

INTERNATIONAL
TRADE LAW:
*An Interdisciplinary,
Non-Western Textbook*

**Volume One of Two
Fourth Edition**

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INTERNATIONAL TRADE LAW: *An Interdisciplinary, Non-Western Textbook*

Volume One of Two

Fourth Edition

Raj Bhala

Wikipedia Entry:

http://en.wikipedia.org/wiki/Raj_Bhala

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MATTHEW  BENDER

Dedication

*For Shera and Her Generation,
That They Are Not Scourged by a Clash of Civilizations,
But Rather Blessed by Peace through Trade,
And for the Glory of God*

Worldwide Praise for this Textbook

From the United States—

“In my experience, few books set a first rate standard for students and teachers alike. This Textbook does. Its interdisciplinary, non-western orientation, coupled with its coverage of time-honored precepts and contemporary issues, is a novel and timely synthesis.”

Jagdish N. **Bhagwati**

University Professor (Economics, Law, and International Affairs)
Columbia University

“I have followed this ambitious Textbook since its 1st edition, which I adopted at Columbia Law School. It presents the canon of International Trade Law, both theory and practice at the multilateral, FTA, and domestic levels. Having negotiated trade, environment, and human rights agreements for the U.S., chairing the U.S. International Religious Freedom Commission, and specializing also in Japanese law, I admire its coverage of trade-related ‘linkage’ issues, and its emphasis on the Asia-Pacific region. It is a pleasure to endorse a work of such fine pedagogy, indeed, of serious scholarship.”

Michael K. **Young**

President
The University of Washington

“This Textbook sets the standard for world-class excellence. First, it synthesizes law with international trade and development economics, explaining and analyzing vital insights and empirical evidence that affect trade law and policy everyday around the world. Second, it takes first and second best solutions seriously, covering not only multilateral trade liberalization in Volume One, but also free trade agreements and customs unions in Volume Two. Third, it moves well beyond traditional tariff and non-tariff barriers, to 21st century behind-the-border protectionist measures, such as technical barriers to trade, sanitary and phytosanitary measures, and state owned enterprise behavior. Fourth, it admirably emphasizes trade law and policy in developing and least developed countries, including India. For the serious student of the field, there simply is no substitute for this Textbook.”

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Director, International Trade Law Program
Rogers College of Law
The University of Arizona

“This Textbook was an early leader in broadening the field to include a range of perspectives and disciplines. Such an approach is essential in today’s complex and diverse

Worldwide Praise for this Textbook

legal environment, in which Trade Law regulates a global economy and students may practice anywhere in the world. The book remains a standard in its incorporation of multiple paradigms, not only conventional efficiency-based Neo-Classical economics, but also compelling normative approaches to social justice. There is much here for any student, teacher, or practitioner, regardless of her approach to Trade Law.”

Frank J. Garcia
Associate Dean for Global Initiatives
Professor of Law
Boston College

“With this 4th edition of his Textbook on *International Trade Law*, Professor Bhala, one of the world’s leading scholars in International Trade Law, has produced something of very special value for and deserving of widespread attention by academics, law and economic students, policymakers, and professionals in the area. This Textbook most ably explains the technical details of the complex and expanding matrix of interdisciplinary subject-matter comprising International Trade Law, while simultaneously providing the ‘big picture’ from the perspectives of both the developed and developing countries. From the intricacies of dumping margin calculations and rules of origin, to the divergent concepts of trade theory, to the views of Saint Thomas Aquinas on the ethics of traders, to the special interests of the BRICS, its pages are a mastery of synthesis and of intellectual and practical nourishment. This Textbook clearly will be of enduring value, spanning classic GATT cases of the early 1950s to modern controversies like currency manipulation. Simply put, this exceptional Textbook is a work of exhaustive and balanced scholarship and of great added-value for all those interested in the Trade Law arena. My American and international students (and I) have greatly benefitted from Professor Bhala’s prior three editions, and we will do so even more with this brilliantly executed 4th edition. Already students from over 100 law schools around the world have been enriched by Professor Bhala’s prior edition, and I am fully confident this ‘global cadre’ will be further enlarged by this new edition.”

Professor Joseph J. Norton, SJD, D. Phil, LLD
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Professor of Financial Institutions Law
Dedman School of Law
Southern Methodist University, and
Sir John Lubbock Professor of Banking Law
University of London (1993–2004)

“Since *NAFTA* took effect in 1994, and the WTO in 1995, International Trade Law has become a far broader, deeper specialty than ever before. New initiatives such as *TPP* and *T-TIP* raise new challenging issues, such as protection for biologics and investor-state dispute settlement. This Textbook is comprehensive and up-to-date in covering both the enduring themes and the details. Here, students and teachers enjoy the flexibility to cover the entirety of the field, or focus intensely on topics within it. Either way, they will be richly rewarded by this very impressive work.”

Worldwide Praise for this Textbook

Gregory **Shaffer**
Chancellor's Professor
School of Law
University of California, Irvine

“This Textbook sets an absolute standard for top quality. It is extremely well researched, well balanced, and well written. Especially impressive is its synthesis of key concepts from international trade and development economics, and political science, with classic and contemporary legal issues. From traditional tariff and non-tariff measures to emerging behind-the-border barriers, from safeguards cases to Section 337 litigation, there is no substitute for this Textbook.”

Beau **Jackson**, Esq.
Attorney
Adduci, Mastriani & Schaumberg, LLP
Washington, D.C.

“It is rare to find a work on trade that is both comprehensive and truly international. I have relied on this Textbook both to teach and apply principles of trade and development. It is a significant contribution to the field, and will have an impact on the way Trade Law is taught and practiced around the world.”

Katrin **Kuhlmann**
President and Founder
The New Markets Lab,
Adjunct Professor
Georgetown University Law Center
Washington, D.C.

From Australia—

“This book is what it sets out to be: Interdisciplinary and Non-Western. More than that, it is a book that encourages students to think. Sure, it works through all of the essential black letter law, the treaty provisions, and the case law across the entire field of WTO law, to help students become competent legal advisers. But, first of all, it exposes students to various perspectives on the objectives, functions, and impacts of the law with an especially thorough introduction to economic analysis of trade. Then, it continues that critical inquiry by incorporating into each topic references to examples, case studies, and stories that bring the black letter law to life. It encourages students to think about law in its political, historical, and economic context — and also about how international law meshes with domestic law and politics. The choice of examples and case studies avoids the traditional focus of scholars on the U.S.A. and the European Community, and succeeds in explaining Trade Law in a truly international way. Diligent students of this text will be left with an enduring sense of the importance of a legal system of trade relations, a conviction that this area of law really matters.”

Worldwide Praise for this Textbook

Dr. Brett **Williams**
Williams Trade Law
Sydney,
External Lecturer in WTO Law
Faculty of Law
University of Sydney,
External Lecturer in WTO Law
College of Law
Australian National University (ANU)
Canberra

From China—

“There is a reason why I have prescribed this Textbook in jurisdictions all over the world, from the United Kingdom to Hong Kong. My students everywhere adore it, and I love it. The 4th edition is even better than its predecessor, with new chapters on balance of payments crises, climate change, export controls, trade adjustment assistance, and World Trade Organization accessions. The new chapter on ethics in trade practice, together with new chapters on the public morality exception under GATT Article XX(a), are sure to impress on students the importance of high standards of professional conduct. And when it comes to intricate matters like the interpretation of market access and national treatment commitments in the four modes of cross-border services supply in a GATS Schedule of Concessions, the explanations and illustrations provide simplicity without simplification. This Textbook is more than a laudable work of legal scholarship. It is a practical handbook for all who work in International Trade.”

Gonzalo Villalta **Puig**
Associate Dean (Research)
Professor of Law
Vice Chancellor’s Outstanding Fellow of the Faculty of Law
The Chinese University of Hong Kong
Hong Kong, SAR

From India—

“India is the world’s largest free market democracy, and finally with this Textbook we have a work for students, teachers, and practicing lawyers that takes India seriously. Spread across its pages is balanced coverage of legal and policy controversies involving the country, and Subcontinent, such as compulsory licensing of pharmaceuticals, patent evergreening, public stockpiling for food security and Green Box reform, invocation of antidumping and countervailing duty remedies, reforms to trade, foreign direct investment, and foreign exchange laws, and strategies and tactics in multilateral and regional trade negotiations. Best of all, the Textbook conveys real passion for the subject.”

Kishu **Daswani**
Professor of Law
Government Law College, Mumbai, and

Worldwide Praise for this Textbook

Professor of Law
St. Xavier's College, Mumbai

“This Textbook is world class in part because it is so user friendly. Its explanations, graphs, and tables are accessible to students with no background in the subject, yet its insights and analyses engage even the most seasoned veterans. Its coverage of major emerging markets like the BRICS helps prepare students for new global realities. But, what makes this Textbook a masterpiece is its integration of economics, politics, philosophy, religion, and ethics with International Trade Law. As a result, the student not only gains technical understanding essential for success in practice, but also becomes a broad-minded scholar.”

Dr. Anupam **Jha**
Professor of Law
University of Delhi

“In a word, this Textbook is ‘courageous.’ It treats not only the most complex technical matters in International Trade Law, but also the most controversial topics in the field. It probes all sides of each issue, showing the reader the perspectives of competing constituencies in developed, developing, and least developed countries. Especially noteworthy is its sensitive, sensible discussion of human rights issues, including socio-economic, labor, and environmental matters, as they interact within the regime of International Trade Law. Does trade liberalization advance or undermine those human rights? Whether the reader plans a career in Private or Public International Law, this Textbook is indispensable.”

Dr. Shashi **Kumar**
Senior Assistant Professor
Department of Human Rights
School for Legal Studies
Babasaheb Bhimrao Ambedkar University
Lucknow

From Ireland—

“I am happy to endorse this outstanding contribution to the growing number of works on International Trade Law. What distinguishes this work from its competitors is not only its comprehensive coverage of WTO law, but also its treatment of preferential trading regimes. It is also particularly rewarding to have a Textbook that moves beyond the legal content of trade to explore its economic, moral, and political dimensions, thus enriching understanding in this area. Moreover, it emphasizes the increasing need to be familiar with the emerging power of the Global South. A truly outstanding work.”

Joseph A. **McMahon**
Dean and Professor
UCD Sutherland School of Law

Worldwide Praise for this Textbook

University College Dublin

From Mexico—

“I had the fortune to learn from this Textbook in its 2001 2nd edition, as a law student. It gave me and my cohorts the knowledge, skills, and inspiration to launch our careers, whether in trade or other specialties of international law. To have studied from it is a plus factor for anyone entering or shifting into the field. Now in practice for over 10 years as an international transactional lawyer, I (and many others) rely on the new editions of the Textbook for the big picture and key details. Its coverage of NAFTA, as well as ‘second generation’ FTAs like Colombia, Panama, KORUS, TPP, and T-TIP, is unparalleled. Its use in conjunction with the *Dictionary of International Trade Law* (also by Professor Bhala) is efficient and rewarding.”

Luis Fernando **Gomar**, Esq.
Partner
Thompson & Knight
Mexico City

From New Zealand—

“As always, Raj Bhala offers thought provoking perspectives and fresh insights that show how and why the international trade regime has become so contested. This latest Textbook is a timely and important contribution to today’s debate about the philosophy, ethics, and outcomes that should shape this regime for the 21st century.”

Jane **Kelsey**
Professor of Law
The University of Auckland

From Nigeria—

“This Textbook is sorely needed throughout law schools in Africa, particularly Nigeria. When I did my LL.B. degree at the University of Nigeria in Nsukka, we did not have a course in International Trade Law. Only in LL.M. studies at the University of Denver, and later for my S.J.D. at the University of Kansas, did I encounter this Textbook. It was a wonderful revelation! The emphasis of the Textbook on special and differential treatment for poor countries, and attention paid to Catholic Social Justice Theory, is especially appreciated. Using this Textbook certainly will help build legal capacity in Africa. With this Textbook and International Trade Law introduced in law schools throughout Africa, and Nigeria in particular, African countries will acquire priceless skills for a redefined participation in international trade negotiations at the WTO.”

Reverend Dr. (Father) Alphonsus **Ihuoma**
Owerri, Nigeria
B.A. Philosophy (Rome), M.A. Theology (Rome), LL.B. (Nigeria),
LL.M., (Denver), S.J.D. (Kansas)

Worldwide Praise for this Textbook

Chaplain
Mayo Clinic
Rochester, Minnesota

From the United Arab Emirates—

“I myself learned the subject of International Trade Law, and fell in love with it, thanks to this Textbook while an LL.M. student at the University of Arizona, and then an S.J.D. candidate at American University (Washington College of Law). Now as Dean and Professor at Sharjah, my students use it, and I commend it to students throughout the Middle East and beyond. No other work treats Arab Islamic countries in the world trading system with such thought, vision, and hope. In addition to its insightful analysis of substantive topics, the quality of English writing is so high that even native speakers will improve their legal writing by perusing it. This Textbook inspires both the mind and heart.”

Bashar H. Malkawi
Dean and Professor of Law
College of Law
University of Sharjah

From the United Kingdom—

“This Textbook is the testimony of the intellectual prowess of a scholar’s scholar in the field of International Trade Law. The length and width of the subject are covered in clear, elegant prose, with topics organized and divided in a logical accessible manner that is a delight to read. Careful, indeed compassionate in the cosmopolitan spirit, attention is paid to problems faced by developing countries. Rightly so in the post-9-11 world, the link between trade liberalization and national security is highlighted, and the theme of ‘peace through trade’ is critically explored. This Indian-American, visible as he is in the field of rapid development, should take pride in serving the thankful world trade community with this enlightening and user-friendly Textbook.”

