

# **International Trade Law: A Comprehensive Textbook**



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## Volume One: Interdisciplinary Foundations and Fundamental Obligations

FIFTH EDITION

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KANSAS CITY, MISSOURI

“ON POINT” COLUMNIST  
BLOOMBERG QUINT  
MUMBAI, INDIA



CAROLINA ACADEMIC PRESS  
Durham, North Carolina

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ISBN 978-1-5310-1425-4  
eISBN 978-1-5310-1426-1  
LCCN 2018968049

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Carolina Academic Press, LLC  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

*For Shera and Her Generation,  
That They Are Not Scourged by Poverty, Extremism, or a Clash of Civilizations,  
But Rather Blessed by Peace through Sustainable Trade and Development.*

*And for the Glory of God.*



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# About the Author

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Raj Bhala is the inaugural Leo. S. Brenneisen Distinguished Professor (2017–present) at the University of Kansas School of Law, before which he held the inaugural Rice Distinguished Professorship (2003–2017). Both are university-level chairs, the highest accolade for scholarship and research in Kansas. He served as KU’s Associate Dean for International and Comparative Law (2011–2017).

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A Harvard Law School (J.D.) graduate, *cum laude*, Raj completed Master’s degrees at the London School of Economics, in Economics, and Oxford (Trinity College), in Management-Industrial Relations, as a Marshall Scholar. His undergraduate degree (in Economics), *summa cum laude*, is from Duke, where he was an Angier B. Duke Scholar and inducted into *Phi Beta Kappa*. He graduated from the University School-Milwaukee. At each institution, he was blessed with great teachers.

Raj is author of one of the world’s leading textbooks, *International Trade Law: A Comprehensive Textbook*, the 1st edition of which was published in 1996, and which has been used at over 100 law schools around the world. He wrote the first treatise on GATT in nearly 50 years, *Modern GATT Law*, and the first major book on the *Trans Pacific Partnership*, *TPP Objectively*. His book *Trade, Development, and Social Justice* applies Catholic social teaching to GATT special and differential treatment rules.

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He has been privileged to live, work, and/or explore about 50 countries across six continents, including India and Pakistan, Israel and most of the Gulf Arab countries, and China and (the separate customs territory of) Taiwan. His abiding professional goal is to educate for peace, that is, to enhance human capital and legal capacity for economic development, political stability, and international understanding.

He is an avid distance runner and has completed three of the “World’s Major Marathons” (Boston twice, Chicago, and New York), and is a (rather poor) student of Shakespeare and Hindi. His Wikipedia entry is [https://en.wikipedia.org/wiki/Raj\\_Bhala](https://en.wikipedia.org/wiki/Raj_Bhala).

# Table of Abbreviations

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AANZFTA	ASEAN-Australia-New Zealand Free Trade Agreement
AB	WTO Appellate Body
ABA	American Bar Association
ABI	Automated Broker Interface
ACDB	WTO Accession Commitments Data Base
ACFTU	All China Federation of Trade Unions
ACP	African, Caribbean, and Pacific
ACS	Automated Commercial System
ACTRAV	Bureau for Workers' Activities (ILO)
ACWL	Advisory Center on WTO Law
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
ADP	Automatic data processing
ADVANCE Democracy Act	2007 Advance Democratic Values, Address Non-democratic Countries and Enhance Democracy Act
AECA	Arms Export Control Act of 1976
AEO	Authorized Economic Operator
AFA	Adverse Facts Available
AfDB	African Development Bank
AFIP	<i>Administración Federal de Ingresos Públicos</i> (Argentina, Federal Public Revenue Administration)
AFL-CIO	American Federation of Labor-Congress of Industrial Organizations
AFTA	ASEAN Free Trade Area
Ag	Agriculture

AGOA	2000 African Growth and Opportunity Act
AGOA II	(included in 2002 Trade Act)
AGOA III	2004 African Growth and Opportunity Acceleration Act
Agriculture Agreement	WTO Agreement on Agriculture
AI (1st meaning)	Artificial Intelligence
AI (2nd meaning)	Avian Influenza
AID	U.S. Agency for International Development
AIG	American Insurance Group
AIIS	American Institute for International Steel
AIPAC	American Israel Public Affairs Committee
AIOC	Anglo Iranian Oil Company
ALBA	Bolivarian Alliance for the Peoples of our America
ALJ	Administrative Law Judge
ALOP	Appropriate Level Of Protection
ALT	Alternate (alternate proposed text)
AMA	American Medical Association
AmCham	American Chamber of Commerce
AMPS	Acrylamido tertiary butyl sulfonic acid
AMS (1st meaning)	Aggregate Measure of Support
AMS (2nd meaning)	Agriculture Marketing Services (USDA)
ANAD	National Association of Democratic Lawyers (Mexico)
ANZCERTA	Australia-New Zealand Closer Economic Relations Trade Agreement (CER)
AoA	WTO Agreement on Agriculture
AOG	All Other Goods
AOR	All Others Rate
APEC	Asia Pacific Economic Cooperation (forum)
APOC	Anglo Persian Oil Company
AR	Administrative Review
ARI	Additional (United States) Rules of Interpretation
ARP Act of 2000	2000 Agricultural Risk Protection Act
ARRA	2009 American Recovery and Reinvestment Act
ARS	Advance Ruling System

ASA	American Sugar Alliance
ASCM	WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement)
ASEAN	Association of South East Asian Nations
ASP	American Selling Price
ATAP	1996 Agreement Concerning Certain Aspects of Trade in Agricultural Products (1985 U.S.-Israel FTA)
ATC	WTO Agreement on Textiles and Clothing
ATPA	1991 Andean Trade Preferences Act
ATPDEA	2002 Andean Trade Promotion and Drug Eradication Act
ATT	2014 U.N. Arms Trade Treaty
AU\$	Australian Dollar
AUD	Australian Dollar
AUV	Average Unit Value
AV	Audio-Visual
AVE	<i>Ad Valorem</i> Equivalent
B&H	Brokerage and handling (costs)
B&O	Washington State Business and Occupation Tax Rate Reduction
BA	Bankers Acceptance
BBS	Bangladesh Bureau of Statistics
B.C.	British Columbia
BCI	Business Confidential Information
BCR	Blue Corner Rebate (Thailand)
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
BIA	Best Information Available (Pre-Uruguay Round U.S. term for Facts Available)
BILA (ILAB)	Bureau of International Labor Affairs (U.S. DOL OTLA)
BIS (1st meaning)	Bank for International Settlements
BIS (2nd meaning)	Bureau of Industry and Security (U.S. DOC)
<i>bis</i> (3rd meaning)	second version (of a text), again, repeat

B.I.S.D.	Basic Instruments and Selected Documents
BIT	Bilateral Investment Treaty
BJP	Bharatiya Janata Party (India)
BNA	Bureau of National Affairs (International Trade Reporter and International Trade Daily)
BOJ	Bank of Japan
BOK	Bank of Korea
Bolero	Bills of Lading for Europe
BOP	Balance Of Payments
BOT	Balance Of Trade
BP	British Petroleum
bpd	barrels per day
Brexit	Withdrawal of the U.K. from EU
BRICS	Brazil, Russia, India, China, and South Africa
BSE (1st meaning)	Bombay Stock Exchange
BSE (2nd meaning)	Bovine Spongiform Encephalopathy (Mad Cow Disease)
BSSAC	Beneficiary Sub-Saharan African Country
BTA (1st meaning)	Bilateral Trade Agreement
BTA (2nd meaning)	2002 Bio-Terrorism Act (Public Health Security and Bio-terrorism Preparedness and Response Act of 2000)
BTA (3rd meaning)	Border Tax Adjustment
BTB	May 2007 Bipartisan Trade Deal
C&F	cost and freight
CAA	1979 Clean Air Act
CA\$	Canadian Dollar
CAD	Canadian Dollar
CAPES	<i>Centre d'Analyse des Politiques, Economiques et Sociales</i> (Burkina Faso)
CAFTA-DR	<i>Central American Free Trade Agreement—Dominican Republic</i>
CAN	Community of Andean Nations
CANACAR	<i>Camara Nacional del Autotransporte de Carga</i>
CAP (1st meaning)	Common Agricultural Policy (EU)
CAP (2nd meaning)	Carolina Academic Press
CASA	<i>Construcciones Aeronáuticas SA</i> (Spain)

