WTO Joint Initiative on Electronic Commerce and discusses the state of affairs of the plurilateral negotiations.

Topics

- What is digital trade?
- Trends in contemporary digital trade
- What is digital trade law?
- WTO law of relevance for digital trade, incl. case-law
- WTO Joint Initiative on Electronic Commerce

SESSION 2: 18 APRIL 2024

Subject

Session two is devoted to the regulatory landscape of digital trade rulemaking in preferential trade agreements (PTAs). It discusses broader trends and regulatory templates with a distinct focus on the CPTPP, the USMCA, the RCEP and the EU PTAs. It covers the Digital Economy Agreements (DEAs) and discusses their scope and legal nature. The session gives a clear sense of the applicable trade rules and of geopolitical developments in the area of global digital trade rulemaking.

Topics

- Digital trade rulemaking in PTAs (CPTPP, the USMCA, the RCEP and the EU PTAs + Swiss and UK PTAs)
- DEAs
- Applicable digital trade law (incl. implications for domestic data governance regimes)
- Geopolitics of digital trade rulemaking

SESSION 3: 25 APRIL 2024

Subject

Session three explores the important interfaces between digital trade law and domestic data governance regimes. In particular, the discussion will be devoted to the contestations around digital trade and privacy; digital trade and human rights; digital trade and sustainability, as well as data inequalities and the development dimension of global digital trade rulemaking.

Topics

- Digital trade rulemaking and interfaces with domestic regulatory regimes
- Digital trade and privacy (incl. discussion of the pertinent rules in the EU and the US)
- Digital trade and human rights
- Digital trade and sustainability
- Data inequalities; development aspects of digital trade law

SESSION 4: 2 MAY 2024

Subject

Session four, as the final one, will wrap up and discuss the present and the future of global digital trade law. It will open the debate about the optimal framework for regulating the global data-driven economy and invite inputs from students on selected key issues. Some questions for discussion may be assigned to groups of students.

Topics

- The future of global digital trade law
- How to regulate fluid technological environments? What about artificial intelligence (AI)?
- Is trade law the best platform for regulating data-dependent societies?
- Trade-offs: digital innovation versus digital sovereignty?
- How to ensure an inclusive regulatory framework for digital trade?

Compulsory readings for all sessions

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>

Mira Burri, A WTO Agreement on Electronic Commerce: An Enquiry into its Substance and Viability, *Georgetown Journal of International Law* 53 (2023), 565–625, available at: <https://ssrn.com/abstract=4550690>

Mira Burri, María Vásquez Callo-Müller and Kholofelo Kugler, The Evolution of Digital Trade Law: Insights from TAPED, *Trade Law 4.0 Working Paper* No 4/2023 (forthcoming in *World Trade Review* Vol. 23, 2024), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4621230

Anupam Chander and Paul M. Schwartz, Privacy and/or Trade, *University Chicago Law Review* 90 (2023), available at: <http://dx.doi.org/10.2139/ssrn.4038531>

Optional readings for all sessions

Mira Burri, The Impact of Digitalization on Global Trade Law, *German Law Journal* 24:3 (2023), 171–202, available at: <http://dx.doi.org/10.2139/ssrn.4349803>

Mira Burri, ‘Interfacing Privacy and Trade’, *Case Western Journal of International Law* 53 (2021), 35–88, available at: <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2596&context=jil>

Mira Burri (ed), *Big Data and Global Trade Law* (Cambridge University Press, 2021), available at: <https://doi.org/10.1017/9781108919234>

Anupam Chander and Haochen Sun (eds), *Data Sovereignty along the Digital Silk Road* (Oxford University Press, 2023), available at: <https://global.oup.com/academic/product/data-sovereignty-9780197582794?cc=ch&lang=en&#>

Mira Burri, Digital Trade Law and Human Rights, *AJIL Unbound* 117 (2023), 110–115, available at: <https://ssrn.com/abstract=4448426>

Nick Couldry and Ulises A. Mejias, Data Colonialism: Rethinking Big Data’s Relation to the Contemporary Subject, *Television and New Media* 20 (2019), 336–349, available at: <https://doi.org/10.1177/1527476418796632>

Angelina Fisher and Thomas Streinz, Confronting Data Inequality, *IILJ Working Paper* 2021/1, available at: https://www.iilj.org/wp-content/uploads/2021/04/Fisher-Streinz-Confronting-Data-Inequality-IILJ-Working-Paper-2021_1.pdf