Dr. A.F.M. Maniruzzaman
Chair and Professor of International Business Law
School of Law
University of Portsmouth

Table of Abbreviations

ACP	African, Caribbean, and Pacific
ACS	Automated Commercial System
AD	Antidumping
AD Agreement	WTO Antidumping Agreement (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994)
ADB	Asian Development Bank
ADVANCE Democracy Act	Advance Democratic Values, Address Non-democratic Countries and Enhance Democracy Act of 2007
AECA	Arms Export Control Act of 1976
AEO	Authorized Economic Operator
AFA	Adverse Facts Available
AfDB	African Development Bank
AFL-CIO	American Federation of Labor-Congress of Industrial Organizations
AFTA	ASEAN Free Trade Area
Ag	Agriculture
AGOA	African Growth and Opportunity Act (2000)
Agriculture Agreement	WTO Agreement on Agriculture
AID	U.S. Agency for International Development
AIG	American Insurance Group
ALJ	Administrative Law Judge
AMA	American Medical Association
AmCham	American Chamber of Commerce
AMS	Aggregate Measure of Support
AOG	All Other Goods
AOR	All Others Rate
APEC	Asia Pacific Economic Cooperation (forum)
ARP Act of 2000	Agricultural Risk Protection Act of 2000
ARRA	American Recovery and Reinvestment Act of 2009
ASA	American Sugar Alliance
ASEAN	Association of South East Asian Nations
ASP	American Selling Price
ATAP	1996 Agreement Concerning Certain Aspects of Trade in Agricultural Products (1986 U.S.-Israel FTA)
ATC	WTO Agreement on Textiles and Clothing
ATPA	Andean Trade Preferences Act (1991)
ATPDEA	Andean Trade Promotion and Drug Eradication Act (2002)
ATT	2013 U.N. Arms Trade Treaty
AUV	Average Unit Value

Table of Abbreviations

AV	Audio-Visual
AVE	<i>Ad Valorem</i> Equivalent
B&O	Washington State Business and Occupation Tax Rate Reduction
BBS	Bangladesh Bureau of Statistics
BDC	Beneficiary Developing Country
BDS	Boycott, Divestment, and Sanctions
Berne Convention	1886 (1971) Berne Convention for the Protection of Literary and Artistic Works
BFA	Banana Framework Agreement
BILA (ILAB)	Bureau of International Labor Affairs (U.S. DOL OTLA)
BIA	Best Information Available (Pre-Uruguay Round U.S. term for Facts Available)
BIS (1st meaning)	Bank for International Settlements
BIS (2nd meaning)	Bureau of Industry and Security (U.S. DOC)
B.I.S.D.	Basic Instruments and Selected Documents
BIT	Bilateral Investment Treaty
BJP	Bharatiya Janata Party
BOP	Balance Of Payments
BOT	Balance Of Trade
BRICS	Brazil, Russia, India, China, and South Africa
BSE (1st meaning)	Bombay Stock Exchange
BSE (1st meaning)	Bovine Spongiform Encephalopathy (Mad Cow Disease)
BTA (1st meaning)	Bilateral Trade Agreement
BTA (2nd meaning)	Bio-Terrorism Act of 2002 (Public Health Security and Bioterrorism Preparedness and Response Act)
BTA (3rd meaning)	Border Tax Adjustment
BTD	May 2007 Bipartisan Trade Deal
CAFTA-DR	Central American Free Trade Agreement-Dominican Republic
CAN	Community of Andean Nations
CAP	Common Agricultural Policy (EU)
CBD	U.N. Convention on Biological Diversity
CBERA	Caribbean Basin Economic Recovery Act of 1983
CBI	Caribbean Basin Initiative
CBO	Congressional Budget Office
CBP	U.S. Customs and Border Protection (“U.S. Customs Service” until 1 March 2003)
CBSA	Canadian Border Services Agency
CCB	U.S. Conference of Catholic Bishops

Table of Abbreviations

CCC (1st meaning)	Commerce Country Chart
CCC (2nd meaning)	U.S. Commodity Credit Corporation (USDA)
CCC (3rd meaning)	Customs Cooperation Council (renamed WCO in 1994)
CCI	Countervailing Currency Intervention
CCL	Commerce Control List
CCP	Chinese Communist Party (or CPC, Communist Party of China)
CCPA	U.S. Court of Customs and Patent Appeals (abolished 1982; transfer to Federal Circuit)
CCS	Carbon Capture and Storage
CDC (1st meaning)	U.S. Centers for Disease Control
CDC (2nd meaning)	Chilean Distortions Commission
CDM	Clean Development Mechanism
CEC	Commission for Environmental Cooperation (NAFTA)
CEP	Constructed Export Price
CER	Closer Economic Relationship
CET	Common External Tariff
CETA	Comprehensive Economic and Trade Agreement
CFIUS	Committee on Foreign Investment in the United States
C.F.R. (1st meaning)	Code of Federal Regulations
CFR (2nd meaning)	Council on Foreign Relations
CGE	Computable General Equilibrium
CJ	Commodity Jurisdiction
CIA	U.S. Central Intelligence Agency
CIF (c.i.f)	Cost, Insurance, and Freight
CISADA	Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010
CIT	U.S. Court of International Trade (New York, N.Y.)
CITA	U.S. Committee for Implementation of Textile Agreements
CITES	1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora
CITT	Canadian International Trade Tribunal
CMO	Common Market Organization (EU)
CNL	Competitive Need Limitation
COBRA	Consolidated Omnibus Budget and Reconciliation Act (multiple years)

Table of Abbreviations

COCOM	Coordinating Committee on Multilateral Export Controls
COGS	Cost of Goods Sold
COMESA	Common Market for Eastern and Southern Africa
COP	Cost of Production
COS	Circumstances of Sale (dumping margin calculation adjustment)
CPA	Certified Public Accountant
CPC	U.N. Central Product Classification list
CPSC	U.S. Consumer Product Safety Commission
CQE	Certificate of Quota Eligibility
Crop Year 2001 Act	Crop Year 2001 Agricultural Economic Assistance Act
CRS	Congressional Research Service
CSI	Container Security Initiative
CTC	Change in Tariff Classification
CTD	WTO Committee on Trade and Development
CTESS	WTO Committee on Trade and Environment in Special Session
CTH	Change in Tariff Heading
CTHA	WTO Chemical Tariff Harmonization Agreement
C-TPAT	Customs-Trade Partnership Against Terrorism
CTSH	Change in Tariff Sub-Heading
CU	Customs Union
Customs Valuation Agreement	WTO Agreement on Customs Valuation (Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994)
CUFTA (CUSFTA)	Canada-United States FTA
CV	Constructed Value
CVA	Canadian Value Added
CVD	Countervailing Duty
DDA	Doha Development Agenda
DDTC	U.S. Directorate of Defense Trade Controls (Department of State)
DFQF	Duty Free, Quota Free
DGFT	Director General of Foreign Trade (part of Ministry of Commerce, India)
DHS	U.S. Department of Homeland Security
DIFMER	Difference in Merchandise (dumping margin calculation adjustment)
DM (1st meaning)	<i>Deutsche Marks</i>
DM (2nd meaning)	Dumping Margin
DMA	Domestic Marketing Assessment
DMZ	De-Militarized Zone

Table of Abbreviations

DOC	U.S. Department of Commerce
DOD	U.S. Department of Defense
DOE	U.S. Department of Energy
DOJ	U.S. Department of Justice
DOL	U.S. Department of Labor
DOT	U.S. Department of Transportation
DP (DPW)	Dubai Ports Dubai Ports World
DPA	Deferred Prosecution Agreement
DRAM	Dynamic Random Access Memory
DSB	WTO Dispute Settlement Body
DSM	Dispute Settlement Mechanism
DSU	WTO Dispute Settlement Understanding (Understanding on Rules and Procedures Governing the Settlement of Disputes)
EA	Environmental Assessment
EAA	Export Administration Act of 1979
EAC (1st meaning)	East African Community
EAC (2nd meaning)	East Asian Community
EAC (3rd meaning)	Environmental Affairs Council (CAFTA-DR)
EAR	Export Administration Regulations
EBA	Everything But Arms
EBOR	Electronic On Board Recorder
EC (1st meaning)	European Commission
EC (2nd meaning)	European Communities
ECAT	Emergency Committee for Foreign Trade
ECB	European Central Bank
ECC (1st meaning)	Environmental Cooperation Commission (CAFTA-DR)
ECC (2nd meaning)	Extraordinary Challenge Committee (NAFTA)
ECCN	Export Control Classification Number
ECE	Evaluation Committee of Experts (<i>NAFTA</i>)
ECFA	Economic Cooperation Framework Agreement
ECHR	European Court of Human Rights
ECJ	European Court of Justice
ECLAC	Economic Commission for Latin America and the Caribbean
E-Commerce	Electronic Commerce
ED	Economic Development Administration (of DOC)
EDI	Electronic Data Interchange

Table of Abbreviations

EEC	European Economic Community
EFTA	European Free Trade Association
EGA	WTO Environmental Goods Agreement
EIF	Enhanced Integrated Framework (formerly “IF,” or “Integrated Framework”)
EN	Explanatory Note
EP	Export Price
EPA (1st meaning)	Economic Partnership Agreement
EPA (2nd meaning)	U.S. Environmental Protection Agency
EPZ	Export Processing Zone
ESCS	European Steel and Coal Community
ESP	Exporter’s Sales Price (Pre-Uruguay Round U.S. term for Constructed Export Price)
ERP	Effective Rate of Protection
ET (EST)	Eastern Time (Eastern Standard Time)
ETA	Employment and Training Administration (of DOL)
ETP	Eastern Tropical Pacific
ETS	Emission Trading Scheme
EU	European Union
Ex-Im Bank	U.S. Export-Import Bank
FACT Act of 1990 (1990 Farm Bill)	Food, Agriculture, Conservation, and Trade Act of 1990
FAIR Act of 1996 (1996 Farm Bill)	Federal Agricultural Improvement and Reform Act of 1996
FAO	Food and Agricultural Organization
FAS	Foreign Agricultural Service (of USDA)
FAST	Free And Secure Trade
FATA	Federally Administered Tribal Areas (Pakistan)
FBI	U.S. Federal Bureau of Investigation
FCIC	U.S. Federal Crop Insurance Corporation (USDA)
FCPA	Foreign Corrupt Practices Act of 1977
FDI	Foreign Direct Investment
Federal Circuit	U.S. Court of Appeals for the Federal Circuit (Washington, D.C.)
Fed. Reg.	Federal Register
FERC	U.S. Federal Energy Regulatory Commission
<i>FF</i>	<i>French Francs</i>
FICCI	Federation of Indian Chambers of Commerce and Industry
FINCEN	U.S. Financial Crimes Enforcement Network (Department of the Treasury)
FMCSA	Federal Motor Carrier Safety Administration
FMV	Foreign Market Value (Pre-Uruguay Round U.S. term for Normal Value)

Table of Abbreviations

FMVSS	Federal Motor Vehicle Safety Standards
FOA	Facts Otherwise Available
FOB (f.o.b.)	Free On Board
FOP	Factors of Production
FPC	U.S. Federal Power Commission (predecessor of DOE)
FRAND	Fair, Reasonable, and Non-Discriminatory
FRCP	U.S. Federal Rules of Civil Procedure
FRCrimP	U.S. Federal Rules of Criminal Procedure
FRE	U.S. Federal Rules of Evidence
FSA (1st meaning)	U.S. Farm Services Agency
FSA (2nd meaning)	Food Safety Agency (EU)
FSC	Foreign Sales Corporation
FSRI Act of 2002 (2002 Farm Bill)	Farm Security and Rural Investment Act of 2002
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
FTAAP	Free Trade Agreement of the Asia Pacific Region
FTC	Free Trade Commission (NAFTA)
FTZ (1st meaning)	Foreign Trade Zone
FTZ (2nd meaning)	Free Trade Zone
FY	Fiscal Year
FX	Foreign Exchange
G7	Group of Seven Industrialized Nations
G8	Group of Eight Industrialized Nations
G20	Group of Twenty Developed Nations
G33 (or G-33)	Group of 33 Developing Countries
G&A	General and Administrative expenses
GAAP	Generally Accepted Accounting Principles
GAO	U.S. Government Accountability Office
GATB	General Agreement on Trade in Bananas (15 December 2009)
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GI	Geographical Indication
GM	Genetically Modified, Genetic Modification
GMO	Genetically Modified Organism
GNH	Gross National Happiness
GNI	Gross National Income
GNP	Gross National Product

Table of Abbreviations

GOI	Government of India
GPA	Government Procurement Agreement (WTO Agreement on Government Procurement)
GPS	Global Positioning System
GRI	General Rules of Interpretation (of the HS)
GPT	General Preferential Tariff (Canada)
GSM	General Sales Manager
GSP	Generalized System of Preferences (U.S.)
GSP+	Generalized System of Preferences Plus (EU)
GTA	Global Trade Atlas
H5N1	Avian Flu
HCTC	Health Care Tax Credit
HDI	U.N. Human Development Index
HHS	U.S. Department of Health and Human Services
HIPC	Highly Indebted Poor Country
HKMA	Hong Kong Monetary Authority
HNW	High Net Worth
HPAE	High Performing Asian Economy
HPC	High Performance Computer
HS	Harmonized System
HSBC	Hong Kong Shanghai Banking Corporation
HTS	Harmonized Tariff Schedule
HTSUS	Harmonized Tariff Schedule of the U.S.
IA (1st meaning)	Import Administration (U.S. DOC)
IA (2nd meaning)	Information Available
IADB	Inter-American Development Bank
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development (The World Bank)
IBT	International Brotherhood of Teamsters
ICs	Indigenous Communities
ICC	International Chamber of Commerce
ICE	U.S. Immigration and Customs Enforcement
ICFTU	International Confederation of Free Trade Unions
ICJ	International Court of Justice
ICOR	Incremental Capital Output Ratio
ICSID	International Center for the Settlement of Investment Disputes
IEEPA	International Emergency Economic Powers Act of 1977
IFPRI	International Food Policy Research Institute
IFSA	Iran Freedom Support Act of 2006
IFTA	United States-Israel Free Trade Implementation Act of 1985

Table of Abbreviations

IIPA	International Intellectual Property Alliance
ILO	International Labor Organization
ILRF	International Labor Rights Forum
ILSA	Iran and Libya Sanctions Act of 1996 (called ISA after IFSA)
IMF	International Monetary Fund
IMF Articles	Articles of Agreement of the International Monetary Fund
INR	Initial Negotiating Right
INS	U.S. Immigration and Naturalization Service (reorganized partly into ICE in March 2003)
IO	International Organization
IP	Intellectual Property
IPIC Treaty (Washington Treaty)	1989 Intellectual Property in Respect of Integrated Circuits
IPCC	Intergovernmental Panel on Climate Change
IPPC	1952 International Plant Protection Convention
IPR	Intellectual Property Right
IRC	U.S. Internal Revenue Code
IRQ	Individual Reference Quantity
IRS	U.S. Internal Revenue Service
ISA	Iran Sanctions Act of 1996, as amended (formerly ILSA)
ISDS	Investor-State Dispute Settlement
ISO	International Organization for Standardization
IT	Information Technology
ITA (1st meaning)	WTO Information Technology Agreement
ITA (2nd meaning)	U.S. International Trade Administration (DOC)
ITAR	International Traffic in Arms Regulations
ITC	U.S. International Trade Commission
ITO	International Trade Organization
ITO Charter (Havana Charter)	Charter for an International Trade Organization
ITU	International Telecommunications Union
JFTC	Japan Fair Trade Commission
JNPT	Jawaharlal Nehru Port Terminals (Mumbai, India)
JV	Joint Venture
KCBT	Kansas City Board of Trade
KDB	Korea Development Bank
KEXIM	Export-Import Bank of Korea
KORUS	Korea-United States Free Trade Agreement
KSA	Kingdom of Saudi Arabia
L/C	Letter of Credit
LAP	Labor Action Plan (<i>Columbia TPA</i>)

Table of Abbreviations

LCA	Large Civil Aircraft
LDBDC	Least Developed Beneficiary Developing Country
LDC (1st meaning)	Least Developed Country
LDC (2nd meaning)	Less Developed Country (includes developing and least developed countries)
LLDC	Landlocked Developing Country
LNG	Liquefied Natural Gas
LNPP	Large Newspaper Printing Press
LOT	Level of Trade (dumping margin calculation adjustment)
LPMO	Livestock Product Marketing Organization (Korea)
LTFV	Less Than Fair Value
MAD	Mutually Assured Destruction
MAI	Multilateral Agreement on Investment
MCL	Munitions Control List
MCTL	Military Critical Technologies List
MDG	Millennium Development Goal
MEA	Multilateral Environmental Agreement
MEFTA	Middle East Free Trade Agreement
MENA	Middle East North Africa
METI	Ministry of Economy, Trade, and Industry (Japan, formerly MITI)
MFA	Multi-Fiber Arrangement (1974–2004)
MFN	Most Favored Nation
MITI	Ministry of International Trade and Industry
MMBtu	Million British Thermal Unit
MNC	Multinational Corporation
MNE	Multinational Enterprise
MOCIE	Ministry of Commerce, Industry, and Energy (Korea)
MOFAT	Ministry of Foreign Affairs and Trade (Korea)
MOFCOM	Ministry of Commerce (China)
MOU	Memorandum of Understanding
MPF	Merchandise Processing Fee
MRA	Mutual Recognition Agreement
MRL	Maximum Residue Level
MRM	Marine Resource Management
MSF	<i>Médecins Sans Frontières</i>
MTA	Multilateral Trade Agreement
MTB	Miscellaneous Trade Bill (multiple years)
MTN	Multilateral Trade Negotiation
MTOP	Millions of Theoretical Operations per Second
MVTO	Motor Vehicles Tariff Order
MY	Marketing Year
NAD Bank	North American Development Bank (<i>NAFTA</i>)