CB	citizens band (radio)
CBD	U.N. Convention on Biological Diversity
CBE	Commander of the Most Excellent Order of the British Empire
CBERA	1983 Caribbean Basin Economic Recovery Act
CBI (1st meaning)	Caribbean Basin Initiative
CBI (2nd meaning)	Central Bank of Iran
CBO	Congressional Budget Office
CBOT	Chicago Board of Trade
CBP	U.S. Customs and Border Protection (“U.S. Customs Service” until 1 March 2003)
CBSA	Canadian Border Services Agency
CC	Cooperative Country (Argentina)
CCB	U.S. Conference of Catholic Bishops
CCC (1st meaning)	U.S. Commodity Credit Corporation (USDA)
CCC (2nd meaning)	Customs Cooperation Council (renamed WCO in 1994)
CCC (3rd meaning)	Commerce Country Chart
CCFRS	Certain cold flat-rolled steel
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)	Canadian Dairy Commission
CDC (3rd meaning)	Chilean Distortions Commission
CDM	Clean Development Mechanism
CDSOA	2000 Continued Dumping and Subsidy Offset Act (Byrd Amendment)
CEC	Commission for Environmental Cooperation (NAFTA)
CEMAC	<i>Communauté Économique et Monétaire de l’Afrique Centrale</i>
CEP	Constructed Export Price

CEPR	Center for Economic and Policy Research
CER	Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)
CET	Common External Tariff
CETA	Comprehensive Economic and Trade Agreement
CFC	Controlled Foreign Corporation
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
CH	Order of the Companions of Honor
CHIPS	Clearing House Interbank Payment System
CIA	U.S. Central Intelligence Agency
CIC	Citizenship and Immigration Service for Canada
CIF (c.i.f)	Cost, Insurance, and Freight
CIP	Chhattisgarh Industrial Program (India)
CISADA	2010 Comprehensive Iran Sanctions, Accountability, and Divestment Act
CISG	Convention on Contracts for the International Sale of Goods (U.N.)
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
CJ	Commodity Jurisdiction
CKD	Complete knock down
CME	Chicago Mercantile Exchange
CMI	<i>Comité Maritime International</i> (IMO)
CMM	Conservation Management Measures
CMO	Common Market Organization (EU)
CNCE	<i>Comisión Nacional de Comercio Exterior</i> (Argentina)
CNL	Competitive Need Limitation
CNY	Chinese Yuan



COBRA	Consolidated Omnibus Budget and Reconciliation Act (multiple years)
COCOM	Coordinating Committee on Multilateral Export Controls
COGS	Cost of Goods Sold
COMESA	Common Market for Eastern and Southern Africa
CONNUM	Control Number
COP	Cost of Production
COS	Circumstances of Sale (dumping margin calculation adjustment)
COSCO	Chinese Ocean Shipping Company
CPA	Certified Public Accountant
CPC	U.N. Central Product Classification list
CPSC	U.S. Consumer Product Safety Commission
CPTPP	Comprehensive and Progressive Agreement for Trans Pacific Partnership (entered into force 30 December 2018, informally called TPP 11)
CQE	Certificate of Quota Eligibility
Crop Year 2001 Act	Crop Year 2001 Agricultural Economic Assistance Act
CRS	Congressional Research Service
CRTC	Canadian Radio-Television and Telecommunications Commission
CSCL	China Shipping Container Lines
CSI	Container Security Initiative
CSP (1st meaning)	Conferences of States Parties
CSP (2nd meaning)	Certificate of Supplementary Protection (CETA)
CSPV	Crystalline Silicon Photovoltaic cells, modules, laminates, and panels (solar panels)
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
CTPA	United States—Colombia Trade Promotion 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 (1st meaning)	Countervailing Duty
CVD (2nd meaning)	Chronic Venous Disorder
CVI	Chronic Venous Insufficiency
CVID	Complete, Verifiable, Irreversible Disarmament
CWP	Circular Welded carbon quality steel Pipe
CY	Calendar Year
DAHD	Department of Animal Husbandry, Dairying, and Fisheries (India)
DARPA	U.S. Defense Advance Research Project Agency
DCR	Domestic Content Requirement
DCS	Destination Control Statement
DDA	Doha Development Agenda
DDTC	U.S. Directorate of Defense Trade Controls (Department of State)
DeitY	Department of Electronics and Information Technology (MCIT, India)
DFQF	Duty Free, Quota Free
DGFT	Director General of Foreign Trade (part of Ministry of Commerce, India)
DHS	U.S. Department of Homeland Security
DJAI	<i>Declaración Jurada Anticipada de Importación</i> (Argentina, Advance Sworn Import Declaration)
DIEM	<i>Derechos de Importación Específicos Mínimos</i> (Argentina, Minimum Specific Import Duties)
DIFMER	Difference in Merchandise (dumping margin calculation adjustment)
DIY	Do It Yourself

DM (1st meaning)	Dumping Margin
DM (2nd meaning)	<i>Deutsche Marks</i>
DMA	Domestic Marketing Assessment
DMZ	De-Militarized Zone
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
DPCIA	1990 Dolphin Protection Consumer Information Act
DPRK	Democratic People's Republic of Korea (North Korea)
DRAM	Dynamic Random-Access Memory
DRAMS	Dynamic Random-Access Memory Semiconductor
DSB	WTO Dispute Settlement Body
DSM	Dispute Settlement Mechanism
DSU	WTO Dispute Settlement Understanding (Understanding on Rules and Procedures Governing the Settlement of Disputes)
DVD	Digital Video Recording
EA	Environmental Assessment
EAA	1979 Export Administration Act
EAC (1st meaning)	East African Community
EAC (2nd meaning)	East Asian Community
EAC (3rd meaning)	Environmental Affairs Council (CAFTA-DR, KORUS)
EADS	European Aeronautic Defense and Space Company NV
EAR	Export Administration Regulations
EBA	Everything But Arms
EBOR	Electronic On Board Recorder
EC (1st meaning)	European Commission
EC (2nd meaning)	European Communities
ECA (1st meaning)	Economic Cooperation Agreement

ECA (2nd meaning)	Agreement between the Government of the United States of America and the Government of the Republic of Korea on Environmental Cooperation (KORUS)
ECA (3rd meaning)	Export Controls Act of 2018 (part of 2018 NDAA)
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)
ECCAS	Economic Community of Central African States
ECCN	Export Control Classification Number
ECE	Evaluation Committee of Experts (NAFTA)
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
ECU	European Currency Unit
ED	Economic Development Administration (of DOC)
EDBI	Export Development Bank of Iran
EDC	Export Development Corporation (Canada)
EDI	Electronic Data Interchange
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EFSA	European Food Safety Authority
EFTA	European Free Trade Association
EGA	WTO Environmental Goods Agreement
EIB	European Investment Bank
EIF	Enhanced Integrated Framework (formerly “IF,” or “Integrated Framework”)
<i>EIG</i>	<i>équipement d’intérêt general</i> (France)
ELLIE	Electronic Licensing Entry System
ELS	Extra Long Staple (cotton)
EN	Explanatory Note

ENFORCE Act (TFTEA, TEA)	2015 Trade Facilitation and Trade Enforcement Act
EOBR	Electronic On Board Recorder
EP	Export Price
EPA (1st meaning)	Economic Partnership Agreement
EPA (2nd meaning)	U.S. Environmental Protection Agency
EPI	Economic Policy Institute
EPZ	Export Processing Zone
ERP	Effective Rate of Protection
E-SIGN	2000 Electronic Signatures in Global and National Commerce Act
ESCS	European Steel and Coal Community
ESL	English as a Second Language
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)
ETI Act	2000 Extraterritorial Income Exclusion Act (U.S.)
ETP	Eastern Tropical Pacific (Ocean)
ETS	Emission Trading Scheme
EU	European Union
EV	Electric Vehicle
Ex-Im Bank	U.S. Export-Import Bank
FACT Act of 1990 (1990 Farm Bill)	1990 Food, Agriculture, Conservation and Trade Act
FAIR Act of 1996 (1996 Farm Bill)	1996 Federal Agricultural Improvement and Reform Act
FAO	Food and Agricultural Organization
FAS	Foreign Agricultural Service (of USDA)
FAST	Free And Secure Trade
FATA	Federally Administered Tribal Areas (Pakistan)
FATF	Financial Action Task Force
FBI	U.S. Federal Bureau of Investigation