Table of Abbreviations

NAAEC	North American Agreement on Environmental Cooperation (NAFTA Environmental Side Agreement)
NAALC	North American Agreement on Labor Cooperation (NAFTA Labor Side Agreement)
NAFTA	North American Free Trade Agreement
NAM (1st meaning)	U.S. National Association of Manufacturers
NAM (2nd meaning)	Non-Aligned Movement
NAMA	Non-Agricultural Market Access
NAO	National Administrative Office (NAFTA)
NASA	U.S. National Aeronautics and Space Administration
NBP	National Bank of Pakistan
NCTO	National Council of Textile Organizations
NEI	National Export Initiative
NFIDC	Net Food Importing Developing Country
NFTC	National Foreign Trade Council
NG	Natural Gas
NIC	Newly Industrialized Country
NIEO	New International Economic Order
NMDC	National Minerals Development Corporation (India)
NME	Non-Market Economy
NNSA	U.S. National Nuclear Security Administration (DOE)
NOAA	U.S. National Oceanic and Atmospheric Administration (DOC)
NPA	Non-Prosecution Agreement
NPC	National People's Congress (China)
NPL	Non-Performing Loan
NPT	Nuclear Non-Proliferation Treaty of 1968
NRC	U.S. Nuclear Regulatory Commission
NRI	Non-Resident Indian
NRL	Nuclear Referral List
NSA	U.S. National Security Agency
NSPD	National Security Presidential Directive
NSS	WTO SPS National Notification System
NTA	National Textile Association
NTB	Non-Tariff Barrier
NTE	National Trade Estimate Report on Foreign Trade Barriers (USTR)
NTM	Non-Tariff Measure
NTR	Normal Trade Relations
NV	Normal Value
NWFP	North West Frontier Province (Pakistan)
OAS	Organization of American States
OBRA	Omnibus Budget and Reconciliation Act (multiple years)

Table of Abbreviations

OCD	Ordinary Customs Duties
OCR	Out of Cycle Review
ODA	Official Development Assistance
ODC	Other Duties and Charges
OECD	Organization for Economic Cooperation and Development
OED	Oxford English Dictionary
OEE	U.S. Office of Export Enforcement (BIS)
OEM	Original Equipment Manufacturer
OFAC	U.S. Office of Foreign Assets Control (Department of the Treasury)
OIC	Organization of Islamic Conference
OIE	World Organization for Animal Health (<i>Office International des Epizooties</i>)
OMA	Orderly Marketing Arrangement
OMO	Open Market Operation
OOIDA	Owner-Operator Independent Drivers Association
OPEC	Organization of Petroleum Exporting Countries
OPIC	U.S. Overseas Private Investment Association
OTC	Over the Counter
OTCA	Omnibus Trade and Competitiveness Act of 1988
OTDS	Overall Trade distorting Domestic Support
OTEXA	Office of Textiles and Apparel (U.S. DOC)
OTLA	Office of Trade and Labor Affairs (in DOL)
PAPS	Pre-Arrival Processing System
Paris Convention	1883 Paris Convention for the Protection of Industrial Property
PASA	Pre-Authorization Safety Audit
PBC (PBOC)	People's Bank of China
PBUH	Peace Be Upon Him
PCA	Post-Clearance Audit
PEO	Permanent Exclusion Order
PFC	Priority Foreign Country
PhRMA	Pharmaceutical Manufacturers of America
PNTR	Permanent Normal Trade Relations
POI	Period of Investigation
POR	Period of Review
PPM (1st meaning)	Parts Per Million
PPM (2nd meaning)	Process and Production Method
PP	Purchase Price (Pre-Uruguay Round U.S. term for Export Price)
PPP	Purchasing Power Parity
PRC	People's Republic of China
PSA	Port of Singapore Authority

Table of Abbreviations

PSI	Pre-Shipment Inspection
PSI Agreement	WTO Agreement on Pre-Shipment Inspection
PSRO	Product Specific Rule of Origin
PTA	Preferential Trade Agreement, or Preferential Trading Arrangement
PTO	U.S. Patent and Trademark Office
QE	Quantitative Easing
QIZ	Qualified Industrial Zone
QR	Quantitative Restriction
R&D	Research and Development
R&TD	Research and Technological Development measures
RAM	Recently Acceded Member (of WTO)
RBI	Reserve Bank of India
RCEP	Regional Comprehensive Economic Partnership
REER	Real Effective Exchange Rate
RMA	U.S. Risk Management Association (RMA)
RMB	<i>Ren min bi</i> ("people's money," the Chinese currency)
RMG	Ready Made Garment
Rome Convention	1964 Rome Convention for the Protection of Performer, Producers of Phonograms and Broadcasting Organizations
ROO	Rule Of Origin
ROW	Rest Of World
ROZ	Reconstruction Opportunity Zone
RPT	Reasonable Period of Time
RTA	Regional Trade Agreement
RTAA	Re-employment Trade Adjustment Assistance
RVC	Regional Value Content
S&D	Special and Differential
SAA	Statement of Administrative Action
SAARC	South Asia Association for Regional Cooperation
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAFE Port Act	Security and Accountability for Every Port Act of 2006
SAFTA	South Asia Free Trade Agreement
SAGIA	Saudi Arabian General Investment Authority
SAMA	Saudi Arabian Monetary Authority
SAPTA	South Asia Preferential Trading Arrangement
SARS	Sudden Acute Respiratory Syndrome
SCGP	Supplier Credit Guarantee Program
SCM	Subsidies and Countervailing Measures
SCM Agreement	WTO Agreement on Subsidies and Countervailing Measures
SCP	Sugar Containing Product

Table of Abbreviations

SDF	Steel Development Fund (India)
SE	Secretaría de Economía (Secretariat of Economy, Mexico, formerly <i>SECOFI</i>)
SEBI	Securities and Exchange Bureau of India
SEC	U.S. Securities and Exchange Commission
SECOFI	Secretary of Commerce and Industrial Development (<i>Secretario de Comercio y Fomento Industrial</i>), i.e., Ministry of Commerce and Industrial Development (Mexico, renamed SE in December 2000)
SEIU	Service Employees International Union
SENTRI	Secure Electronic Network for Travelers Rapid Inspection
SEZ	Special Economic Zone
SG&A	Selling, General, and Administrative expenses
SME (1st meaning)	Small and Medium Sized Enterprise
SME (2nd meaning)	Square Meter Equivalent
SNAP-R	Simplified Network Application Process — Redesign
SOCB	State Owned Commercial Bank
SOE	State Owned Enterprise
SOF	Special Operations Forces
SPI	Special Program Indicator
SPS (1st meaning)	Sanitary and Phytosanitary
SPS (2nd meaning)	Single Payment Scheme
SPS Agreement	WTO Agreement on Sanitary and Phytosanitary Measures
SRO	Specific Remission Order
SSA	Sub-Saharan Africa
SSAC	Sub-Saharan African Country
SSG	Special Safeguard
SSM	Special Safeguard Mechanism
STDF	WTO Standards and Trade Development Facility
STE	State Trading Enterprise
STO	Special Trade Obligation
SVE	Small, Vulnerable Economy
SWAT	Strategic Worker Assistance and Training Initiative
T&A	Textiles and Apparel
TAA (1st meaning)	Trade Adjustment Assistance
TAA (2nd meaning)	Trade Agreements Act of 1974, as amended
TAAEA	Trade Adjustment Assistance Extension Act of 2011
TAA Reform Act	Trade Adjustment Assistance Reform Act of 2002
TAC	Total Allowable Catch

Table of Abbreviations

TBT	Technical Barriers to Trade
TBT Agreement	WTO Agreement on Technical Barriers to Trade
TCP (1st meaning)	Third Country Price
TCP (2nd meaning)	<i>El Tratado de Comercio entre los Pueblos</i> , (“Trade Treaty for the Peoples”)
TDI	Trade Defense Instrument
TEA	Trade Expansion Act of 1962
TED	Turtle Excluder Device
TEO	Temporary Exclusion Order
TEU	Twenty Foot Equivalent Unit
TFR	Total Fertility Rate
TGAAA	Trade and Globalization Adjustment Assistance Act of 2009
TIEA	Tax Information Exchange Agreement
TIFA	Trade and Investment Framework Agreement
TIPT	Trade and Investment Partnership Initiative
TISA (TSA)	WTO Trade in Services Agreement
TOT	Terms of Trade
TPA (1st meaning)	Trade Promotion Agreement
TPA (2nd meaning)	Trade Promotion Authority (Fast Track)
TPL	Tariff Preference Level
TPM	Trigger Price Mechanism
TPP	Trans Pacific Partnership
TRA	Trade Readjustment Allowance
TRIMs	Trade Related Investment Measures
TRIMs Agreement	WTO Agreement on Trade Related Investment Measures
TRIPs	Trade Related Aspects of Intellectual Property Rights
TRIPs Agreement	WTO Agreement on Trade Related Aspects of Intellectual Property Rights
TRQ	Tariff Rate Quota
TSA	U.S. Transportation Security Administration
TSUS	Tariff Schedule of the United States (predecessor to HTSUS)
T-TIP	Trans-Atlantic Trade and Investment Partnership
TVE	Town and Village Enterprise
TWEA	Trading With the Enemy Act of 1917
UAW	United Auto Workers
UI	Unemployment Insurance
UIEGA	Unlawful Internet Gambling Enforcement Act of 2006
U.K.	United Kingdom
UN	United Nations

Table of Abbreviations

UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Commission on Trade and Development
UNEP	United Nations Environmental Program
UNFCCC	United Nations Framework Convention on Climate Change
UPS	United Parcel Service
UPU	Universal Postal Union
URAA	Uruguay Round Agreements Act of 1994
U.S.	United States
U.S.C.	United States Code
USML	United States Munitions List
USP	United States Price (Pre-Uruguay Round U.S. term encompassing both Purchase Price and Exporter's Sales Price)
U.S.S.R.	Union of Soviet Socialist Republics
USTR	U.S. Trade Representative
USW (1st meaning)	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union
USW (2nd meaning)	United Steel Workers of America
VAT	Value Added Tax
VEO	Violent Extremist Organization
VER	Voluntary Export Restraint
VEU	Validated End User
Vienna Convention	1969 Vienna Convention on the Law of Treaties
VRA	Voluntary Restraint Agreement
W120	WTO services classification list (based on CPC)
WA	Wassenaar Arrangement of 1995
WAML	Wassenaar Arrangement Munitions List
WCO	World Customs Organization (formerly CCC until 1994)
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMD	Weapon of Mass Destruction
WMO	World Meteorological Association
WTO	World Trade Organization
WTO Agreement	Agreement Establishing the World Trade Organization (including all 4 Annexes)
WWF	World Wildlife Fund

Note on Sources

The increased availability of information about the subject of this Textbook, made possible thanks to the Internet, does not ease its preparation. To the contrary, it is ever more difficult. There are 2 problems: quantity and quality.

First, the sheer volume of data available is overwhelming. From blogs and media coverage to law review articles and think-tank studies, there is an assault of materials.

Second, of the material available, much of it is of low, zero, or even negative marginal value. That is especially true of official government pronouncements. In November 2014, Lori Wallach, Director of Global Trade Watch, which is part of the NGO, Public Citizen, lambasted a White House statement that claimed, in respect of *TPP* negotiations, negotiators had “narrowed the remaining gaps,” the conclusion was “coming into focus,” and finishing the talks “as soon as possible” was “a top priority.”¹ Ms. Wallach called the statement the “same sort of *vague cheerleading*” about “progress and a path to an imminent deal” made since 2011.² Her characterization was apt, even polite. More than a few officials trumpet little or no progress as momentous. A realist might say that is because there is so little genuine progress in the polarized political atmosphere in many governments and international economic relations that any step looks like a leap. A cynic might say they do so because progress, real or not, on their watch helps them get better, higher paying positions in the private sector when they rotate out of what is supposed to be public service.

So, to prepare each edition of this Textbook, I must sift through a monstrous amount of sources with a skeptical eye. I need filtering devices. Three of them are the *International Trade Reporter*, *Economist*, and *Financial Times*. In my humble estimation, these publications include the finest journalists on international trade in the English language. Their stories, which stuff 3 file cabinets in my garage, stories help keep my students and me current. It is impossible to cite every story I have used.

Special mention deservedly should be made for many pieces by Toshio Aritake, Bryce Baschuk, Len Bracken, Rossella Brevetti, Lucien O. Chauvin, Stephanie Cohen, Amrit Dhillon, Tony Dutra, Brian Flood, Tom Gilroy, Joe Kirwin, Peter Menyasz, Rick Mitchell, Leslie A. Pappas, Daniel Pruzin, Madhur Singh, Amy Tsui, and Gary G. Yerkey in the *International Trade Reporter*, which Bloomberg BNA publishes, and by Alan Beattie, Guy de Jonquière, Simon Mundy, David Pilling, Victor Mallet, Gillian Tett, Frances Williams, and Martin Wolf in the *Financial Times*. (*The Economist* does not identify author bylines.) With apologies to them and their colleagues, this new Edition would be nothing but a multi-volume citation list, were I not to adopt a simple policy: a footnote appears to accompany a direct quote, or extensive use of key data. In brief, may I express my deepest thanks and respect for these publications and their staff? May I also express gratitude to *Al Jazeera*, *Khaleej Times*, *Gulf News*, and *The Gulf Today*, for their coverage of developments concerning trade and the Islamic world?

Similarly, several Chapters of this Textbook has benefited from a large number of official publications of the U.N., World Bank, and WTO, and from some U.S. and foreign

¹ Quoted in Leslie A. Pappas, *Ministerial Meeting Doesn't Yield Consensus But Leaders in Talks Say Gaps More Narrow*, 31 INT'L TRADE REP. (BNA) 1990 (13 Nov. 2014). [Hereinafter, Pappas.]

² Quoted in Pappas (emphasis added).

Note on Sources

government bodies. None of them bears a copyright, and almost all of them are available on the official websites of these entities. Citing them all would load the Textbook down in footnotes. Yet, it is worth remarking that among them, my lodestar has been the *Overview and Compilation of U.S. Trade Statutes* (111th Congress, 2nd Session, 2010). Prepared periodically by the Committee on Ways and Means of the U.S. House of Representatives, this Committee Print is what I believe to be the clearest and most concise summary of American foreign trade law contained in any official publication.

What I have learned from legal sources referenced in earlier *International Trade Law* editions resonates in the present edition. Space does not permit a full list of the hundreds of law books, book chapters, and articles I have examined over the years, and to which I remain indebted. That list grows daily. The same policy applies to legal sources: a footnote accompanies a direct quote or great dependence.

There are core texts on international and development topics on which I draw to prepare material (including graphs). It is only right to acknowledge them explicitly:³

- P.T. Bauer, *Dissent on Development* (1976)
- Jagdish Bhagwati & Arvind Panagariya eds., *The Economics of Preferential Trade Agreements* (1996)
- Robert J. Carbaugh, *International Economics* (7th ed. 1999)
- Richard E. Caves, Jeffrey A. Frankel & Ronald W. Jones, *World Trade and Payments: An Introduction* (6th ed. 1993)
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- Robert C. Tucker ed., *The Marx-Engels Reader* (2d ed. 1978)
- Immanuel Wallerstein, *The Essential Wallerstein* (2000)

In addition, certain parts of this Textbook draw on my other books.

³ The free online *Teacher's Manual* for this Textbook sets out a longer list of consulted works, particularly in the fields of international and development economics.

Note on Sources

On GATT topics, it is only natural to peek at my treatise, *Modern GATT Law*, originally published in 2005 and expanded to 2-volume 2nd edition in 2013, by Thomson Reuters Sweet & Maxwell in London. Eleanor Norton and Andrew Moroney, the Publishing Editors on the 1st and 2nd editions, respectively, and more recently Lydia Manch, kindly understood my desire to avoid “re-inventing the wheel.” I have drawn on Chapters and used sections from 2nd edition of the treatise, with appropriate substantive and stylistic changes. To a lesser degree, I draw on *Trade, Development, and Social Justice* (Carolina Academic Press 2003), and a treatise with Professor Kevin Kennedy of Michigan State, *World Trade Law* (Lexis Publishing 1998, with 1999 *Supplement*). My dear friend, Dr. Keith Sipe, President of Carolina Academic Press, and Ms. Adriana Sciortino, Lexis Publishing, indulged my efforts to economize on my efforts.

Similarly, I rely on previous articles, some of which are not cited in, or subsequent to, the *Modern GATT Law* treatise. Material on GATT Article XX(a) and Islamic countries comes from *Diversity within Unity: Import Laws of Islamic Countries on Ḥarām (Forbidden) Products*, 47 *THE INTERNATIONAL LAWYER* 343–406 (2014, with Shannon B. Keating). The discussion of trade preferences for Africa uses *The Limits of American Generosity*, 29 *FORDHAM INTERNATIONAL LAW JOURNAL* 299–385 (January 2006), and some discussion of FTAs is based on *Competitive Liberalization, Competitive Imperialism, and Intellectual Property*, 28 *LIVERPOOL LAW REVIEW* issue 1 (2007). The trade sanctions analysis is informed by *MRS. WATU and International Trade Sanctions*, 33 *THE INTERNATIONAL LAWYER* 1–26 (Spring 1999). The review of the EU CAP draws on *Empathizing with France and Pakistan on Agricultural Subsidy Issues in the Doha Round*, 40 *VANDERBILT JOURNAL OF TRANSNATIONAL LAW* 949–985 (2007). The annual *WTO Case Review*, published by the *Arizona Journal of International and Comparative Law* (co-authored with Arizona Professor David Gantz, and more recently with Shannon Keating and Bruno Simões) assists in many spots.

Confessedly, it is not easy to set aside my views, and in any event, value-free scholarship is impossible, as C.S. Lewis (1898–1963) rightly argued in *The Abolition of Man* (1943). Besides, who wants a Textbook replete with bland regurgitation, but no provocative analysis to ponder? A book without personality is both unnatural and insufferable. So, regarding WTO dispute settlement, my views on precedent are evident in the coverage of the *DSU* (and *The Stare Decisis Trilogy* is cited in the pertinent Chapter). Likewise, my views in *The Doha Round Trilogy* (cited in the Chapter on that Round) are evident in various discussions. To all the journals in which the Trilogies and other articles on which I have drawn, thank you.

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- (1) **Matthew Cooper** (Olathe, Kansas), J.D. Class of 2015
Born in Nashville, Tennessee, Matt came to KU Law after living in Los Angeles, and Houston, studying International Trade in Aarhus, Denmark, graduating from the University of Arkansas with a degree in International Business Management, and working for the Diabetes Division of Medtronic, Inc. in San Antonio, where he not only won an MVP Award, but also mentored his colleagues. While at KU Law, Matt held an International Trade internship at Lehnardt & Lehnardt, LLC, was on the ELSA WTO Moot Court Team, and served in the Douglas County Legal Aid Clinic. Matt edited several Chapters.
- (2) **Madeline Heeren** (Lenexa, Kansas), J.D. Class of 2015
Maddie graduated *cum laude* in 3 years from Creighton University with a double major in International Business and Business Intelligence and Analytics, and studied at the Universitat Autònoma in Barcelona. She brought work experience as an intern with Con Agra Foods in Omaha, travel experience in roughly 10 countries, and Spanish language skills, and enthusiasm for boating and playing soccer. She served as President of the KU Student Bar Association (SBA), and worked at United Across Borders (UAB), a non-profit she founded in 2013 engaged in activities in Bangladesh. Maddie contributed to material on IP treaties, and edited several Chapters.
- (3) **Shannon B. Keating** (Lawrence, Kansas), J.D. Class of 2013
Shannon brought her expertise to bear on reviewing and commenting on several Chapters, and analyzing key WTO Appellate Body Reports. Even after graduation, she painstakingly combed through the Schedules of Tariff Concessions of every Muslim country that is a WTO Member to ascertain how they treat *ḥarām* (forbidden) products. Shannon gained this expertise in Washington, D.C., where she did trade and development work with a consulting firm (Fontheim International) and a non-governmental organization (the Trade, Aid, and Security Coalition), and in Kansas City, where she did international business work with Sprint. She is an Attorney with New Markets Lab in Washington, D.C., specializing in trade and development.
- (4) **Heidi Minnihan** (Wichita, Kansas), J.D. Class of 2014, M.B.A. Class of 2014
Heidi meticulously analyzed the environmental provisions in America’s FTAs, and developed material on Trade and Climate Change. She also pioneered a Chapter on American trade history, after researching several sources, both conventional and revisionist. She put her business acumen to work, served in

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- (5) **Aqmar Rahman** (Lawrence, Kansas), J.D. Class of 2015
Born in Dhaka, Bangladesh, Aqmar worked as a management consultant in Washington, D.C., and then came to KU for college, graduating in 2011 with a degree in Political Science and a minor in Business Administration. At KU Law, he clerked for a federal judge, worked for law firms and government agencies in Bangladesh, India, and the U.S. He also founded a non-profit organization to provide basic necessities to impoverished individuals around the world. Aqmar helped on Chapters involving the ILO, prison labor, and labor rights issues.
- (6) **Sarah Schmidt** (Marysville, Kansas), J.D. Class of 2013, M.A. Economics Class of 2013
Sarah patiently synthesized a vast array of sources into coherent, discrete Chapters on Ethics, FX, and FTAs. She also scrupulously briefed a number of WTO Appellate Body Reports, courageously climbed Mount Kilimanjaro at Spring Break 2013, and continued her work after graduation. Sarah is an Attorney with Middle East Broadcasting in Dubai.
- (7) **Bruno Germain Simões** (Lawrence, Kansas), J.D. Class of 2013
Bruno thoroughly analyzed WTO Appellate Body jurisprudence on subsidies and CVDs, leading to streamlined Chapters. While doing so, he led the KU Law WTO Moot Court Team in international competition to 15th place in the world in 2013. Showing extraordinary commitment and loyalty, Bruno continued his research, writing, and editing of material after graduation, during the Missouri Bar Exam review period, and up to just 3 days before departing for Brussels to take up his new International Trade Law position at the FratiniVergano law firm. Once in that position, he continued to help draft and edit key portions of the CVD Chapters.
- (8) **Chalinee Tinaves** (Vienna, Virginia), J.D. Class of 2014
Chalinee applied her legal acumen to the Sino-American currency dispute, critically evaluating arguments for and against alleged Chinese undervaluation of the *yuan*, and to the labor provisions in all of America's FTAs, which she compared and contrasted. She was indispensable in analyzing America's export control laws. Thanks to her, the coverage of these topics is broader and deeper than before. A native of Thailand and avid traveler, Chalinee was an intern after her 1L year with the USTR, and an extern with the DOC in Washington, D.C., as a 3L. Chalinee is an Attorney in private practice in Houston and Washington, D.C., specializing in export controls and trade sanctions.
- (9) **Spencer Toubia** (Wichita, Kansas), J.D. Class of 2015
Spencer joined KU Law after working in international banking and trade in Wichita. Earning his Bachelor's degree at KU, he received the coveted Dean's Certificate of International Business for his extensive studies in Spanish and International Business. At KU Law, Spencer interned with the Office of the Sedgwick County District Attorney in Wichita, and spent his final semester as an extern at the U.S. Court of Appeals for the Federal Circuit under The Honorable Judge Evan Wallach. Spencer also represented KU Law at the 2015 ELSA WTO Moot Court competition.

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This publication is a family product. That improves its quality, so I would not wish it any other way. My lovely wife and best friend, Kara, and our poised daughter, Shera, our little gift who has matured further since the previous edition into a smiling, generous teenager with a world class sense of fashion, are blessed with truly splendid talent.

Note on Pedagogy

Is there a single, correct way to teach International Trade Law? Surely not. Are some ways better, and others worse? Surely, yes. The Preface and Introduction already articulate why this Textbook is subtitled “An Interdisciplinary, Non-Western Approach,” and explained the importance of technical details. How does the Textbook manifest this Approach, and cover the nuts-and-bolts of the field? It uses 5 strategies.

- **1st: Textbook**

The Textbook is a textbook. It does not rely heavily on outside excerpts. Rather, it is written from start to finish as a presentation. Excerpts are used only if their substance and style facilitates this presentation.

- **2nd: Case Write Ups**

The Textbook explains and analyzes WTO Appellate Body Reports. It is not that the Appellate Body cannot speak for itself. It is that the Appellate Body does so poorly, with painful prose, endless redundancies, and monstrous length. The reader needs to know (1) what the rule is, (2) why the rule is what it is, (3) on what facts the rule is based, and (4) why the losing argument was a loser. So, the Textbook writes up important Appellate Body precedents emphasizing these factors. Put bluntly, in a world in which the English is under assault from certain information technologies like texting, lawyers and their teachers should be guardians of the language of Shakespeare, Gibbon, Churchill, and Orwell. To showcase the writing of the Appellate Body is to assault the language further when training those guardians.

- **3rd: Assumptions**

The Textbook assumes the reader can “think like a lawyer.” Typically, that cognitive asset is developed in the first year of legal training, though in my experience American law schools do not have a monopoly here. High quality training of diverse vocations such as the Roman Catholic Priesthood and Special Operations Forces nurtures critical analytical and reasoning skills, including a sophisticated ability to make analogies and distinctions, fashion and deconstruct subtle arguments, apply rules to fact patterns, synthesize diverse concepts and sources, and improvise creatively.

What the Textbook does not assume is that the reader knows anything about International Trade Law. The reader need only be thirsty for knowledge of the breadth and depth of the field. So, the Textbook is not a vehicle for re-hashing 1st year legal training, such as extracting a holding or rationale from a judicial opinion. Instead, it is designed to raise the reader to the “next level,” by training her in a specialty.

- **4th: Statutory and Treaty Construction (Free Online Documents)**

The Textbook teaches statutory and treaty construction skills. Part of getting to the “next level,” moving from the first year of law school to the upper class specialty courses and beyond, is developing these skills. While full of multilateral, regional, and domestic cases, treaties and statutes drive International Trade Law. So, each Chapter of the Textbook identifies the pertinent documents to which the reader should refer. All of them are available freely on line on many websites. So, unlike the first 3 editions, the 4th and

Note on Pedagogy

subsequent editions are unaccompanied by a *Documents Supplement*.

All Documents referenced in the Textbook, and many more, are posted *gratis* on the website of the University of Kansas Wheat Law Library. The links are:

General University of Kansas Wheat Law Library:

<http://law.ku.edu/wheat-law-library>

International Trade Law Documents:

<http://guides.law.ku.edu/intltrade>

These documents are freely downloadable, in Word and/or PDF format. I am grateful to my KU Wheat Law Library colleagues, Chris Steadham, Interim Director, and Pam Tull, Head of Public Services, for their energetic, enthusiastic, and unflagging support.

• **Reality and Possibilities**

Fifth, the Textbook conveys the reality of change, a sense of urgency, and consequent opportunities. Examples from the Non-Western world adduce the shifts in the global trading system, and perhaps even are a harbinger of reversion to the relative balance of power that prevailed before the Industrial Revolution. Consider the fact that:

Until the late 1990s, only about 30 percent of the developing world (21 of 72 countries) was catching up with the economic frontier (the U.S.), and the rate of catch-up was about 1.5 percent per head per year. Since the late 1990s, nearly three-quarters of the developing world (75 of 103 countries) started catching up, at an accelerated annual pace of about 3.3 percent per head.⁴

This catching up means no practitioner or student can afford to be complacent about, or focus only on, her local legal market. That market already has a Non-Western flavor. That is not a risk. It is an opportunity, “here” and “there.”

• **Hints for Exams**

There is no short cut to excellence in International Trade Law. The sequence for success is an old fashioned one: read the assigned portions of the Textbook conscientiously; formulate notes and outlines while reading; go to and engage actively (at least intellectually, if not verbally) in class (which, if priced hourly, costs a lot); sit near the front of the class, and do not multi-task while in class (the texts, emails, and web surfing can wait); take copious class notes; recopy those notes and synthesize them with notes from the readings; re-read relevant portions of the Textbook; and ask questions of the teacher (whose salary, or a portion thereof, the student pays). Following this sequence is vital, whether preparing for an end-of-semester exam or a major research paper.

There are some additional hints. One is to review the Table of Contents. Perusing this Table will bring to mind the structure of the material, its organization, and key concepts and cases. Another one is to use the Table of Abbreviations. Like flash cards, the items in that Table identify or link to virtually every key concept in the Textbook. A third hint is sleep. Peaceful, quiet, sleep. Lawyers make mistakes (or more of them), and are less polite, when tired.

⁴ Arvind Subramanian & Martin Kessler, *The Hyperglobalization of Trade and its Future* (2013), quoted in Martin World, *Globalization in a Time of Transition*, FINANCIAL TIMES, 17 July 2013, at 7.

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There are seven sins in the world: Wealth without work, Pleasure without conscience, Knowledge without character, Commerce without morality, Science without humanity, Worship without sacrifice, and Politics without principle.

--Mahatma Gandhi (1869–1948)

Interdisciplinary and Technical

There are 2 inherent features to the study of International Trade Law in the post-9/11 world: it is interdisciplinary, and it is technical. The serious lawyer appreciates these features are ineluctable. “Interdisciplinary” means importantly, but not only, law and economics. To study International Trade Law is to study how and why people and their governments interact, or do not interact. It is to study human behavior in a global framework of law that itself changes, sometimes radically. “Technical” means International Trade Law is not an easy field. There are no masters, only students (including this author) of varying degrees of accomplishment.

International Trade Law is formulated, interpreted, applied, and violated in one or more intellectual paradigms amidst practical realities of global, regional, country-specific, and sector specific natures. To understand this multi-faceted context makes the study of International Trade Law like a Liberal Arts course, and calls on the lawyer to be a Renaissance person. It may even be vouchsafed that the field grew up with, and out of, the Liberal Arts.

So, the reader rightly asks: Which countries have a keen export or import interest in a particular rule? What economic, political, philosophical, religious, and cultural forces motivate and constrain countries? How does the market for trade in a particular good or service operate? What are the trends in that market? To address these questions is to go far in understanding the rules governing how trade happens.

But, the answers do not result in a complete understanding of those rules. To go all the way requires an understanding of the technicalities of rules. What do the rules say? How did they evolve? What justifies them? Where do the uncertainties lie?

Thus, for the reader looking for the proverbial “Law and Ice Cream” course, it is best now to put this Textbook aside and continue the search. Exercising that option, of course, is at variance with the consistent, if not increasing, pressure on American law schools from the American Bar Association (ABA) to offer courses that are international and practical in nature.

But, for the adventurous, this Textbook might play a sweet (albeit modest) role in understanding issues that fall under the hackneyed term “globalization.” It might broaden and sharpen critical legal analysis of those issues, and even shaping choices about profession and lifestyle. It might also impart knowledge and skills readily applicable in legal positions. Perhaps it might even promote better writing skills, which is another outcome the ABA seeks from the law schools it accredits.

Not Geneva-Centric

A logical consequence of the aforementioned 2 features is that International Trade Law

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is about far more than the WTO. That was true before 1 January 1995, when the *WTO Agreement* entered into force, and always will be true. Indeed, the subject is about farm more than the Western world, the population of which accounts for only 12% of humanity.

Too often, perhaps especially among academics, a Geneva-centric view of the global trading system prevails. The fact is, as Naina Lal Kidwai, President of the Federation of Indian Chambers of Commerce and Industry (FICCI) put it in January 2013, the multilateral trading system faces an “existential threat.”⁵ Why?

One reason is the increasing appeal to many WTO Members of FTAs. FTAs pre-date GATT. Indeed, the inefficiencies associated with spreading the production and consumption gains from free trade across the globe through a patchwork of FTAs, and the risks that FTAs become military blocs, helped impel a provision in the August 1941 *Atlantic Charter* calling for a post-Second World War multilateral trade forum. But, with the death of the Doha Round, and more generally the practical frustrations of using the “single undertaking” rule in an ever-larger, more diverse WTO, Members have looked to FTAs as at least a “second best” solution to advance their trade interests.