FCIC	U.S. Federal Crop Insurance Corporation (USDA)
FCPA	1977 Foreign Corrupt Practices Act
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>
FFTJ	Fittings, flanges, and tool joints
FICCI	Federation of Indian Chambers of Commerce and Industry
FIFA	<i>Fédération Internationale de Football Association</i>
FINCEN	U.S. Financial Crimes Enforcement Network (Department of the Treasury)
FIRRMA	Foreign Investment Risk Review Modernization Act of 2018 (part of 2018 NDAA)
FIT	Feed-in tariff
FMCSA	Federal Motor Carrier Safety Administration
FMSA	2011 Food Safety Modernization Act
FMV (1st meaning)	Foreign Market Value (Pre-Uruguay Round U.S. term for Normal Value)
FMV (2nd meaning)	Fair Market Value
FMVSS	Federal Motor Vehicle Safety Standards
FOA	Facts Otherwise Available
FOB (f.o.b.)	Free On Board
FOP	Factors of Production
FOREX	Foreign Exchange
FPA	Foreign Partnership Agreement
FPC	U.S. Federal Power Commission (predecessor of DOE)
FRAND	Fair, Reasonable, and Non-Discriminatory (terms)
FRCP	U.S. Federal Rules of Civil Procedure
FRCrimP	U.S. Federal Rules of Criminal Procedure
FRE	U.S. Federal Rules of Evidence
FRS	Fellowship of the Royal Society
FRSA	Fellowship of the Royal Society for the Encouragement of Arts, Manufactures, and Commerce

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)	2002 Farm Security and Rural Investment Act
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
GAIN	USDA FAS Global Agricultural Information Network
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 (GATT 1947 and/or GATT 1994)
GATT 1947	General Agreement on Tariffs and Trade 1947 and all pertinent legal instruments (Protocols, Certifications, Accession Protocols, and Decisions) entered into under it before entry into force of the WTO Agreement (1 January 1995)
GATT 1994	GATT 1947 plus all pertinent legal instruments (1994 Uruguay Round Understandings and Marrakesh Protocol) effective with the WTO Agreement (1 January 1995)
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GE	General Electric

GI	Geographical Indication
GILTI	Global Intangible Low-Taxed Income
GL	General License
GM	Genetically Modified, Genetic Modification
GMO	Genetically Modified Organism
GNH	Gross National Happiness
GNI	Gross National Income
GNP	Gross National Product
GOI	Government of India
GPA	Government Procurement Agreement (WTO Agreement on Government Procurement)
GPO	Government Pharmaceutical Organization (Thailand)
GPS	Global Positioning System
GPT	General Preferential Tariff (Canada)
GRI	General Rules of Interpretation (of the HS)
GSM	General Sales Manager
GSP	Generalized System of Preferences (U.S.)
GSP+	Generalized System of Preferences Plus (EU)
GTA	Global Trade Atlas
GW	gigawatt
H5N1	Avian Flu (virus)
HCTC	Health Care Tax Credit
HDC	Holder in Due Course
HDI	U.N. Human Development Index
Helms-Burton Act	1996 Cuban Liberty and Democracy Solidarity ( <i>Libertad</i> ) Act
HFCS	High Fructose Corn Syrup
HHS	U.S. Department of Health and Human Services
HIPC	Highly Indebted Poor Country
HKMA	Hong Kong Monetary Authority
HM	Her (His) Majesty
HMG	Her (His) Majesty's Government
HNW	High Net Worth
HOEP	Hourly Ontario Energy Price



Homeland Security Act	2002 Homeland Security Act
HPAE	High Performing Asian Economy
HPAI	High Pathogenic Avian Influenza
HPC	High Performance Computer
HPNAI	High Pathogenic Notifiable Avian Influenza
HQ	Headquarters
HS	Harmonized System
HSBC	Hong Kong Shanghai Banking Corporation
HSBI	Highly Sensitive Business Information
HTS	Harmonized Tariff Schedule
HTSUS	Harmonized Tariff Schedule of the U.S.
HVAC	Heating, Ventilation, and Air Conditioning
IA (1st meaning)	Import Administration (U.S. DOC)
IA (2nd meaning)	Information Available
IA (3rd meaning)	Internal Advice
IADB	Inter-American Development Bank
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development (The World Bank)
IBT (1st meaning)	International Brotherhood of Teamsters
IBT (2nd meaning)	International Business Transactions
IC (1st meaning)	Indifference Curve
ICs	Indigenous Communities (Inuit and other indigenous communities)
ICAC	International Cotton Advisory Committee
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
ICS	Investment Court System
ICSID	International Center for the Settlement of Investment Disputes

ICTSD	International Center for Trade and Sustainable Development
IDB	Integrated Database
IDF	Israeli Defense Forces
IEC	Importer-Exporter Code (India)
IEEPA	1977 International Emergency Economic Powers Act
IFPRI	International Food Policy Research Institute
IFSA	2006 Iran Freedom Support Act
IFTA	1985 United States-Israel Free Trade Implementation Act
IGBA	1970 Illegal Gambling Business Act
IGG	<i>itinéraire à grand gabarit</i> (France)
IIPA	International Intellectual Property Alliance
ILAB (BILA)	Bureau of International Labor Affairs (U.S. DOL OTLA)
ILC	International Law Commission
ILO	International Labor Organization
ILRF	International Labor Rights Forum
ILSA	1996 Iran and Libya Sanctions Act (called ISA after IFSA)
IMC	Industrial Metal and Commodities
IMF	International Monetary Fund
IMF Articles	Articles of Agreement of the International Monetary Fund
IMO	International Maritime Organization (CMI)
Incoterms	International Commercial Terms (ICC)
INR (1st meaning)	Initial Negotiating Right
INR (2nd meaning)	Indian <i>Rupee</i>
INS	U.S. Immigration and Naturalization Service (reorganized partly into ICE in March 2003)
IO	International Organization
IP	Intellectual Property
IPCC	Intergovernmental Panel on Climate Change
IPIC Treaty (Washington Treaty)	1989 Intellectual Property in Respect of Integrated Circuits
IPOA	International Plan Of Action
IPOA-IUU	International Plan Of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (FAO)
IPPC	1952 International Plant Protection Convention

IPR (1st meaning)	Intellectual Property Right
IPR (2nd meaning)	International Priority Right
IRC	U.S. Internal Revenue Code
IRG (IRGC)	Iranian Revolutionary Guard Corps (Islamic Revolutionary Guard Corps)
IRISL	Islamic Republic of Iran Shipping Lines
IRQ	Individual Reference Quantity
IRS	U.S. Internal Revenue Service
ISA	Iran Sanctions Act of 1996, as amended, <i>i.e.</i> , Iran Sanctions Act of 2012 (formerly ILSA)
ISDS	Investor-State Dispute Settlement
ISIL	Islamic State in the Levant (ISIS)
ISIS	Islamic State in Shams (ISIL)
ISO	International Organization for Standardization
ISTC	International Sugar Trade Coalition
IT	Information Technology
ITA (1st meaning)	WTO Information Technology Agreement (1996)
ITA (2nd meaning)	U.S. International Trade Administration (DOC)
ITA II	Information Technology Agreement (2015)
ITAR	International Traffic in Arms Regulations
ITC	U.S. International Trade Commission
ITDS	International Trade Data System (electronic single window for import-export data)
ITO	International Trade Organization
ITO Charter (Havana Charter)	Charter for an International Trade Organization
ITRD	International Trade Reporter Decisions
ITSR	Iranian Transactions and Sanctions Regulations (31 C.F.R. Part 560)
ITT	ITT Corporation
ITT NV	ITT Night Vision
ITU	International Telecommunications Union
IUU	illegal, unreported and unregulated
JADE Act	2008 Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act

J&K	Jammu and Kashmir (Indian-Administered Kashmir)
JFTC	Japan Fair Trade Commission
JIA	Japanese Investigative Authority
JNPT	Jawaharlal Nehru Port Terminals (Mumbai, India)
JPC	Joint Planning Committee (India)
JV	Joint Venture
KCBT	Kansas City Board of Trade
KDB	Korea Development Bank
KEXIM	Export-Import Bank of Korea
KFC	Kentucky Fried Chicken
<i>KfW</i>	<i>Kreditanstalt für Wiederaufbau</i> (Germany, Credit Agency for Reconstruction)
kg	Kilogram
KMA	Kubota Manufacturing of America
<i>KMT</i>	<i>Kuomintang</i>
KORUS	Korea—United States Free Trade Agreement
KPPI	<i>Komite Pengamanan Perdagangan Indonesia</i> (competent international trade authority)
KSA	Kingdom of Saudi Arabia
KU	University of Kansas
kWh	Kilowatt hour
L/C	Letter of Credit
LAN	Local Area Network
LAP	Labor Action Plan (Colombia TPA)
LCA	Large Civil Aircraft
LCD	Liquid Crystal Display
LDBDC	Least Developed Beneficiary Developing Country
LDC (1st meaning)	Least Developed Country
LDC (2nd meaning)	Less Developed Country (includes developing and least developed countries)
LDC (3rd meaning)	Local distribution company
LGBTQ+	Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), and others
LLDC	Landlocked Developing Country
LNG	Liquefied Natural Gas