So, between 1990 and 2010, the number of FTAs and CUs grew from 70 to 300.⁶ Ironically, that was a relatively good period for the multilateral trading system, as it encompassed the vitally important Uruguay Round (1986–1994). In the first 20 years of the life of the WTO, *i.e.*, since its birth on 1 January 1995 through September 2014, WTO Members had entered into 253 RTAs, which translated into an average of or nearly 13 annually, and notified the Secretariat at a rate of 24 per year.⁷ Even before the death of the Doha Round, frustration with it led countries as diverse as America, Chile, Japan, and Singapore to pursue aggressively preferential trading arrangements.

Today, about 50% of the exports of the top 30 exporting countries go to an FTA or CU partner country.⁸ This fact intimates another: economies integrated through an FTA or CU share chains of production. Consider *NAFTA*: imports into the U.S. from Mexico, its partner (along with Canada) in *NAFTA* contain an average of 40% American content. In contrast, imports into the U.S. from China contain an average of just 4% American content.⁹ With the death of that Round, the key function of the WTO, other than dispute settlement, monitoring, and research, is as a “marketplace for different kinds of agreement,” wherein Members attempt “coalitions of the willing to negotiate opening up their own economies without assuming that everyone has to do that or will travel at the same speed.”¹⁰

Thus, much of the Second of the Two Volumes is dedicated to FTAs. Another reason

⁵ Quoted in Amrit Dhillon, *Lamy Explains Doha Deadlock as Result of Confusion on Emerging Economies' Role*, 30 INT'L TRADE REP. (BNA) 208 (7 Feb. 2013).

⁶ See Martin Wolf, *Globalization in a Time of Transition*, FINANCIAL TIMES, 17 July 2013, at 7. [Hereinafter, *Globalization*.]

⁷ See Bryce Baschuk, *Azevêdo Urges WTO Members to Resolve TFA Impasse; Chides Trade Fragmentation Trend*, 31 INT'L TRADE REP. (BNA) 1767 (2 Oct. 2014).

⁸ See *Globalization*.

⁹ See Brian Flood, *Mexican Ambassador Says NAFTA Nations Have Shared Interests in TPP, Other FTAs*, 30 INT'L TRADE REP. (BNA) 1458 (19 Sept. 2013).

¹⁰ Ali Qassim, *TTIP, TPP Can Encourage Multilateral Trade Talks, Conference Speakers Say*, 31 INT'L TRADE REP. (BNA) 1070 (12 June 2014) (quoting Lord Peter Mandelson, who served as

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to eschew Geneva-centrism concerns export controls, trade sanctions, and other remedies that go beyond traditional TDIs authorized under GATT and WTO accords. They are important, and will be for as long as Members care about their sovereignty and seek to preserve policy space, not to mention to protect their national security. So, trade remedies make up the other part of Volume Two.

The 2 features and their implication suggest it is time to revolutionize the way International Trade Law is presented. It is time to give the field the breadth and depth of coverage it deserves. Hence, Volume One is dedicated to Fundamental Obligations, and Volume Two to Remedies and Preferences. These Volumes may be used in a 2-semester sequence in International Trade Law. Or, they may be used as separate, stand-alone volumes for individual courses.

It is high time to redeploy intellectual energies to the Non-Western World, and thereby look at the GATT-WTO system and FTAs from the perspectives of the BRICS (Brazil, Russia, India, China, and South Africa), other emerging and developing countries, like Malaysia, and least developed countries, like Bangladesh. By “Non-Western,” I mean Asia, Africa, the Middle East, and Latin America. All authors have their favorites in terms of topical coverage and comfort level. I am no exception. Mine are India, my heritage, Iran, with which I have been intrigued since the 1979 Hostage Crisis, and South East Asia, throughout which I have travelled.

Perhaps these inclinations, which pertain to ex-colonies, may be justified on 2 grounds. First, to know these countries is to know a good deal about the Non-Western World. India is the largest free market democracy in the world. The dominant player on the Subcontinent, its ethnic, linguistic, and religious diversity makes it an efficient country to visit, despite its decrepit physical infrastructure: the visitor sees all of God’s creation in one day, and then enjoys its mouth-watering culinary tradition at dinner, along with a robust, domestically brewed lager.

Iran, like India, is heir to an ancient civilization, and at the cross-roads of other, grand civilizations. Persians and Indians traded with each other, and others like Arabs and Chinese, long before there was a Western World. Iran is the only *Shi’ite* nation in the world. The erstwhile ally of Iran, the U.S., is a country with which Iran has had a tragic bilateral relationship since the 1978–1979 Islamic Revolution.

Both India and Iran have underperformed economically, albeit for different reasons. They far lag Little Tigers in the Far East, like Malaysia, the country from which my wife hails, and are even further behind the 4 Tigers (or Dragons), Hong Kong, Korea, Singapore, and Taiwan. They would be lucky to be in a middle-income trap.

Second, to know these countries is to be able to compare and contrast a large number of other Non-Western countries. How has India performed relative to China? How do Bangladesh, Pakistan, and Sri Lanka differ from India? Why has Malaysia underperformed the Asian Tigers (Hong Kong, Korea, and Singapore, and Taiwan)? Can Malaysia do better yet maintain racial, religious, and ethnic harmony among its Muslim Malay, Buddhist Chinese, and Christian Chinese and Indian communities? As for Iran, what does it need to do to re-enter the world trading system? Can this Persian nation integrate with its Arab and Turkish neighbors?

EU Trade Commissioner from 2004–2008, when negotiations collapsed in July 2008 over (*inter alia*) a Special Safeguard Mechanism (SSM) for agricultural product import surges sought by India and other developing countries).

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In sum, it is a sin to train International Trade Lawyers on the premise of a Euro-centric world. Economic, political, military, and perhaps most importantly, demographic facts point to the obvious: for decades to come, the students of today will practice import-export law, trade finance, foreign direct investment, and allied fields in an increasingly Non-Western environment. The U.N. World Population Prospects forecasts, summarized in Table I-1, show why this point is (or ought to be) obvious. Indeed, the point holds true whether they practice in America, Europe, or elsewhere. Note especially that about 50% of India's population (1.25 billion as of February 2015) is below 25 years old, and that India has considerable room for "catch up growth:" its PPP GDP *per capita* is U.S. \$5,500 (as of 2013), contrasted with \$11,900 in China and \$15,000 in Brazil.¹¹

To Propose, Not Impose

There is, and indeed ought to be, a dramatic tension in any Textbook. At one extreme, a Textbook by an author with strong views risks being idiosyncratic, even a tract. No Textbook should be a vehicle for articulating and defending the views of the author. The appropriate venues for such argumentation are articles and monographs. At the other extreme, no author who earnestly responds to the vocational calling of a teacher writes in an entirely selfless manner. As C.S. Lewis long ago pointed out in *The Abolition of Man* (1943), value-free scholarship is a chimera, and to pursue it endangers students. (Textbooks should rise to works of synthetic and innovative scholarship, but that is another matter.). Put simply, inherent in the drafting of any teaching materials is the dramatic tension between argumentation and neutrality.

¹¹ *A Chance to Fly*, THE ECONOMIST, 21 Feb. 2015, at 11.

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**Table I-1:
Global Population and Non-Western World¹²**

<i>Issue</i>	<i>Answer or Projection</i>			
Global population (billions, with projections based on a medium fertility assumption) in ... ?	1950	2013	2050	2100
	2.5	7.2	9.55	10.85
European population as a percentage of global population in 1950?	22%, with Britain, Germany, and Italy among the top 10 most populous countries			
Only region in the world to shrink between 2013 and 2050?	Europe, with largest declines in Russia, Bulgaria, and other former Soviet countries			
Sub-Saharan African population as a percentage of global population in 2050?	25% (increased from 16% in 2013), based on increased fertility rates in populous Sub-Saharan African countries such as Nigeria			
Year in which population of China peaks, and size?	2028, at about 1.6 billion			
Year in which population of India overtakes China, and size, to become most populous country in the World?	2028, at about 1.6 billion			
Top 10 most populous countries (in rank order) in ... ?	1950	2013	2050	
	China India U.S. Russia (excluding rest of former U.S.S.R.) Japan Indonesia Germany Brazil Britain Italy	China India U.S. Indonesia Brazil Pakistan Nigeria Bangladesh Russia Japan	India China Nigeria U.S. Indonesia Pakistan Brazil Bangladesh Ethiopia Philippines	
Number of Non-Western countries (counting Brazil as “Non-Western”) in Top 10 in ... ?	1950	2013	2050	
	5	8	9	

¹² See DANNY DORLING, *POPULATION 10 BILLION: THE COMING DEMOGRAPHIC CRISIS AND HOW TO SURVIVE IT* (2013); STEPHEN EMMOTT, *10 BILLION* (2013); *Faces of the Future*, THE ECONOMIST, 22 June 2013, at 64. See also Clive Cookson, *Crowded Planet*, FINANCIAL TIMES, 13–14 July 2013, at 11 (reviewing the 2 books). Note the low fertility assumption model of the U.N. projects population peaking at 8.34 billion in 2050, and then dropping to 6.75 billion in 2100. See *id.* Even if that scenario materializes, the shift to the Non-Western world is likely.

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To manage this tension, it is useful to invoke the distinction between imposition and proposition. Never is the object of *International Trade Law* to impose a view, least of all my own — assuming it were possible to do so, which it is not. Always, the goal is to propose — that is, to be provocative by setting out ideas for students to ponder and debate. The reader quickly would put down this Textbook with a thump if it did no more than regurgitate the views of the author from other venues. Rightly so. The reader seeks not indoctrination but enlightenment on theoretical and practical dimensions of a topic.

At the same time, even the least experienced of reader surely appreciates the subject is not algorithmic. Even seemingly slight details sometimes illuminate weighty matters of war and peace, poverty and wealth, injustice and fairness, and chaos and order. The reader needs and deserves guidance, at least to help chalk out an independent course of study and practice.

TPP, T-TIP, TPA, TISA, and EGA

As of this writing, neither *TPP* nor *T-TIP* is finalized, and renewed *TPA* has not been enacted. Like the river of which Herodotus (484–425 B.C.) wrote, International Trade Law flows continuously. Perhaps like that river, some parts are murky. *TPP* negotiations are the least transparent of any trade deal in American history. Who knows what regulatory harmonization is being discussed in the corridors of power inside the Beltway and in Washington, D.C. (and *T-TIP* is as much about regulatory harmonization as trade)? In the monstrously polarized environment inside that Beltway, political statements about *TPA* contours, details, and timing are as loose pebbles on the river bed. The same points hold with respect to Doha Round-related talks on services (*TISA*) and environmental goods (*EGA*).

In the meantime, teachers have to teach. To prepare students to be world-class practitioners and scholars in International Trade Law is my duty, quest, and passion. Bluntly, I cannot wait for plutocratic or ideological decision-makers to finish fighting. I must help students, many of whom are part of the squeezed, indebted middle class — a class that includes single Moms and veterans of the Afghanistan and Iraq Wars, and the class with which I identify and to which I am indebted.

So, this Textbook, like its predecessors, emphasizes what already is “on the books.” With roughly 20 GATT-WTO agreements, plus another nearly 2 dozen U.S. FTAs, plus U.S. Customs Law, trade sanctions, and export control rules, there is plenty to learn. New deals like *TPP* and *T-TIP*, and new *TPA* for the President, are covered. But, reference should be made to additional sources. For instance, the *Dictionary of International Trade Law* contains an extensive entry on *TPP*, and the *Modern GATT Law* treatise discusses *TISA* and *EGA* at length.

Invitation to Chat

The Preface to the 1st, 2nd, and 3rd Third Editions of *International Trade Law* concluded with an invitation premised on what Friedrich Nietzsche (1844–1900) wrote in 1888 in his last book, *Ecce Homo* (published in 1908): that which does not kill you makes you stronger. The 5th Edition of *International Trade Law* can be better than the 4th Edition with the help of the most important target audience: students. Scarcely is there a finer moment in teaching than when the teacher learns from the student. So, please communicate your criticisms to me.

Or, call just to chat about trade for fun. After all, too many lawyers, and too many law

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professors, are dour. Practitioners and teachers who have the most fun usually provide the best service — to their faith, health, families, and clients — and live a good life.

With all good wishes,

Raj Bhala

Introduction: 10 Propositions

The specific overture to mitigate the dramatic tension between argumentation and neutrality is to provide cogency to the Textbook through 12 Propositions. These Propositions are on what International Trade Law is, or ought to be, about.¹³ They are woven throughout the Textbook. They relate to one another, as complements, antagonists, and sometimes both.

Proposition 1: Promote Growth and Alleviate Poverty

International Trade Law ought to promote economic growth and poverty alleviation. If International Trade Law does not achieve these fundamental and oft-repeated goals, then it cannot be justified in the paradigm in which it most frequently is evaluated, namely, a Utilitarian calculus of economic efficiency. As between these goals, if and to the extent there is a trade-off, the second is especially important — simply because the poor lack resources. Catholic Social Justice Theory is one of various religious and philosophical paradigms proposing that a preferential option ought to be given to the poor. International Trade Law ought not to make the deprived even more so, and if it does, then its rules are not sustainable. Continued negotiation, drafting, implementation, and enforcement of those rules will be rejected — God forbid, through violent social unrest.

A previous WTO Director General, Pascal Lamy, got it wrong in a January 2013 speech to the Federation of Indian Chambers of Commerce and Industry (FICCI) in New Delhi, India, when he blamed the deadlock in the Doha Round on confusion about the role of emerging economies. He asked:

Are emerging countries rich countries that happen to have sizeable numbers of poor people, or are they poor countries that happen to have large numbers of rich people? If it's the first, then the main principle guiding them in trade talks will be reciprocity with a little flexibility. If the second, then it would be flexibility with a little reciprocity.¹⁴

That is not even a question.

It is true developing countries account (as of 2014) for 48% of global trade output (on PPP terms), and their share of global agricultural trade increased (between 2000–2014) from 27 to 36%.¹⁵ Emerging countries are pretty obviously in the latter camp. To have roughly 600–700 million of 1.2 billion people desperately poor, or about 700–800 million rural poor of 1.3 billion people, as do India and China, respectively, does not make a country “rich,” and to say they “happen to have sizeable numbers of poor people” nearly trivializes both the scale and plight of the poor. As for least developed countries, their

¹³ The statistics mentioned in these Propositions are derived from a variety of sources, including *Lamy Calls on Decision-Makers to Move the WTO Negotiations Forward*, WTO NEWS: SPEECHES (21 Sept. 2012), posted at www.wto.org; *Lamy Suggests “Essential Principles” for Reform of Global Governance*, WTO NEWS: SPEECHES (21 Sept. 2012), posted at www.wto.org.

¹⁴ Quoted in Amrit Dhillon, *Lamy Explains Doha Deadlock as Result of Confusion on Emerging Economies’ Role*, 30 INT’L TRADE REP. (BNA) 208 (7 Feb. 2013).

¹⁵ See WORLD TRADE ORGANIZATION, 2014 WORLD TRADE REPORT 2014 (20 Oct. 2014), posted at www.wto.org.

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average per capita income is just 4% of that of developed countries.¹⁶

Accordingly, is it emerging countries that are confused about their role in the global economy? Or, is it some of the rich countries that try to foist an identity onto them that they are not ready, willing, or able to assume? Unless global trade rules clearly “work” in respect of boosting growth and stimulating poverty, emerging countries rightly will look at those rules, and rule reforms proposed by rich countries, with suspicion.

That is true despite professions by rich countries that trade liberalization demonstrably has alleviated poverty. American Secretary of State John Kerry made just such a pronouncement in November 2013. In an address to the OAS, he claimed FTAs such as the *NAFTA*, *CAFTA-DR*, and FTAs between the U.S. and Chile, Columbia, Panama, and Peru, had raised over 73 million people in Latin America out of poverty in the previous decade (2002–2012).¹⁷ That trade liberalization boosts economic growth, narrowly defined as gains in *per capita* GDP, was generally agreed, and backed by robust economic research. That this growth alleviates poverty, rather than exacerbate socioeconomic stratifications, was not.

The consensus among economists is globalization — defined as increased cross-border flows of trade, investment, finance, and IP — has increased income inequality.¹⁸ There is no doubt inequality is severe and worsening. One percent of the world’s population owns 50% of the world’s wealth (as of 2016), a clear increase from 44% in 2009 and 48% in 2014, and headed toward 54% (by 2020).¹⁹ The top 80 billionaires hold as much wealth (\$1.9 trillion) as the bottom 50% of the rest of the world, an increase of 50% (\$600 billion) in just 4 years (2011–2014). Conversely, the material wealth (such as it was) of the poorest 50% of the world dropped during those years tumbled (by \$750 billion).

America is a case in point. The richest 10% of Americans account for over 50% of annual national income, whereas in the 1970s they claimed 1/3 of it. That is the most skewed distribution since 1917. Between 1993 and 2012, the top 1% of Americans (families with an income in 2012 of \$394,000 or more) received more than 2/3 of the nation’s growth in income.

Correspondingly, America signed blockbuster trade agreements — *NAFTA*, which entered into force on 1 January 1994, and the Uruguay Round, by which the WTO was born on 1 January 1995. Since *NAFTA*, the share of trade that makes up the American GDP doubled to 28% (as of 2013). And, between 1990 and 2007, Chinese imports into the U.S. surged, leading to increased unemployment, lower wages, higher disability claims, and lower labor force participation. To be sure, when *NAFTA* entered into force in 1994,

¹⁶ See World Trade Organization, *WTO Helps Developing Countries Adjust to Major Shifts in Trading Environment* (opening remarks of WTO Director General Roberto Azevêdo), 20 Oct. 2014, posted at www.wto.org.

¹⁷ See John F. Kerry, *Remarks on U.S. Policy in the Western Hemisphere*, Speech to Organization of American States, Washington, D.C. (18 Nov. 2013), posted at www.state.gov/secretary/remarks/2013/11/217680.htm.

¹⁸ See David J. Lynch, *Obama’s Goals Clash as Allies Say Trade Push Widens Income Gap*, 31 INT’L TRADE REP. (BNA) 245 (6 Feb. 2014) (also reporting the above-mentioned statistics).

¹⁹ See *Richest 1% To Own More than Rest of World, Oxfam Says*, BBC NEWS, 19 Jan. 2015, posted at www.bbc.com/news/business-30875633 (reporting results of an Oxfam study).

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international trade supported 1 out of every 10 American jobs.²⁰ Two decades later, roughly spanning the period between the 1st and 4th editions of this Textbook, trade accounted for 1 out of every 5 jobs. Yet, for understandable reasons, the bedrock of American society, its middle and working classes, do not champion aggressive trade liberalization.

Chinese import competition is blamed for 20–25% of manufacturing job losses, with low-skilled workers especially injured. Richard Trumka, President of the AFL-CIO pointed out in a March 2014 speech to the Center for American Progress:

NAFTA put corporations in charge of America’s economic strategy, with the goal of shipping jobs offshore to lower labor costs. [Post-*NAFTA* trade deals] have used *NAFTA* as a starting blueprint.

[Despite] many changes in the trade template since *NAFTA* [including stronger worker rights provisions, the modified *NAFTA* template] failed to evolve with our complex and dynamic global economy.

[The consequence has been the closure of tens of thousands of American manufacturing facilities,] as major companies created more jobs offshore than at home, and imports outstripped exports year after year. [America imports electronics from China, but what it exports in return is] basically trash, like scrap metal and waste paper.

We pursued the strategy that led to structural trade deficits on purpose, because it pitted the workers of our trading partners against our own, and against each other. For their part, our trading partners short-changed their domestic markets in favor of supplying for America, so they too pushed weak unions, low wages, artificially cheap currency, and subsidies for foreign investment like tax-free export zones. . . .

NAFTA worked too well. It’s still keeping wages low. It’s still subverting the rule of law.

. . . [P]roponents of these outdated agreements no longer say they’re good for everyone, or even most of us. Instead, they say we don’t have a choice, we have to do these agreements.

[But,] there is a better way . . . We need new policies to spark a virtuous cycle where rising wages fuel demand, not flimsy debt-driven demand but healthy demand, which would in turn spark business investment and more jobs and higher wages in a strong cycle of global growth that works for all our families, for the environment and our communities.

. . . .

[We also need] strong labor rights protections so that every worker in every country can exercise fundamental human rights on the job, without fear.²¹

Asked succinctly, ever since *NAFTA*, has American trade policy been “corporatized,” resulting in growth and poverty?

Free (or freer) trade is not necessarily the most important cause of these woes, or a

²⁰ See Len Bracken, *Ryan Says TPA Is Top Priority, Outlines Extensive Trade Agenda*, 32 INT’L TRADE REP. (BNA) 334 (12 Feb. 2015) (quoting Representative Paul Ryan (Republican-Wisconsin), Chairman, House Ways and Means Committee).

²¹ Quoted in Michael Rose, *Trumka Outlines AFL-CIO Priorities For Future Trade Agreements Including TPP*, 31 INT’L TRADE REP. (BNA) 620 (3 Apr. 2014).

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cause of all of them. Technology, education, and English literacy play a significant role. An inability to utilize modern technology, which is linked to poor schooling and dreadful English, are hallmarks of the poverty trap. Indian parents know as much: even urban slums and rural huts are dotted with satellite dishes, so that kids can study on line and gain fluency in the world's business language.

Moreover, international trade alone does not explain the rise of the *über-rich*. That the top 85 individuals in the world hold more wealth than 50% of the world's population (the bottom 3.5 billion) — as Oxfam reported in January 2014 — is shocking.²² Oxfam speaks of “political capture:” the wealthy translate their net worth into economic power to ensure rules are bent to favor them, “often to the detriment of everyone else,” resulting in an “erosion of democratic governance, the pulling apart of social cohesion, and the vanishing of equal opportunities for all.”²³ While hardly alone to blame, the rules some of them work to bend include those of the GATT-WTO and FTA regimes.

Proposition 2: Secure New Fragile Middle Class

Arguably the most remarkable but scariest shift in the global economy since the fall of the Berlin Wall is the rise of the new fragile middle class.²⁴ More of humanity — 3 billion people, or almost half the world's population — is in this cohort. These souls are just above the line of absolute poverty of U.S. \$1.25 per day. But, they lack the hallmark of the middle class: financial security. The Asian Development Bank “middle class” as a *per capita* GDP of between \$2.00–20.00 per day, whereas the fragile subset manages on \$2.00–10.00 per day.

That there is a fragile middle class is remarkable, because of whence it came: from poverty. It is thanks to globalization, market capitalism, open trade and investment, better governance, and the rule of law that so many people have been lifted out of abject poverty. In 1981, 58% of the world's population lived on less than \$2.00 per day, while just 20% (then 930 million people) were in the fragile middle class. By 1990, 1.9 billion people — far less than 58% of humanity — lived on less than \$1.25 per day. By 2010, 1.2 billion people — less than 20% of the global population — earned below \$1.25 per day.

To where did the erstwhile impoverished go during the Reagan-Thatcher Privatization Revolution of the 1980s and after the fall of the Berlin Wall in November 1989? Into the middle class: its growth has been exponential in direct relation to the inchoate victory over poverty. The largest Muslim country in the world, Indonesia, is a case in point. In 2010, of its 240 million people, 111 million lived on less than \$2.00 per day, but 125 million lived on between \$2.00–\$10.00 per day. Indonesia crossed the inflection point.

Who these people are is familiar to any traveller in the Non-Western World. They are

²² See Oxfam, *Working for the Few: Political Capture and Economic Inequality*, Briefing Paper 178 at 2 (20 Jan. 2014), posted at www.oxfam.org/sites/www.oxfam.org/files/bp-working-for-few-political-capture-economic-inequality-200114-en.pdf.

²³ Oxfam, *Working for the Few: Political Capture and Economic Inequality*, Briefing Paper 178 (20 Jan. 2014), posted at www.oxfam.org/sites/www.oxfam.org/files/bp-working-for-few-political-capture-economic-inequality-200114-en.pdf.

²⁴ The statistics cited below are from Gillian Tett, *Bad News for Western Jobs as Ideas Are Also Made in China*, FINANCIAL TIMES, 2 May 2014, at 7; Shawn Donnan, Ben Bland & John Burn-Murdoch, *A Slippery Ladder*, FINANCIAL TIMES, 14 Apr. 2014, at 7. Many of the points, and more, are treated in Thomas Piketty's best-seller, *Capital in the Twenty-First Century* (2014).

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street vendors selling fruit in Tunisia or fresh coconut juice in Sri Lanka. They are noodle stand hawkers in Malaysia and samosa vendors in India. They are office cleaners working in gleaming skyscrapers in Bangkok and microenterprise entrepreneurs in Dhaka. They are wheat farmers in Punjab and tea planters in Assam, and they grow dates in Saudi Arabia and apples in China. They design t-shirts in Mumbai once conceived in Paris, and edit legal documents in Bangalore once checked by attorneys in New York. In all these examples are women and religious and ethnic minorities.

What these people want also is familiar to any traveller — and to any astute International Trade Lawyer. They want a bank account, smart phones, high-speed Internet access, and affordable pharmaceuticals. They want to enjoy a beer and snacks after a long workday in front of a flat-screen television while they watch on satellite TV the latest Bollywood movies or cricket test matches. They want to learn English and send their kids to private schools. They might even want to keep a small pet, say a cat, buy a small car like the Tata Nano, and take a short vacation to a nearby beach or a hill station.

Simply put, from an American perspective, our suppliers and our customers are the new fragile middle class, and *vice versa*. Therein lies a powerful beauty of the world trading system: interdependence. We need them for what they offer to us at a cheaper cost and better quality (and, typically with a smile) than we can provide. They need us to enjoy a better life than their recent squalor.

That there is fragile middle class is scary, because of where it might go: back to poverty. Will they continue to be the greatest beneficiaries of globalization, free markets, and free trade? Will governance and the rule of law help reinforce and boost their socioeconomic status? Nothing in the logic of capitalist free trade compels an affirmative answer. That logic is about net gains to a society from unilateral dismantling of trade barriers, not about how those gains are distributed within a society. Seldom do the avatars of free trade — the titans of multinational corporations and their affiliates in political officialdom — champion *sua sponte* or selflessly the cause of the fragile middle class, much less the poor. Often self-interested opportunity, or threat to self-interest, stirs them.

Proposition 3: Appreciate Non-Western Future

The Asia-Pacific region could descend into conflict over long-standing territorial disputes, resource competition, or any other number of miscalculated reasons. Despite accounting for just 17% of world population, rich countries — including those of Europe — generate (as of April 2014) for 50% of world GDP.²⁵ But, assuming cooler heads prevail in the Non-Western World, then heed should be paid to certain facts and projections.

First, as of 2011, the value of exports in South-South trade exceeds that of South-North trade. That is, in 2011, the value of exports from developing countries (the South) to other developing countries surpassed the value of exports from developing to developed countries (the North). In 2002, developing countries purchased 40% of total developing country exports, while developed countries bought the other 60%. In 2010, the split was 50-50. In 2011, the split crossed the 50-50 threshold. Simply put, poor countries are a more important market for other poor countries than are rich countries.

²⁵ See Chris Giles, *China to Overtake U.S. As Top Economic Power This Year*, FINANCIAL TIMES, 30 Apr. 2014, at 1. [Hereinafter, *China to Overtake*.]

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Second, the share of poor countries in global trade has risen markedly since 1991. In that year, they accounted for 16% of world trade. Over the next 20 years, their share rose an average 0.8%. So, by 2011, developing countries accounted for 32% of world trade. In contrast, exports from traditional powers like the EU and Japan grew relatively less robustly, and even fell. So, *The Economist* observed:

As rich economies falter, middle-income ones grab more of their export markets. As middle-income countries move up the chain, poor ones occupy the less-crowded space of low-wage manufacturing.²⁶

This move-up-the-chain phenomenon is unsurprising to International Trade Lawyers and Development Economists who know Stages of Growth Theory. (This Theory, presented in 1960 by W.W. Rostow in *The Stages of Economic Growth: A Non-Communist Manifesto*, is covered in the Textbook.)

Third, still another telling statistic is the differential rates of growth of exports between poor versus between rich countries. Between 2001 and 2011, exports from rich to poor countries rose at an annual average clip of 11%. In contrast, exports between rich countries rose 7% a year. So, as *The Economist* rightly put it: “Not only is the South more important to the poor; it is more important to the rich, too.”²⁷

That is true for imports as well as exports: not only are poor countries increasingly important export markets for rich countries, but also they are prominent sources of imports into rich countries. For instance, in 2013, over 54% of U.S. imports came from developing countries.²⁸ The increasing reliance of developed countries on export market access and import sourcing from developing countries should not be surprising: as a consumption location for exports from developed countries, developing countries are where the vast new middle class with a voracious appetite is; and as a production location for imports into developed countries, developing countries boast both a large supply of cheap labor and significant human capital. Simply put, demographics are a key determinant of trade patterns and trends.

Fourth, in *Global Trends 2030*, published in 2012, the U.S. National Intelligence Council (NIC) acknowledged that:

With the rapid rise of other countries, the “unipolar moment” is over, and “*Pax Americana*” — the era of American ascendancy in international politics that began in 1945 [with the end of the Second World War] is fast winding down.²⁹

This quadrennial report, reflecting the views of all 16 intelligence agencies, unmistakably identified Europe, Russia, and Japan as powers in relative decline, and Asia as the ascendant region.³⁰ The U.S. “will retain its central role, because it will remain the only

²⁶ *O for a Beaker Full of the Warm South*, THE ECONOMIST, 19 Jan. 2013, at 72. [Hereinafter, *Beaker*.]

²⁷ *Beaker*.

²⁸ See Ye Xie, *Made-in-America Revival Signals Emerging Trouble: Currencies*, 31 INT’L TRADE REP. (BNA) 932 (22 May 2014).

²⁹ Quoted in Geoff Dyer, *Rise in Asian Power to Hasten Demise of “Pax Americana,”* FINANCIAL TIMES, 11 Dec. 2012, at 4.

³⁰ In this respect, consider who is likely to test with increasing frequency International Trade Law, and how and why. International Trade Law is tested not only by traditional hegemonic powers

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country able to mobilize coalitions to address global challenges.”³¹

Hence, as the NCI put it, America in 2030 still will be “first among equals.”³² As for China, subject to constraints of an ageing population, environmental degradation, gross income inequalities, and sociopolitical unrest, it may challenge America economically, technologically, politically, and militarily. But, hostility from its neighbors near and far create support for the U.S. as a bulwark against China.

Proposition 4: Europe is Haggard

“Never mind Europe, focus on the Non-Western World” might be one, albeit undiplomatic, bit of advice for even those planning on a career in the EU. Much of their business and legal affairs will be with Asia, regardless of whether their base is Brussels or Boston. Some in the American law professoriate have an enduring endearment with Europe justified by comfort zones but not facts or forecasts, with consequent Eurocentrism in books and course materials. It would be uncharitable and probably erroneous to condemn Europe and its uneasy Union to irrelevance in the global trading order. But, are Europe’s best centuries are behind it?

Perhaps so. That is because of demographics (Europe is full of grey hair), finances (Europe is effectively bankrupt), vigor (Europe is tired), and secularism (Europe denies its roots). No less than the first non-European Pope in 1,300 years, Francis, said as much in November 2014 in a speech to the European Parliament (the legislature for the 28-state EU) in Strasbourg:

In many quarters we encounter a general impression of *weariness and aging*, of a Europe which is now a “grandmother,” *no longer fertile and vibrant* [In too many cases, the Judeo-Christian values and the humanist ideals that inspired European continental unity seem to have been supplanted] the *bureaucratic technicalities of its institutions*. . . .

. . . .

Europe seems to give the impression of being somewhat *elderly and haggard*, feeling like America and the EU, but also by emerging leaders like the BRICS, Islamic countries like the Kingdom of Saudi Arabia, and tiny countries like Antigua. That is no surprise.