LNPP	Large Newspaper Printing Press
LOC	Line of Control (Kashmir)
LPAI	Low Pathogenic Avian Influenza
LPMO	Livestock Products Marketing Organization (Korea)
LOT	Level of Trade (dumping margin calculation adjustment)
LPNAI	Low Pathogenic Notifiable Avian Influenza
LPMO	Livestock Product Marketing Organization (Korea)
LRW	Large Residential Washer
LTFV	Less Than Fair Value
LWR	Light-Walled Rectangular pipe and tube
LWS	Laminated Woven Sacks
MAD	Mutually Assured Destruction
MAFF	Ministry of Agriculture, Forestry, and Fisheries (Korea)
MAI	Multilateral Agreement on Investment
MAP	Monitoring and Action Plan
Marrakesh Protocol	Marrakesh Protocol to GATT 1994
MAS	Monetary Authority of Singapore
<i>MBB</i>	<i>Messerschmitt-Bölkow-Blohm GmbH</i> (Germany)
MCIT	Ministry of Communications and Information Technology (India)
MCL	Munitions Control List
MCTL	Military Critical Technologies List
MDG	Millennium Development Goal
MDL	Military Demarcation Line (DMZ)
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
MHI	Mitsubishi Heavy Industries, Ltd.
<i>MHT</i>	<i>Matra Hautes Technologies</i> (France)
MIIT	Ministry of Industry and Information Technology (China)

MITI	Ministry of International Trade and Industry (Japan)
MMA	Minimum Market Access (quota)
MMBtu	Million British Thermal Unit
MMPA	1972 Marine Mammal Protection Act
MNC	Multinational Corporation
MNE	Multinational Enterprise
MOCI	Ministry of Commerce and Industry (India, Saudi Arabia)
MOCIE	Ministry of Commerce, Industry, and Energy (Korea)
MOFAT	Ministry of Foreign Affairs and Trade (Korea)
MOFCOM	Ministry of Commerce (China)
MOI (MOI Test)	Market Oriented Industry
MOTIE	Ministry of Trade, Industry, and Energy (Korea)
MOU	Memorandum of Understanding
MP	Member of Parliament
MPC	Marginal Propensity to Consume
MPF	Merchandise Processing Fee
MPS	Marginal Propensity to Save
MRA	Mutual Recognition Agreement
MRE	Meals Ready to Eat
MRL	Maximum Residue Level
MRM	Marine Resource Management
MRS	Marginal Rate of Substitution
MRT	Marginal Rate of Transformation
MSF	<i>Médecins Sans Frontières</i>
MSME	Micro, Small, and Medium Sized Enterprise
MSP	Ministry of Social Protection (Colombia)
MST	Minimum Standard of Treatment
mt	metric ton
MTA (1st meaning)	Multilateral Trade Agreement
MTA (2nd meaning)	Metropolitan Transit Authority (New York City)
MTB	Miscellaneous Trade Bill (multiple years)
MTN	Multilateral Trade Negotiation
MTO	Multilateral Trade Organization
MTOP	Millions of Theoretical Operations per Second

MVTO	Motor Vehicles Tariff Order (Canada)
MY	Marketing Year
NAD Bank	North American Development Bank (NAFTA)
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 (NAFTA 1.0 and/or NAFTA 2.0)
NAFTA 1.0	North American Free Trade Agreement (original FTA that entered into force on 1 January 1994)
NAFTA 2.0	North American Free Trade Agreement (revised FTA based on August 2017–September 2018 renegotiations, formally entitled USMCA, signed 30 November 2018)
NAI	Notifiable Avian Influenza
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)
NATO	North Atlantic Treaty Organization
NASA	U.S. National Aeronautics and Space Administration
NBP	National Bank of Pakistan
NCC (1st meaning)	National Chicken Council
NCC (2nd meaning)	Non-Cooperative Country (Argentina)
N.C.M.	<i>Nomenclatura Común MERCOSUR</i> (MERCOSUR Common Nomenclature)
NCTO	National Council of Textile Organizations
NDA	National Democratic Alliance (India)
NDAA	U.S. National Defense Authorization Act (annual policy bill for DOD and national security since 1962)
NDRC	National Development and Reform Commission
NEI	National Export Initiative
NEP	New Economic Policy (Malaysia)
NFIDC	Net Food Importing Developing Country
NFTC	National Foreign Trade Council

NG	Natural Gas
NGR	Negotiating Group on Rules (WTO Doha Round)
NHI	National Health Insurance (Korea)
NHT	National Hand Tools Corporation
NIC	Newly Industrialized Country
NICO	Naftiran Intertrade Company
NIEO	New International Economic Order
NIOC	National Iranian Oil Company
NITC	National Iranian Tanker Company
NJPA	National Juice Products Association
NLC	National Labor Committee (U.S.)
NLCF	National Livestock Cooperatives Federation
NLD	National League for Democracy (Burma)
NMDC	National Minerals Development Corporation (India)
NME	Non-Market Economy
NMFS	U.S. National Marine Fisheries Service (DOC)
NNSA	U.S. National Nuclear Security Administration (DOE)
NOAA	U.S. National Oceanic and Atmospheric Administration (DOC)
NO <sub>x</sub>	Nitrogen oxides
NPA	Non-Prosecution Agreement
NPC	National People's Congress (China)
NPF	Non-Privileged Foreign status
NPL	Non-Performing Loan
NPT	1968 Nuclear Non-Proliferation Treaty
NRA	National Rifle Association
NRC	U.S. Nuclear Regulatory Commission
NRI	Non-Resident Indian
NRL	Nuclear Referral List
NSA	U.S. National Security Agency
NSC	National Securities Commission (Argentina)
NSG	Nuclear Suppliers Group
NSIBR	National Security Industrial Base Regulations
NSM	Jawaharlal Nehru National Solar Mission (India)



NSPD	National Security Presidential Directive
NSS	WTO SPS National Notification System
NTA	National Textile Association (U.S.)
NTB	Non-Tariff Barrier
NTC	National Trade Council (United States)
NTE (1st meaning)	National Trade Estimate Report on Foreign Trade Barriers (USTR)
NTE (NTE sector) (2nd meaning)	Non-Traditional Export (sector)
NTM	Non-Tariff Measure
NTR	Normal Trade Relations
NV	Normal Value
NVOCC	Non-Vessel Operating Common Carrier
NWFP	North West Frontier Province (Pakistan) (Khyber Pakhtunkhwa)
N.Y. Fed (FRBNY)	Federal Reserve Bank of New York
NYU	New York University
NZ\$	New Zealand Dollar
NZD	New Zealand Dollar
OAS	Organization of American States
OBE	Officer of the Most Excellent Order of the British Empire
OBRA	Omnibus Budget and Reconciliation Act (multiple years)
OCD	Ordinary Customs Duties
OCR	Out of Cycle Review
OCTG	Oil Country Tubular Goods
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
OIDA	Owner-Operator Independent Drivers Association
OPA	Ontario Power Authority (Canada)
OPEC	Organization of Petroleum Exporting Countries
OPIC	U.S. Overseas Private Investment Association (U.S. International Development Finance Corporation)
OPZ	Outward Processing Zone (KORUS)
OTC	Over the Counter
OTCA	1988 Omnibus Trade and Competitiveness Act
OTCG	Oil Country Tubular Good
OTDS	Overall Trade distorting Domestic Support
OTEXA	Office of Textiles and Apparel (U.S. DOC)
OTLA	Office of Trade and Labor Affairs (in DOL)
OTR	Off-The-Road
PAP	People's Action Party (Singapore)
PAPS	Pre-Arrival Processing System
Paris Agreement	December 2015 Paris Climate Accord, or Paris Climate Agreement, under UNFCCC
Paris Convention	1883 Paris Convention for the Protection of Industrial Property
PASA	Pre-Authorization Safety Audit
PBC (PBOC)	People's Bank of China
PBS	Price Band System
PBUH	Peace Be Upon Him
PC	Personal Computer
PCA	Post-Clearance Audit
PCAST	President's Council of Advisors on Science and Technology (United States)
PCB	Printed Circuit Board
PCG (PCG fibers)	Polyvinyl alcohol (PVA), cellulose, and glass fibers
PDV	Present Discounted Value
PEO	Permanent Exclusion Order

PF	Privileged Foreign status
PFC	Priority Foreign Country
PhRMA	Pharmaceutical Manufacturers of America
PLO	Palestine Liberation Organization
PM	Prime Minister
PNTR	Permanent Normal Trade Relations
PNW	Pine wood nematode
POI	Period of Investigation
POR	Period of Review
POW-MIA	Prisoner of War — Missing in Action
PP	Purchase Price (Pre-Uruguay Round U.S. term for Export Price)
PPA	Power Purchase Agreement
PPF	Production Possibilities Frontier
PPM (1st meaning)	Parts Per Million
PPM (2nd meaning)	Process and Production Method
PPP	Purchasing Power Parity
PPS	Probability-Proportional to Size
PRC	People's Republic of China
<i>PROEX</i>	<i>Programa de Financiamento às Exportações</i> (Brazil)
PRO-IP Act	2008 Prioritizing Resources and Organization for Intellectual Property Act
PRS	Price Range System
PSA	Port of Singapore Authority
PSH	Public Stock Holding
PSI	Pre-Shipment Inspection
PSI Agreement	WTO Agreement on Pre-Shipment Inspection
PSRO	Product Specific Rule of Origin
PTA (1st meaning)	Preferential Trade Agreement, or Preferential Trading Arrangement
PTA (2nd meaning)	Payable through account
PTO	U.S. Patent and Trademark Office
PV	Photovoltaic
PVA (PVA fibers)	Polyvinyl alcohol fibers

PVC	Polyvinyl chloride
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
RCC	United States—Canada Regulatory Cooperation Council
RCEP	Regional Comprehensive Economic Partnership
RCMC	Registration-cum-Membership Certificate (India)
rDNA	recombinant deoxyribonucleic acid
REER	Real Effective Exchange Rate
RFMO	Regional Fisheries Management Organization
RMA (1st meaning)	Risk Management Association (U.S.)
RMA (2nd meaning)	Risk Management Authorization
RMB	<i>Ren min bi</i> (“people’s money,” the Chinese currency)
RMG	Ready Made Garment
RMI (DRM)	Rights Management Information (Digital Rights Management)
ROA	Return on Assets
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
RPG	Rocket-propelled grenade
RPL	Relative Price Line
RPT	Reasonable Period of Time
Rs.	<i>Rupee</i>
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	2006 Security and Accountability for Every Port Act
SAFTA	South Asia Free Trade Agreement
SAGIA	Saudi Arabian General Investment Authority
SAMA	Saudi Arabian Monetary Authority
SAPTA	South Asia Preferential Trading Arrangement
SAR	Special Administrative Region
SARS	Sudden Acute Respiratory Syndrome
SCGP	Supplier Credit Guarantee Program
SCM	Subsidies and Countervailing Measures
SCM Agreement	WTO Agreement on Subsidies and Countervailing Measures (ASCM)
SCP	Sugar Containing Product
SDF	Steel Development Fund (India)
SDG	United Nations Sustainable Development Goal
SDN	Specially Designated National
SE	<i>Secretaría de Economía</i> (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
SEP	Standard Essential Patent
SEZ	Special Economic Zone
SFO	Serious Fraud Office
SG&A	Selling, General, and Administrative expenses
SG\$	Singapore Dollar

SGD	Singapore Dollar
SCI	<i>Secretaría de Comercio Interior</i> (Argentina, Secretary of Domestic Trade)
SIE	State Invested Enterprise
SIFI	Systemically Important Financial Institution
SIFMA	Securities Industry and Financial Markets Association
SIL	Special Import License (India)
SIM	<i>Sistema Informático MARIA</i> (Argentina, AFIP electronic portal information system)
SIMA	Special Import Measures Act (Canada)
SKD	Semi-knock down
SMART	Secondary Materials and Recycled Textiles Association
SME (1st meaning)	Small and Medium Sized Enterprise
SME (2nd meaning)	Square Meter Equivalent
SMS	Supply Management System (Canada)
SNAP	Supplemental Nutritional Assistance Program
SNAP-R	Simplified Network Application Process—Redesign
S.O.	Statutory Order (India)
SOCB	State Owned Commercial Bank (China)
SOE	State Owned Enterprise
SOF	Special Operations Forces
SOGI	Sexual Orientation and Gender Identity
SPD	Solar Power Developer
SPI (1st meaning)	Seven Pillars Institute for Global Finance and Ethics
SPI (2nd meaning)	Special Program Indicator
SPS (1st meaning)	Sanitary and Phytosanitary
SPS (2nd meaning)	Single Payment Scheme
SPS Agreement	WTO Agreement on Sanitary and Phytosanitary Measures
SPV	Special Purpose Vehicle
SRAM	Static Random Access Memory (chip)
SRO	Special Remission Order (Canada)
SSA	Sub-Saharan Africa
SSAC	Sub-Saharan African Country

SSF Guidelines	Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (FAO)
SSG	Special Safeguard
SSM	Special Safeguard Mechanism
SSN	Resolutions of the National Insurance Supervisory Authority (Argentina)
STDF	WTO Standards and Trade Development Facility
STE	State Trading Enterprise
STO	Special Trade Obligation
SUV	Sport utility vehicle
SVE	Small, Vulnerable Economy
SWAT	Strategic Worker Assistance and Training Initiative
SWIFT	Society for Worldwide Interbank Financial Telecommunications
T&A	Textiles and Apparel
TAA (1st meaning)	Trade Adjustment Assistance
TAA (2nd meaning)	Trade Agreements Act of 1974, as amended
TAAEA	2011 Trade Adjustment Assistance Extension Act
TAA Reform Act	2002 Trade Adjustment Assistance Reform Act
TABC (TBC)	Trans-Atlantic Business Council (also abbreviated TBC)
TABD	Trans-Atlantic Business Dialogue
TAC	Total Allowable Catch
TB	tuberculosis
TBT	Technical Barriers to Trade
TBT Agreement	WTO Agreement on Technical Barriers to Trade
TCOM	Total Cost of Manufacturing
TCP (1st meaning)	Third Country Price
TCP (2nd meaning)	<i>El Tratado de Comercio entre los Pueblos</i> , (“Trade Treaty for the Peoples”)
TCS	Tata Consulting Services
TDA	2000 Trade and Development Act
TDEA	1983 Trade and Development Enhancement Act
TDI	Trade Defense Instrument

TDIC	Tourism Development and Investment Company (Abu Dhabi, UAE)
TEA (1st meaning)	Trade Expansion Act of 1962, as amended
TEA (2nd meaning)	Trade Enforcement Act of 2015, as amended (same as TFTEA)
TED	Turtle Excluder Device
TEO	Temporary Exclusion Order
<i>ter</i>	third version (of a text)
TEU	Twenty Foot Equivalent Unit
TFA	WTO Agreement on Trade Facilitation (Trade Facilitation Agreement)
TFAF	Trade Facilitation Agreement Facility
TFP	Total Factor Productivity
TFR	Total Fertility Rate
TGAAA	2009 Trade and Globalization Adjustment Assistance Act
TIEA	Tax Information Exchange Agreement
TIFA	Trade and Investment Framework Agreement
TIPI	Trade and Investment Partnership Initiative
TIPT	Trade and Investment Partnership Initiative
TISA (TiSA, TSA)	WTO Trade in Services Agreement
TN	NAFTA business visa
TNC	WTO Trade Negotiations Committee
TOT	Terms of Trade
TPA (1st meaning)	Trade Promotion Agreement
TPA (2nd meaning)	Trade Promotion Authority (Fast Track)
TPBI	Thai Plastic Bags Industries
TPC	Technology Partnerships Canada
TPEA	2015 Trade Preferences Extension Act
TPF	United States—India Trade Policy Forum
TPL	Tariff Preference Level
TPM (1st meaning)	Trigger Price Mechanism
TPM (2nd meaning)	Technological Protection Measure
TPP	Trans Pacific Partnership
TPP 11	CPTPP (entered into force 30 December 2018)