In 1990, the share of world trade accounted for by advanced economies was 75%. By 2012, that share had fallen to slightly above 50%, meaning that developing and some least developed countries are rising in prominence, partly because of relatively more robust economic and export growth. China is the most obvious example: its share of world economic output (measured in current dollar terms) rose from less than 2% in 1992 to 10% in 2012.

Similar statistics exist with respect to FDI. In 2000, the U.S. held 37% of the worldwide inward stock of FDI. By 2012, that share was just 17% share. See James Politi, *Obama Push on Inward Investment*, FINANCIAL TIMES, 28 Oct. 2013, at 1. To where did that stock of investment migrate? Emerging markets, which tested the historical advantage of the U.S.: a large consumer market with high purchasing power, certainty and predictability in the rule of law, modern infrastructure, and good governance. In all these areas, America suffered varying degrees of dysfunction, while the challengers, many of which were in the Non-Western World, had “upped their game.”

³¹ Geoff Dyer, *Rise in Asian Power to Hasten Demise of “Pax Americana,”* FINANCIAL TIMES, 11 Dec. 2012, at 4.

³² Quoted in Geoff Dyer, *Rise in Asian Power to Hasten Demise of “Pax Americana,”* FINANCIAL TIMES, 11 Dec. 2012, at 4.

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less and less a protagonist in a world which frequently regards it with aloofness, mistrust and even, at times, suspicion. . . .

. . . .

[New life for the European project] depends on the recovery of the vital connection [among transcendental values and the talents and needs of Europeans.] A Europe that is no longer open to the *transcendent dimension of life* is a Europe which risks slowly *losing its own soul* and that “humanistic spirit” which it still loves and defends. . . .

. . . .

[While EU discussions frequently reference human rights, they lack attention to correlative duties.] As a result, the rights of the individual are upheld, without regard for the fact that each human being is part of a social context wherein his or her rights and duties are bound up with those of others and with the *common good* of society itself.³³

These realities, not to mention the feeling in the cities, towns, villages, marketplaces, factories, and farms, are different in countries like Burma, India, Indonesia, Mexico, and South Africa.

This and the previous Proposition connote a Textbook designed to prepare readers for the next half century should not be monochromatic, focusing on Europe along with America. Rather, it should enhance familiarity with the Non-Western World (with Latin America included in that term) to which their business increasingly gravitates.

Proposition 5: Advance Social Justice

If the rules by which nations trade do not advance the common good through higher levels of production, employment, and wages, and through better distribution of consumption and employment opportunities, and income, then those rules are unjust. Utilitarian-based economic efficiency ought not alone to be the benchmark for evaluating International Trade Law. Rather, Social Justice also should be considered.

Social Justice calls for an examination of the effect of International Trade Law on human dignity. Each person is unique, unrepeatable, and of inestimable value. It calls for emphasis on the common good. Calculating winners and losers, and moving forward based on cost-benefit, is less satisfactory than advancing the interests of all. To analogize to the economic concept of Pareto improvements, why not seek changes that advance the interests of all parties, or at least and make no single party worse off?

International Trade Law, if it is socially just, should promote subsidiarity. Decision-making should be decentralized to the furthest extent possible. Doing so, not only promotes human dignity, but also builds and respects communities. The WTO ought not to be the precursor to global trade governance, for to make it so would ride rough shod over people and localities. Finally, Social Justice in trade rules also means that if choices must be made, a preferential option should be given to the poor.

Few contemporary figures on the world stage have spoken with a more poignant combination of candor and theology more candidly about the application of these principles as the Holy Father, Pope Francis (1936–). Consider his statement to the 2014

³³ *Pope Calls European Parliament to Rejuvenate “Grandmother” of Europe*, CATHOLIC NEWS SERVICE, 25 Nov. 2014, posted at www.catholicnews.com/data/stories/cns/1404908.htm (emphasis added).

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annual gathering of the world's elite in Davos, Switzerland:

Ours is a time of notable changes and significant progress in different areas which have important consequences for the life of humanity. In fact, "we must praise the steps being taken to improve people's welfare in areas such as health care, education and communications" ([Apostolic Exhortation,] *Evangelii Gaudium* [*Joy of the Gospel*], 52 [24 November 2013]), in addition to many other areas of human activity, and we must recognize the fundamental role that modern business activity has had in bringing about these changes, by stimulating and developing the immense resources of human intelligence.

Nonetheless, the successes which have been achieved, even if they have reduced poverty for a great number of people, often have led to a widespread social exclusion. Indeed, the majority of the men and women of our time still continue to experience daily insecurity, often with dramatic consequences. . . . I wish to emphasize the importance that the various political and economic sectors have in promoting an inclusive approach which takes into consideration the dignity of every human person and the common good. I am referring to a concern that ought to shape every political and economic decision, but which at times seems to be little more than an afterthought. Those working in these sectors have a precise responsibility towards others, particularly those who are most frail, weak and vulnerable. It is intolerable that thousands of people continue to die every day from hunger, even though substantial quantities of food are available, and often simply wasted. Likewise, we cannot but be moved by the many refugees seeking minimally dignified living conditions, who not only fail to find hospitality, but often, tragically, perish in moving from place to place.³⁴

Surely such remarks at least compliment the work of secular NGOs against marginalization and exclusion in the global economy.

Social Justice is one species of justice. Another type pertinent to International Trade Law is Distributive Justice. Here, inequalities are justifiable only if they work to the advantage of the least well off. Query whether, and to what extent, trade agreements are negotiated, drafted, and executed from behind that Rawlsian veil of ignorance.

Proposition 6: Understand Schisms

International Trade Law is inherently divisive, both among countries and within countries. Moreover, there are no long-term alliances, across borders or within borders, among trading nations. Consequently, systemic stability, in the sense of equilibrium across all rules, is not enduring. There is constant pressure from one country or another to change or get an exemption from one rule or another.

That partly is a result of the rise of global supply chains, and shifting patterns of trade within those chains. Globalization not only has de-nationalized consumption, allowing consumers to opt for an array of goods from multiple countries, but also it has de-nationalized production. Production of goods and services involves value added chains that ignore borders, a phenomenon possible partly by information technology. The chains are constructed, creatively destroyed, and reconstructed elsewhere based on interdisciplinary variables, not the least of which are economic and political. Thus, interdependence

³⁴ *Message of Pope Francis to the World Economic Forum in Davos*, 17 Jan. 2014, posted at www.news.va/en/news/message-of-pope-francis-to-the-world-economic-foru.

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through an alliance of producers-suppliers-exporters-importers-consumers one day can shift another day.

Schisms in International Trade Law also result from politics. Consider Dubai, a commercial *entrepôt* with the political aspiration of rivaling Singapore as one of the world's greatest low-cost import-export centers. In working toward this goal, Dubai has navigated another political reality: American sanctions against Iran, Dubai's "traditional commercial partner."³⁵ The replacement for Iran is Africa, and Chinese companies are particularly prominent in funneling imports and exports to Africa via Dubai. Therein lies a third political reality: the increased attention of China on Africa's natural resources to fuel China's energy needs in competition with those of India and the U.S.

An illustration both marvelous and flummoxing of the schismatic challenges posed by de-nationalized production came in January 2014. The mighty Tokyo-headquartered auto company, Honda, announced that exports of its cars from its factories in America exceeded its imports of cars into the U.S.³⁶ It thus became the first Japanese car manufacturer to become a net exporter of cars from the U.S., which is the second largest car market in the world. It opened its first American plant in 1982. Between 2011–2013, Honda invested \$3 billion to increase production capacity at its 4 plants in Alabama, Indiana, and Ohio. As America's 5th largest car company (measured by sales in 2013), Honda had good reason for localizing production: avoid currency risks (*e.g.*, dollar depreciation relative to the *yen*); take advantage of FTA networks, like *NAFTA* (indeed, Mexico was the destination for most of its American output); minimize shipping and distributions costs; and, of course, jump over tariffs and NTBs.

What does this fact mean for International Trade Law? Does it mean the Laws of Absolute and Comparative Advantage, developed by Adam Smith (1723–1790) and David Ricardo (1772–1823) are wrong, insofar as they presume producer-exporters are domestic citizens? Or, do those Laws operate regardless of the nationality of producer-exporters? Does it mean trade remedy laws are outdated, because imposing an AD duty, CVD, or safeguard on imports might actually hurt American companies manufacturing abroad and shipping home to the U.S. — the now-classic pattern with China as their export platform? Simply put, when actors in cross-border trade find geography irrelevant, what happens to the rules that govern them, which are based on geography, and underlying it, sovereign spaces? As for America, what does it mean for its international trade policy? Should it be suspicious of FTAs, the critics of which charge accelerate the decline of American industry? Or, should it take note that FTAs might be contributing to the "steady hollowing out" of the Japanese industrial base?³⁷

Another intriguing point about schisms is that sometimes they are not allowed to appear too openly. Theoretically, WTO Members are equal. They should work out disagreements through patient, persistent negotiation, resulting in consensus decision-making. Thus, only once in the history of the WTO has there been a vote. That happened in 1995, shortly after

³⁵ Simeon Kerr, *Dubai Optimism Fails to Mask Concerns on Overheating Risk*, FINANCIAL TIMES, 28–29 Dec. 2013, at 4.

³⁶ See Jennifer Thompson & Henry Foy, *Honda's U.S. Exports Overtake Imports*, FINANCIAL TIMES, 29 Jan. 2014, at 11.

³⁷ Ben McLannahan & Shawn Donnan, *Twin Forces Lead to Japan's Worst Trade Deficit*, FINANCIAL TIMES, 28 Jan. 2014, at 4.

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its birth: there was a show of hands to approve the accession of Ecuador.³⁸ The reality, however, is rather different. The U.S. strongly opposes voting in the WTO. Why? Voting is a “nuclear option,” and (unlike the International Monetary Fund and World Bank), it is not weighted among Members by their budgetary contributions to the Organization. So, the U.S. would be reduced to 1 country, 1 vote, as in the U.N. The act of voting could be an adverse precedent for America, which results in precedents in terms of substantive decisions that are adverse to American interests. In other words, voting could expose schisms between the U.S. and much of the rest of the world, with determinations in favor of the latter.

Proposition 7: See Dichotomies

International Trade Law is divisive in respect of the relationship between multilateral and RTAs. There are (based on notifications to the WTO as of 31 July 2013) “574 RTAs, of which 379 are in force.”³⁹ On average, each WTO Member belongs to 13 different FTAs or CUs. Thus, the average Member must administer 14 different regimes of International Trade Law — the texts of the GATT and associated WTO agreements, plus 13 other FTAs or CUs. This dichotomy creates technical difficulties (while good work for lawyers). They are evident (*inter alia*) in relation to ROOs.

The dichotomy between multilateral and FTA regimes creates tensions. First, while trade liberalization via FTAs may catalyze efforts to reduce barriers at the GATT-WTO level, FTAs also can sap multilateralism of its vitality. If a country secures market access for most of its exports through a web of FTAs, why pursue multilateral talks? Indeed, Jagdish Bhagwati dubs all trade agreements, save for multilateral ones, as “termites in the trading system.”⁴⁰ They are sub-optimal, not first-best solutions for free trade, but second best, partial ones.

Interestingly, the converse problem also exists. Attention to multilateral talks may make it difficult to focus on regional ones. Indeed, the USTR, Ambassador Carla Hills, “was initially cool to the idea” of *NAFTA*, because she and her fellow negotiators were focused on the Uruguay Round.⁴¹ Signed in December 1992, *NAFTA* discussions began in 1986; that Round was launched in September 1986, and finished in December 1993.

Second, there are diminishing returns to the value of preferences under FTAs and CUs. Each new such deal erodes the distinctiveness of the preference of prior deals. Some countries in an earlier-in-time arrangement may feel economically disadvantaged relative to parties to a later-in-time deal. This erosion helps explain the appeal of “megaregionalism,” that is, FTAs involving a large number of countries across one or more regions, such as the proposed *TPP*, involving 12 countries, and *T-TIP* between America and Europe. With multiple countries as parties to a single deal, erosion of 1 smaller deal between 2 countries by 1 of them entering another smaller deal with a 3rd country is less

³⁸ See Daniel Pruzin, *WTO Bali Package in Limbo; Cuba, Latin American Allies Block Deal*, 30 INT’L TRADE REP. (BNA) 1920 (12 Dec. 2013).

³⁹ See Daniel Pruzin, *G-20 Leaders to Call for Greater Transparency in Regional Free Trade Talks*, 30 INT’L TRADE REP. (BNA) 1339 (5 Sept. 2013).

⁴⁰ See JAGDISH BHAGWATI, *TERMITES IN THE TRADING SYSTEM: HOW PREFERENTIAL AGREEMENTS UNDERMINE FREE TRADE* (2008).

⁴¹ Shawn Donnan, *World Faces Up to the Era of Regional Agreements*, FINANCIAL TIMES SPECIAL REPORT — THE FUTURE OF NAFTA, 3 Dec. 2013, at 1 (*quoting* Robert Zoellick).

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a concern — all such countries are in the megadeal.

Further, countries not included in one or another FTA or CU may feel excluded not only in an economic sense, but also in a geopolitical one. That is especially true for poor countries relying on the GSP for market access into rich countries: as the latter sign ever-more and ever-deeper FTAs, and include some developing countries in those FTAs, the value of GSP treatment for the excluded ones is reduced. And, smaller countries excluded from FTAs with the likes of the U.S. may feel their concerns — such as placing disciplines on farm or fisheries subsidies — cannot be addressed by an FTA, because (like climate change) the problem is global, demanding a multilateral solution.⁴²

Proposition 8: National Security Matters

International Trade Law is an instrument of national power. In discussing FTA negotiations such as *TPP* amidst the collapse of multilateralism with the death of the Doha Round, the *Financial Times* observed:

Stop counting carrier fleets, fighter jets, and cruise missiles. America's wars in Iraq and Afghanistan showed the limits of military might. Today's great games revolve around

⁴² At any given juncture, Schisms (Proposition 6) and Dichotomies (Proposition 7) are manifest in a few key economic sectors. Their legal problems sometimes shape International Trade Law. Most obviously, agriculture (particularly food commodities or valuable natural resources), industry (particularly steel and T&A), services (particularly banking, finance, insurance, and telecommunications), and IP (particularly patented pharmaceuticals), drive many trade negotiations. Yet another example is government procurement, which accounts for 20% of the GDP of the EU, and indeed about that amount for the world. To ignore the fact some sectors are strategic, and some are sensitive, is to study International Trade Law at too abstract a level.

Consider the vital importance of services in trade negotiations. Frustrated by the lack of progress in the Doha Round, starting in 2012, the U.S. pursued a plurilateral *Trade in Services Agreement* (*TISA*, or *TSA*), and sought to liberalize service trade via a major FTA, the *TPP*. That made strategic sense for 2 reasons: roughly 80% of America's GDP and labor force is engaged in services, and foreign trade barriers to American service imports often are worse than tariffs on American goods. China and Mexico are cases in point. The average Chinese and Mexican levies on American goods (as of December 2013) are 8 and 5%, respectively. When Chinese and Mexican barriers to American services are converted to a tariff equivalent metric, the equivalent tariffs are 66 and 44%, respectively. Similarly, in India, the equivalent tariff barrier is about 70%. See Edward Luce, *Obama Cannot Lead from Behind on Trade*, FINANCIAL TIMES, 9 Dec. 2013, at 11 (citing research by Edward Allen, Council on Foreign Relations); Edward Alden, *Obama: Building Trade to Build Growth*, REUTERS, 5 Dec. 2013; posted at <http://blogs.reuters.com/great-debate/2013/12/05/obama-building-trade-to-build-growth/>. Simply put, there is considerable room for the U.S. to negotiate reductions by foreign countries in their barriers to the sector of greatest importance to the American economy.