TRA	Trade Readjustment Allowance
TRB	Tapered roller bearing
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
TRO	Temporary Restraining Order
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
TV	Television
TVE	Town and Village Enterprise
TVPA	2000 Trafficking Victims Protection Act
TWEA	1917 Trading With the Enemy Act
TWN	Third World Network
UAW	United Auto Workers
UBC	University of British Columbia
U.C.C.	Uniform Commercial Code
UCLA	University of California at Los Angeles
UCP (1st meaning)	Uniform Customs and Practices
UCP (2nd meaning)	Unified Cargo Processing
UE	United Electrical, Radio and Machine Workers of America
UES	United Engineering Steel (U.K.)
UETA	1999 Uniform Electronic Transactions Act
UF	Ultra-filtered (milk)
UF <sub>6</sub>	Uranium Hexafluoride
UI	Unemployment Insurance
UIEGA	2006 Unlawful Internet Gambling Enforcement Act
U.K.	United Kingdom
U.K.CGC	U.K. Carbon & Graphite Company
UMR	Usual Marketing Requirement (FAO)

UMTS	Universal Mobile Telecommunications System
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Conference on the Law of the Sea Treaty
UNCTAD	United Nations Commission on Trade and Development
UNEP	United Nations Environmental Program
UNFCCC	United Nations Framework Convention on Climate Change
UNICA	Brazilian Sugarcane Industry Association
UNITA	National Union for the Total Independence of Angola
UNODA	United Nations Office of Disarmament Affairs
UPA	United Progressive Alliance (India)
UPOV	International Union for the Protection of New Varieties of Plants, referring to 1961 International Convention for the Protection of New Varieties of Plants (revised 1972, 1978, 1991)
UPS	United Parcel Service
UPU	Universal Postal Union
URAA	1994 Uruguay Round Agreements Act
U.S.	United States
USAPEEC	USA Poultry and Egg Export Council
U.S.C.	United States Code
USCCAN	United States Code Congressional and Administrative News
USMCA	United States-Mexico-Canada Agreement (revised FTA based on August 2017–September 2018 renegotiations, informally called NAFTA 2.0, signed 30 November 2018)
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
VC	Venture Capital
VCR	Video Cassette Recorder
VEO	Violent Extremist Organization
VER	Voluntary Export Restraint
VEU	Validated End User
Vienna Convention	1969 Vienna Convention on the Law of Treaties
VOC	Volatile organic compound
VRA	Voluntary Restraint Agreement
VW	Volkswagen AG
W120	WTO services classification list (based on CPC)
WA	1995 Wassenaar Arrangement
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
XITIC	Xiamen International Trade and Industrial Company
ZAC	<i>zone d'aménagement concertée</i> (France)
ZTE	Zhongxing Telecommunications Corp.
1916 Act	Antidumping Act of 1916, as amended (repealed)
1930 Act	Tariff Act of 1930, as amended
1934 Act	Reciprocal Trade Agreements Act of 1934
1934 FTZ Act	Foreign Trade Zones Act of 1934, as amended
1974 Act	Trade Act of 1974, as amended
1978 Act	Customs Procedural Reform and Implementation Act
1979 Act	Trade Agreements Act of 1979
1984 Act	International Trade and Investment Act of 1984 (Trade and Tariff Act of 1984)

1988 Act	United States—Canada Free Trade Implementation Act
1990 Act	Customs and Trade Act of 1990
1993 NAFTA Implementation Act	North American Free Trade Implementation Act of 1993
2002 Act	Trade Act of 2002
2003 Act	Burmese Freedom and Democracy Act of 2003
2007 Act	Implementing Recommendations of the 9/11 Commission Act of 2007
2010 Act	Omnibus Trade Act of 2010
3D	Three dimensional
3PLs	Third Party Logistics Providers
3Ts (3T Issues)	Taiwan, Tiananmen, and Tibet
4Ts (4T Issues)	Taiwan, Tiananmen, Tibet, and The Party (CCP)

# Acknowledgments

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A publication of this breadth and depth is the product of many good and energetic minds. I am blessed by such minds around me that not only contribute to a better product than possibly could be achieved alone, but also make the research and writing process every bit as fun as quiet contemplation (an equally indispensable activity).

This Textbook is “Made in Kansas,” thanks to my Research Assistants (RAs). They came from near and far to the University of Kansas School of Law (KU Law) for their *Juris Doctor* (J.D.) degree, plus earned a Certificate in International Trade in Finance. I asked these talented and cosmopolitan RAs to treat me as a colleague, not a Professor, and take a “hard look” at the drafts. They worked diligently on hundreds of draft pages. I am grateful for their contributions and personal sacrifices.

Listed alphabetically, my KU Law School RAs on this and previous editions of the Textbook are:

Matthew Cooper, J.D. Class of 2015

Owen Andrew Grieb, J.D. Class of 2007

Madeline Heeren, J.D. Class of 2015

David Roy Jackson, J.D. Class of 2007

Lauren E. Johannes, J.D. Class of 2019

Shannon B. Keating, J.D. Class of 2013

Viet Q. Le, J.D. Class of 2019

Heidi Minnihan, J.D. Class of 2014, M.B.A. Class of 2014

Aqmar Rahman, J.D. Class of 2015

Sarah Schmidt, J.D. Class of 2013, M.A. Economics Class of 2013

Bruno Germain Simões, J.D. Class of 2013

Devin S. Sikes, J.D. Class of 2008

Dan Spencer IV, J.D. Class of 2006

Chaline Tinaves, J.D. Class of 2014

Spencer Toubia, J.D. Class of 2015

Eric Witmer, J.D. Class of 2016

Cody N. Wood, J.D. Class of 2017

It is a joy to see each one of them flourish, professionally and personally, in their extraordinary endeavors across the world.

Hearty thanks also go to Carolina Academic Press, especially the Managing Editor, Ryland Bowman. In every respect, at every step, he and his team have been efficient, supportive, and responsive, and consistently worked hard to produce, promote, and distribute a product for teaching and research useful around the globe. In a major endeavor like this one, they are fun professionals with whom to work.

This publication is the blessing of a splendid family. The family improves its quality, so I would not wish it any other way. Actually, it is product of an extended family. The first is my **Research Assistant** family (above). Next is the **Sipe** family: Keith, Linda, Scott, and Caitlin, who have supported me in every professional endeavor since I entered the legal academy in 1989. And there is my immediate family: my smart and lovely wife and best friend, **Kara**; and our poised daughter, **Shera**, our little gift who has matured beyond our best dreams since the previous edition into a smiling, generous college student with a world class intellect and *très chic* sense of fashion.

# Note on Pedagogy

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Is there a single, correct way to teach International Trade Law? Surely not. The Preface and Introduction articulate why this work is subtitled “A Comprehensive Textbook,” highlight its interdisciplinary and Non-Western approach, and explain the importance of both grand theory and technical details. Are some ways of teaching this subject better, and others worse? Surely, yes. The better ways are user-friendly—they invite the reader to the subject, drawing the reader to study in a way that makes that study at once both work and play. Toward this end of fostering an experience that is simultaneously productive and fun, the Textbook uses seven strategies.

- **First: 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 facilitate this presentation. Accordingly, the Textbook aims to avoid disjointedness among readings, and gaps among topics.

- **Second: 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 (notwithstanding its boast that in 2017, no decision exceeded 70 pages—pages, it is worth noting, on A4 paper filled with small font print). 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 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.

- **Third: 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 first-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.

- **Fourth: 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 three editions, the 4th and 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, Director, Pam Crawford, Assistant Director for Public & Technical Services, and Blake Wilson, Assistant Director for Instructional & Faculty Services, for their energetic, enthusiastic, and unflagging support.

- **Fifth: 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.<sup>1</sup>

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



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.”

- **Sixth: Stylistic Conventions**

Readers should not have to fight a text. Rather, the style of the prose they read should be as simple and elegant as possible. When that prose is a law, it should be as clear as possible, except where ambiguity is deliberately intended by the underlying law or policy. To be sure, errors creep into any text, let alone one of major length. Ideally, and through multiple editions, each one entailing corrections to the predecessor, they should be at a minimum.

Toward this end—helping the reader flow with, rather than fight against—this Textbook, I adhere to the following stylistic conventions. First, in citations, I rebel against the tyranny of the *Blue Book*. Instead of slavishly following that aspect of American legal culture, I use consistent, common-sense references that describe all the information (including, where applicable, websites) the reader needs to appreciate and access source materials. Likewise, I avoid excessive citation, and provide a general (and heart-felt) acknowledgment in the Front Material to Volume One.

Second, I rely heavily on the use of abbreviations that are used across the discourse of International Trade Law. Each abbreviation is defined in the Table of Abbreviation, which appears in the Front Material of each Volume. Along with the text itself, this Table explains each term. In turn, knowing those terms and the short-hand notations for them are ingredients for success in study, scholarship, and practice.

Third, with respect to excerpted materials, and on occasion and where appropriate, I make minor stylistic edits. Such edits make no impact on the substance of the passages (which would be inappropriate). Rather, they are designed to be user-friendly, to enhance the reader’s focus on substance by avoiding distractions in style. So, for instance, I correct minor typos, capitalizing certain standard terms, format margins and headings, convert British to American English spelling, use numbered instead of bullet-point or dash lists, and standardize all dates according to the traditional international convention of day-month-year).

- **Seventh: 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.

# Note on Sources

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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 two problems: quantity and quality.

First, the sheer amount 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.”<sup>1</sup> Ms. Wallach called the statement the “same sort of *vague cheerleading*” about “progress and a path to an imminent deal” made since 2011.<sup>2</sup> 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, across all Volumes, I sift through a prodigious volume of sources with a skeptical eye. I need filtering devices. Three of them are the *International Trade Reporter*, *Economist*, and *Financial Times*. These publications have on staff the finest international trade journalists in the English language. Their stories help keep my students and me current. It is neither possible nor desirable to cite each story used.

Yet, special mention deservedly should be made for many pieces by Toshio Ariake, Bryce Baschuk, Nayanima Basu, Ryan Beene, Len Bracken, Rossella Brevetti, Lucien O. Chauvin, Connor Cislo, Stephanie Cohen, Gabrielle Coppola, Joe Deaux,

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1. Quoted in Leslie A. Pappas, *Ministerial Meeting Doesn't Yield Consensus But Leaders in Talks Say Gaps More Narrow*, 31 *International Trade Reporter* (BNA) 1990 (13 November 2014). [Hereinafter, Pappas.]

2. Quoted in Pappas (emphasis added).

Amrit Dhillon, Tony Dutra, Brian Flood, Tom Gilroy, Stephen Gardner, Jennifer Jacobs, Llewellyn Hinkes-Jones, Alexis Kramer, Joe Kirwin, Jenny Leonard, Bengt, Ljung, Eric Martin, Andrew Mayeda, Peter Menyas, Rick Mitchell, Mark Niquette, Toluse Olorunnipa, Chris Opfer, Leslie A. Pappas, Daniel Pruzin, Elaine Ramirez, Jorgelina do Rosario, B.J. Siekierski, Madhur Singh, Justin Sink, Amy Tsui, Justin Villamil, Josh Wingrove, and Gary G. Yerkey in the *International Trade Reporter*, which Bloomberg BNA publishes, and by Alan Beattie, Shawn Donnan, Guy de Jonquières, 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 the BBC, Bloomberg (U.S.), Bloomberg Quint (India), and Reuters for their exceptional coverage of international trade law and policy developments? Thanks also are due to *Al Jazeera*, *Khaleej Times*, *Gulf News*, and *The Gulf Today*, for their coverage of developments concerning trade and the Islamic world? Lawyers operate based on facts as well as law, but whence the hard, reliable facts to exercise good legal judgments? Well-educated, unfettered journalists are one vital source.

Similarly, several Chapters of this Textbook benefit from a large number of official publications of the U.N., World Bank, and WTO, and from some U.S. and foreign 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 the clearest and most concise summary of American foreign trade law contained in any official publication.

What I 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 since 1995, when I prepared that the 1st edition that appeared in 1996. That list grows weekly. The same policy applies to legal sources: a footnote accompanies a direct quote or great dependence; otherwise, a friendly expression here of indebtedness.

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:<sup>3</sup>

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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.

- 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)
- Robert M. Dunn, Jr. & John H. Mutti, *International Economics* (5th ed. 2000)
- Malcolm Gillis et al., *Economics of Development* (4th ed. 1996)
- Robert Gilpin, *The Political Economy of International Relations* (1987)
- Steven Husted & Michael Melvin, *International Economics* (4th ed. 1998)
- Melvyn Krauss, *The New Protectionism* (1978)
- Melvyn Krauss, *How Nations Grow Rich* (1997)
- Paul Krugman, *The Age of Diminished Expectations* (1990)
- Paul R. Krugman & Maurice Obstfeld, *International Economics: Theory and Policy* (4th ed. 1997)
- V.I. Lenin, *Imperialism: The Highest State of Capitalism* (1916, Junius Publications Ltd. ed. 1996)
- Stuart R. Lynn, *Economic Development: Theory and Practice for a Divided World* (2003)
- W. Charles Sawyer & Richard L. Sprinkle, *International Economics* (2003)
- Amartya Sen, *Development as Freedom* (1999)
- Dudley Seers ed., *Dependency Theory—A Critical Reassessment* (1981)
- T.N. Srinivasan, *Eight Lectures on India's Economic Reforms* (2000)
- Robert C. Tucker ed., *The Marx-Engels Reader* (2nd ed. 1978)
- Immanuel Wallerstein, *The Essential Wallerstein* (2000)

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

On GATT topics, it is only natural to peek at my treatise, *Modern GATT Law*, originally published in 2005 and expanded to two-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 draw on Chapters and used sections from 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, Bruno Simões, Eric Witmer, and Cody Wood) assists in many spots.

Confessedly, it is not easy to set aside my views, and in any event, value-free scholarship is impossible. Besides, who wants a Textbook replete with bland regurgitation, but no provocative analysis to ponder? A book without personality is 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.

# Preface to 5th Edition

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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 two 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 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 two features is that International Trade Law 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. For reasons chronicled throughout this Textbook, what the WTO will look like in the coming decades is unclear. The cover graphic on the 21–27 July 2018 issue of *The Economist* displayed a sinking ship with “The Plan to Save the WTO” emblazoned on its hull. And, with or without the WTO, International Trade Law is about far 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.”<sup>4</sup> 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.<sup>5</sup> 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

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4. Quoted in Amrit Dhillon, *Lamy Explains Doha Deadlock as Result of Confusion on Emerging Economies' Role*, 30 *International Trade Reporter* (BNA) 208 (7 February 2013).

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



an average of or nearly 13 annually, and notified the Secretariat at a rate of 24 per year.<sup>6</sup> 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.<sup>7</sup> 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. The auto sector is especially integrated: the average car part crosses the U.S.-Canada-Mexico borders six times before it is incorporated into a finished vehicle.<sup>8</sup> In contrast, imports into the U.S. from China contain an average of just 4% American content.<sup>9</sup> With the death of that Round, the key function of the WTO, other than dispute settlement, monitoring, and research, is as a “market-place 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.”<sup>10</sup>

Thus, the fourth of the four Volumes is dedicated to FTAs. Another reason 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. They 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 Three.

## Curriculum Revolutions and the Canon of International Trade Law

The two features and their implication suggest it is time to revolutionize (again) the way International Trade Law is presented. The 4th edition (2015) aimed to give the field the breadth and depth of coverage it deserves. In that edition, Volume One was dedicated to Fundamental Obligations, and Volume Two to Remedies and

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6. See Bryce Baschuk, *Azevêdo Urges WTO Members to Resolve TFA Impasse; Chides Trade Fragmentation Trend*, 31 International Trade Reporter (BNA) 1767 (2 October 2014).

7. See *Globalization*.

8. See B.J. Siekierski, *No U.S.-Only Auto Content Requirement, Canada Says*, 35 International Trade Reporter (BNA) 104 (18 January 2018).

9. See Brian Flood, *Mexican Ambassador Says NAFTA Nations Have Shared Interests in TPP, Other FTAs*, 30 International Trade Reporter (BNA) 1458 (19 September 2013).

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

Preferences. Those Volumes could be used in a two-semester sequence in International Trade Law. Or, they could be used as separate, stand-alone volumes for individual courses.

Yet in the few years since the 4th edition, International Trade Law has become even broader and deeper than ever before. Many law schools in the U.S. and overseas offer not only a two-semester sequence such as International Trade Law and Advanced International Trade Law, but also a third or even fourth course in the general field of International Trade. Examples of the additional courses include: Customs Law, Trade Remedies, and a variety of “Trade and . . .” courses, such as Trade and Labor, Trade and the Environment, and Trade and National Security.

Hence the new revolution this 5th edition hopes to represent: a four-volume flexible set that can be used in its entirety, or as stand-alone modules for pertinent courses. There should be no need for instructors to expend energy on preparing their own course packs, though certainly they are free to do so. Across these four volumes, all of them together, or any subset thereof, should fulfill their instructional needs and interests. Toward that end, Volume One includes two new Chapters on transactional foundations of free trade. These Chapters review the documentary sale, alleviating the need to supplement the Textbook, or require as a pre-requisite an International Business Transactions course.