In turn, providing better quality services to a broader number of people can help alleviate poverty. Consider health care. In the developed world, 80% of children diagnosed with cancer survive, whereas in many parts of the developing world, the rate is just 10%. It is higher in some developing countries, but not by much: in Rangoon, Burma, it is 30%. See Shawn Donnan, *Bringing First-World Care to Developing Nations*, FINANCIAL TIMES, 25 Nov. 2013, at 8. The availability of advanced health care research, diagnostic, and treatment services in rich countries is the key factor that explains why a cancer diagnosis is not a death sentence in them, but tends to be one in poor countries. Reducing barriers to trade in medical and nursing services, allowing greater access of First World providers into the Third World, can change the reality that 94% of childhood cancer deaths occur in low- and middle-income countries.

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another dimension of power. Geopolitics is making way for geoeconomics.⁴³

Market access through a network of FTAs projects commercial power in the way an aircraft carrier projects air power. If military power can protect market access, by safeguarding shipping channels, then so much the better. Of all world trade, 90% is conducted across oceans, and a vital element in American national security strategy is keeping shipping lanes safe from pirates, terrorists, or other threats to commerce.

What, then, has changed from previous centuries of colonialism backed by gunboat diplomacy? One answer is International Trade Law can be an instrument of national power deployed for the common good. It can (indeed, ought to) advance the cause of “peace through trade,” reduce fear and anxiety, and thereby enhance national security. In the 21st century, America lacks the resources, and perhaps the will, to police all of the world’s oceans all of the time. So, it must forge and nurture friendships, and rely on them, as it did in 2009 to form a coalition of over 80 countries named the “Contract Group on Piracy off the Coast of Somalia.” The game is not a zero-sum one of mercantilism and empire, but of a win-win mutually beneficial open trading environment. After all, a trading relationship characterized by domination is not sustainable. Sooner or later, the exploited will revolt against the exploiter.

To be sure, warring parties are unlikely to drop their weapons and start commerce in the hopes of building peace, particularly if they have not agreed on an international political boundary between them. That is obvious in respect of India and Pakistan (with respect to the disputed Kashmir boundary) and Israel and Palestine (with respect to the disputed boundary of the 2 states). But, at least as among countries with mutually recognized boundaries, such as Iran and the U.S., there is no *a priori* reason to rule out the possibility trade could yield a mutually beneficial and respectful interdependence.

Proposition 9: Pay Special Attention to India and China

Across all Propositions, India and China are a common denominator. But, that denominator is not always of the same value. India and China are both similar and different.

They have achieved impressive economic growth, but combat gross income disparities and argues they needs the special dispensations in international trade rules that come with developing country status (Propositions 1 through 4). They side with each other, or with different countries, in international trade negotiations, depending on the issue, and some of their trade measures are the subject of dispute, being criticized for contributing to gross trade imbalances (Propositions 5 and 6). Such measures often involve raw materials, T&A, the steel industry, or the banking, insurance, or telecommunications sectors (Proposition 6). By no means is it certain their Membership in the WTO (particularly the accession of China on 11 December 2001) has resulted in reduced political or military tensions with their Asian neighbors (including not only Taiwan vis-à-vis China, but China and India themselves), or the U.S. (Proposition 7). And, China’s much ballyhooed accession has not yielded the widespread civil liberties and human rights freedoms

⁴³ Philip Stephens, *Trade Trumps Missiles in Today’s Global Power Plays*, FINANCIAL TIMES, 22 Nov. 2013, at 9.

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everyday Indians have enjoyed since Independence from Britain on 15 August 1947.⁴⁴ China, since the CCP took power by force on 1 January 1949, remains an authoritarian, officially atheistic state; modern India is a secular democracy struggling to adhere to the principles of its “Bapu” (Father), Mohandas K. (Mahatma) Gandhi (1869–1948).

India boasts the 3rd largest economy in the world, following China and America.⁴⁵ Measuring its GDP in PPP terms, India jumped from Number 10 in 2005 to Number 3 in 2014. The Indian economy doubled, from 19% of the size of America’s in 2005 to 37% in 2011. India is of considerable importance to America: with the world’s third largest middle-class consumer market, it is (as of 2013) America’s 18th largest export market.⁴⁶ Boasting a diverse array of products, from precious stones and rice to pharmaceuticals and textiles, India is the 10th largest origin of America’s imports. A flagship company, Tata Consulting Services (TCS), sponsors the world’s largest marathon, New York, dropping the troubled European bank, ING, in 2014.⁴⁷ Similarly, American law firms outsource to Indian lawyers an array of tasks.

For all its promise, Indian reforms launched in 1991, have yet to be thorough in their ambition or implementation. From Srinagar to Trivandrum, and Amritsar to Calcutta, India has nothing close to a 21st century infrastructure. India requires an investment of roughly \$1 trillion to modernize its roads, ports, telecommunications network, and other features required for any economy to realize its comparative advantages in the world trading system. Further, until India grapples with its monstrous and pervasive corruption, the small person will stay small. These problems lie at the central and sub-central government levels. Special note should be taken of the latter, for 2 reasons. First, GATT-WTO obligations generally apply to sub-central governments as much as they do to central governments. Second, state — not central — governments are the cause of delay for 80% (as of May 2014) of large infrastructure projects vital to the India’s progress.⁴⁸

⁴⁴ Similarly, the extent to which the human rights climate in Vietnam improves following its 11 January 2007 WTO accession and participation in FTA negotiations, such as the *TPP*, is unclear. There was speculation the Communist government would free dissidents, and loosen restrictions on freedom of speech, as the Communist government sought to build trust with its western trading partners. The extent to which it does so, and whether it does so in a sustained manner (*i.e.*, it avoids regressive crack downs), is uncertain. See John Boudreau, *U.S.-Vietnam Ties, Trade Negotiations May Free More Critics, Freed Blogger Says*, 31 INT’L TRADE REP. (BNA) 1975 (6 Nov. 2014) (discussing the views of Vietnamese blogger Nguyen Van Hai, also known as Dieu Cay, who was sentenced in 2012 to 12 years imprisonment for spreading anti-government propaganda, but released in October 2014 and re-settled in Los Angeles, as a goodwill gesture amidst FTA negotiations with the U.S. and EU).

⁴⁵ See *China to Overtake*.

As discussed in a separate Chapter, PPP corrects for exchange rate and inflation differences by measuring the value of the same basket of goods and services (*e.g.*, an apple, a laptop computer, a haircut, and a medical checkup) in real terms in different countries.

⁴⁶ See Stephanie Cohen, *Obama, Modi Agree to High-Level IP Working Group, Financing, Infrastructure Initiative*, 31 INT’L TRADE REP. (BNA) 1748 (2 Oct. 2014).

⁴⁷ Your Textbook author ran the last ING sponsored New York Marathon on a crisp autumn day in November 2013, finishing in 3:37:34, with his wife and daughter greeting him at the finish line. (He now runs Half-Marathons instead.)

⁴⁸ See Victor Mallet, *Faith in Modi’s Free Market Credentials is Misguided*, FINANCIAL TIMES, 5 May 2014, at 2.

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But, as any traveler to India knows, there is serenity in the world's largest free market democracy. It is ancient civilization that is the most religiously pluralistic nation in human history. Somehow, India survives, and moves forward, if at times at an elephant's pace referred to as the "Hindu rate of growth" of around 5% that allows the nation to keep pace, or barely outpace, population growth. For all the suffering of the poor and fragile middle class, there is a joy on the streets and in the villages of India matched in China by a widespread (but by no means universal) morose anxiety enveloped in an oppressive climate.

Growth in China has exceeded that "Hindu rate." In 1979, when reforms spearheaded by Deng Xiaoping were launched, the *per capita* income of China was U.S. \$180. Over the next 3 decades, Chinese GDP grew by an historically unprecedented annual average of 10%. By 2013, Chinese *per capita* GDP was about \$8,000. Between 1990 and 2012, China leaped from having just 2% of world trade in tangible goods to 12%.

Yet, China was — and still is — both a developing and developed country.⁴⁹ China is developing in that its *per capita* GDP ranks 100 in the world.

China is developed in that, as of 2013, it was the 2nd largest economy in the world, measured by GDP, following the U.S. and surpassing Japan. In 2014, the World Bank announced China became the world's largest economy, measured in PPP terms, displacing the U.S. from the top spot, which America held since 1872 when it overtook the United Kingdom.⁵⁰ Whereas India sometimes disappoints expectations, China often exceeds them: it was not projected to beat America until 2019. The pace of its growth, even discounting for inaccuracies and falsehoods in official CCP statistics, is breathtaking: in 2005, its GDP in PPP terms was 43% of that of the U.S.; by 2011, it was 87%. Between 2011 and 2014, the Chinese economy expanded by 24%, whereas the American economy grew by just 7.6%.

Concomitantly, China is the largest holder of U.S. Treasury securities, and second only to Canada as America's largest trading partner. China is the largest source of American imports (thus being the 2nd largest market for Chinese exports), and the 3rd largest market for U.S. exports. Like it or not, America and China are broadly and deeply interdependent. They also compete with one another on healthy, non-military fronts: in 2013, the U.S. and China ranked 1st and 2nd as the top destinations for FDI.

Thanks to its export-oriented growth success, in contrast to India's traditional inward-looking growth strategies, the CCP has pulled hundreds of millions of Chinese out of poverty, the greatest poverty reduction in human history. India still is indisputably poor. To be sure, the human rights costs China paid India would not accept: (1) assaults on human dignity, such as female infanticides, forced abortions, and a one-child policy, all of which led to the deaths of upwards of 100 million Chinese girls; and (2) assaults on human freedom, thanks to endless efforts by the Chinese Communist Party to repress freedom of speech, association, and conscience.

So, China not only is the greatest opportunity for energetic exporters and importers around the world, but also the greatest threat to the multilateral trading system. Fear of

⁴⁹ See *China Should be More Active in Global Economic Governance, Lamy Tells Beijing Forum*, World Trade Organization (Speech of Pascal Lamy to China Development Forum), 24 Mar. 2013, posted at www.wto.org.

⁵⁰ See *China to Overtake*.

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competition from China on an MFN basis is a causal factor in the failure of WTO Members to conclude successfully the Doha Round. China, while implementing some of the WTO decisions against it, flagrantly violates many of the foundational principles, or pillars, of the GATT. It failed to liberalize its markets for services and FDI in the manner it pledged when it acceded to the WTO, and since 2006, it reneged on some of its liberalization reforms in trade in goods. China stands accused of manipulating its currency for at least a decade, deliberately under-valuing it to boost exports.

Whether the government of China embodies the values appropriate for full, honest participation in the world trading system is in question. Unthinkable in India except for the briefest of periods (the 1974–1976 Emergency Period under Prime Minister Indira Gandhi, who promptly was voted out of office at the next general election), the CCP is cited repeatedly for complicity in human rights atrocities, the 4 June 1989 Tiananmen Square incident being a pre-eminent illustration. In its paranoid efforts to retain its grip on power, the CCP systematically represses any group or person it perceives as a challenge to the authority of the Party. That is manifest not only in its treatment of Tibetan Buddhists, but also in its ordination of Catholic bishops who do not have approval from the Holy See (Vatican). Whereas some Indian leaders might bathe in the Ganges at Varanasi to cleanse themselves of their bad *karmas* (deeds), almost laughably, the CCP tries to control the reincarnation of the 14th Dalai Lama, Tenzin Gyatso (because only one approved by the CCP is authorized), and intervene in the Apostolic succession dating back over 2,000 years to the Chair of Saint Peter, instituted by Jesus Christ, by ordaining bishops without a Papal mandate.⁵¹

Indian or Non-Resident Indians (NRIs) have won Nobel Prizes in several disciplines, making India proud. Surely China is in the rare position of having the honor of being home to 2 Nobel Peace Prize winners — the Dalai Lama (1989) and Liu Xiaobo (2011), but persecuting them both. Many WTO Members would ascribe to the principles in Charter '08, authored by Liu Xiaobo. India not only would do so, but also might wish its secular constitution, which embodies all of those principles, but which is the longest in the world, would be shorter. Following the dramatic Arab Spring of 2011, the list includes former leaders of autocratically-governed Arab countries. But, it does not include the CCP.

Proposition 10: Be Happy

International Trade Law is (or should be) the architecture for cross-border importation and exportation that leads to greater wealth and less poverty. To use a different metaphor, it is (or should be) the rule-of-law scaffolding that allows for trade, and that trade should better the lives of people, both in terms of expanded production and consumption opportunities, and the quality of those opportunities.

If International Trade Law plays (or ought to play) this happy role, then why are many practitioners and professors in the field so unhappy? Why are some of them downright miserable, mean, or both? Why do some obsess endlessly about fame and fortune, and die at their desks in the office (literally) as their children fall into drug abuse and their spouses divorce them? Surely knowing the grand purpose of their field should lead them to a joyful

⁵¹ See, e.g., John Thavis, *Vatican Condemns Illegitimate Ordination of Bishop in China*, CATHOLIC NEWS SERVICE, 5 July 2011, posted at www.catholicnews.com (reporting on the case of Paul Lei Shiyin, who was ordained by the Chinese Catholic Patriotic Association, which is supported by the CCP).

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approach to it, to think of their work as a vocation, not merely an occupation?

Consider these grim facts:⁵²

- (1) American law students enter law school with the same rate of depression as the general public, namely, 8%. By the spring semester of their 1st year, 32% of them are clinically depressed. By the time they graduate from law school, 40% of them are clinically depressed. (The figure drops to 17% 2 years after graduation, but that still is double the average.)
- (2) Suicide is the 3rd leading cause of death among lawyers in the U.S. and Canada. It accounts for 10.8% of their deaths. Suicide among lawyers is 6 times the suicide rate in the general population (69.3 per 100,000, versus 10–14 per 100,000).

Economically, these figures bespeak a terrible waste of human capital. Morally, it is tragic that students pay good money (plus incur an opportunity cost) for the salaries of law professors, yet then go to law school only to become depressed, and thereafter join a profession that puts them at disproportionate risk of suicide.

Fortunately, an Australian Nurse, Bronnie Ware, offers help in her book, *The Top Five Regrets of the Dying* (2013).⁵³ Having served for many years in palliative care for patients in the last 12 weeks of their lives, Ms. Ware explains these patients gain clarity of vision at the end of their lives. Their top 5 regrets are:

- (1) I wish I had had the courage to live a life true to myself, not the life others expected of me.
- (2) I wish I had not worked so hard.
- (3) I wish I had had the courage to express my feelings.
- (4) I wish I had stayed in touch with my friends.
- (5) I wish I had let myself be happier.

The inference is obvious.

Before their last 12 weeks, International Trade Lawyers can learn from the wisdom of Ms. Ware's patients. They need not wait until the end of life to be true to themselves, to realize they work too hard, to express their feelings courageously, to stay in touch with their friends, and to let themselves be happier. If their present position leave their dreams unfulfilled (*e.g.*, working for MNCs instead of LDCs), keeps them on a treadmill (*e.g.*, billing over 2,000 hours annually), suppresses their true capabilities (*e.g.*, does not involve client contact or field work), corrodes their friendships (*e.g.*, by leaving no time for spontaneous gatherings at the local pub), and is merely satisfactory (*e.g.*, because it is a familiar routine), then they should move on, perhaps set up their own enterprise. International Trade Law is a large and growing field. This life is finite.

Manifestly, these Propositions go beyond conventional Neo-Classical Economic analysis and traditional doctrinal analysis of International Trade Law. These analytical paradigms are plentiful in the Textbook. But, so too are perspectives from other

⁵² See Brian S. Clarke, *Coming Out in the Classroom: Law Professors, Law Students and Depression*, 64 JOURNAL OF LEGAL EDUCATION 403, 405 (Feb. 2015).

⁵³ See Susie Steiner, *Top Five Regrets of the Dying*, THE GUARDIAN, 1 Feb. 2013, posted at www.guardian.co.uk/lifeandstyle/2012/feb/01/top-five-regrets-of-the-dying/print.

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disciplines, notably history, philosophy, politics, and religion. Most importantly, these Propositions are just that, and lest there be doubt, as a student of the field, my own views of them hardly remain static.