Moreover, these volumes should offer them—and their students, plus researchers and practitioners—the “canon” of International Trade Law. Ever since 1 January 1994, when *NAFTA* entered into force, and 1 January 1995, when the WTO agreements from the Uruguay Round took effect, a vast canon has developed far beyond what existed from 30 October 1947, when GATT was signed. Scan the Table of Contents—there is that canon in an organized summary. Scan the Table of Abbreviations—there are the acronyms widely used in canonical discourse. So, to put the point bluntly, there is stuff—a lot of stuff, important stuff, fascinating stuff—to know about International Trade Law in order to be able to speak about the subject intelligently and practice it successfully. Nutshells just will not do for the serious and the ambitious.

## Non-Western Orientation

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 two 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 *Shī'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 Four 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?

In sum, it is a sin to train International Trade Lawyers on the premise of a Eurocentric 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.<sup>11</sup>

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11. *A Chance to Fly*, THE ECONOMIST, 21 February 2015, at 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 (1898–1963) rightly argued 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.

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, *CPTPP* is entering into force among the *TPP* 11, without the U.S., thanks to America’s January 2017 withdrawal from what would have been the largest FTA in human history, covering about 40% of world GDP. (The current *CPTPP* still comprises an impressive 14% of world GDP.) *T-TIP* is dead. Likewise, though hope remains for episodic (and probably plurilateral) agreements on isolated topics, such as *TISA*, the Doha Round, is dead.

Generally, I endeavor in this Textbook to focus on what the law is, especially with respect to the U.S. That *corpus* is vast and deep enough. This Textbook, like its predecessors, emphasizes what already is “on the books.” With roughly 20 GATT-WTO agreements, plus another nearly two dozen U.S. FTAs, plus U.S. Customs Law, trade sanctions, and export control rules, there is plenty to learn. I leave it to other works to deal with what the law “was,” “might be,” or “should be.” So, for example, a full account of the evolution and terms of *CPTPP* is in my *TPP Objectively* (Carolina Academic Press, 2nd ed., 2019), and I avoid overlap between that book and this Textbook.

Table I-1. Global Population and Non-Western World<sup>12</sup>

Issue	Answer or Projection			
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?	2022, at about 1.4 billion (based on fertility rate of 1.6 children per woman)			
Year in which population of India overtakes China, and size, to become most populous country in the World?	2022, at about 1.4 billion (based on fertility rate of 2.5 children per woman)			
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.)	China India U.S. Indonesia	India China Nigeria U.S.	
	Japan Indonesia Germany Brazil Britain Italy	Brazil Pakistan Nigeria Bangladesh Russia Japan	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 *Population Forecasts*, THE ECONOMIST, 15 August 2015, at 31; 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 two 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.

But, what the law “is” depends partly on what it “was,” what it “might have been,” and what arguments about what it “should be.” And, who knows what the law might “become”? Like the river of which Herodotus (484–425 B.C.) wrote, International Trade Law flows continuously. Perhaps like that river, some parts are murky, especially the parts that snake through corridors of ideologically-infused, plutocratic power inside the Beltway and in Washington, D.C.? In the monstrously polarized environment inside that Beltway, political statements about contours, details, and timing are as loose pebbles on the river bed.

In the meantime, teachers have to guide their students across the river, that is, they have to teach. To navigate those waters with my students, getting them across to become world-class practitioners and scholars in International Trade Law is my duty, quest, and passion. Among these students are many in 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.

## Invitation to Chat

The Preface to every Edition of *International Trade Law* concludes 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. Future Editions of *International Trade Law* can be better than this 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. And, please know that the views expressed throughout this Textbook do not necessarily reflect those of the institutions with which I am or have been associated, including KU and Dentons.

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

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The specific overture to mitigate the dramatic tension between argumentation and neutrality is to provide cogency to the Textbook through 10 Propositions. These Propositions are on what International Trade Law is, or ought to be, about.<sup>13</sup> 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

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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 September 2012), [www.wto.org](http://www.wto.org); *Lamy Suggests "Essential Principles" for Reform of Global Governance*, WTO NEWS: SPEECHES (21 September 2012), [www.wto.org](http://www.wto.org).



them in trade talks will be reciprocity with a little flexibility. If the second, then it would be flexibility with a little reciprocity.<sup>14</sup>

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%.<sup>15</sup> 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 LDCs, their average *per capita* income is just 4% of that of developed countries.<sup>16</sup>

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).<sup>17</sup> 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.<sup>18</sup> Not surprisingly, therefore, there is a vast corpus of literature challenging globalization generally, and free trade in particular. Among the leading works

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14. Quoted in Amrit Dhillon, *Lamy Explains Doha Deadlock as Result of Confusion on Emerging Economies' Role*, 30 *International Trade Reporter* (BNA) 208 (7 February 2013).

15. See WORLD TRADE ORGANIZATION, 2014 *WORLD TRADE REPORT* 2014 (20 October 2014), [www.wto.org](http://www.wto.org).

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 October 2014, [www.wto.org](http://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 November 2013), [www.state.gov/secretary/remarks/2013/11/217680.htm](http://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 *International Trade Reporter* (BNA) 245 (6 February 2014) (also reporting the above-mentioned statistics).



are *Has Globalization Gone Too Far?* (1997) and *Straight Talk on Trade* (2018), both by Dani Rodrik (1957–), and *Globalization and its Discontents* (2002), *Fair Trade for All* (2005), *Making Globalization Work* (2004), and *The Great Divide: Unequal Societies and What We Can Do About Them* (2015), all by Joseph Stiglitz (1943–), World Bank Chief Economist (1997–2000), and 2001 Nobel Economics Prize winner. There also is an impressive counter-literature, the leading works of which include those by Jagdish Bhagwati (1934–)—*The Wind of the Hundred Days: How Washington Mismanaged Globalization* (2002), *Free Trade Today* (2003), *In Defense of Globalization* (2007), *Termites in the Trading System: How Preferential Agreements Undermine Free Trade* (2008), and *Why Growth Matters: How Economic Growth in India Reduced Poverty and the Lessons for Other Developing Countries* (2013, with Arvind Panagariya)—plus *Why Globalization Works* (2004), by Martin Wolf, CBE (1946–). Each book is to be taken seriously, especially by law students, legal scholars, and practicing lawyers. The authors are not lawyers, which makes their analysis of the world trading system for which lawyers write and apply rules all the more important.

Summarizing much less synthesizing the literature in the debate about globalization and trade liberalization is fraught with peril. That said, there is no doubt inequality is severe and worsening. The debate tends to be about the causal factors (*i.e.*, is globalization and free trade to blame for inequality?) and policy prescriptions (*i.e.*, is more or less globalization, and freer trade, the way to lessen socioeconomic stratifications and alleviate poverty)?<sup>19</sup> But, as to the problem of inequality *per se*, the evidence is clear. 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).<sup>20</sup> 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

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19. One notable policy shift came in August 2018, when the New Zealand's Labor government, led by Prime Minister Jacinda Ardern (1980, PM, 2017–) banned all foreigners from buying existing homes in the country (except for Australians and Singaporeans, because of FTA commitments, and foreigners with residency status). Average home prices in New Zealand had risen over 60%, and in Auckland had doubled, in the previous decade (2008–2017). The law, the *Overseas Investment Amendment Bill*, which passed Parliament on a 63–57 vote, was designed to eliminate demand from wealthy foreigners (particularly Mainland Chinese), but also increase the supply of affordable housing, by allowing them to make limited investments in new apartments in large developments—in other words, to cause an inward shift in the demand curve, and an outward shift in the supply curve, in the New Zealand property market. See *New Zealand Bans Sale of Homes to Foreigners*, BBC NEWS, 15 August 2018, [www.bbc.co.uk/news/world-asia-45199034](http://www.bbc.co.uk/news/world-asia-45199034). As New Zealand's Minister of Trade and Economic Development, David Parker (1960–), said:

This government believes that New Zealanders should not be outbid by wealthier foreign buyers. Whether it's a beautiful lakeside or ocean-front estate, or a modest suburban house, this law ensures that the market for our homes is set in New Zealand, not on the international market.

Quoted in *id.*

20. See *Richest 1% To Own More than Rest of World*, Oxfam Says, BBC News, 19 January 2015, [www.bbc.com/news/business-30875633](http://www.bbc.com/news/business-30875633) (reporting results of an Oxfam study).

billion) in just 4 years (2011–2014). Conversely, the material wealth (such as it was) of the poorest 50% of the world 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 one-third 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 two-thirds of the nation's growth in income. And, in 2015, the top 1% of American families (those with gross incomes of at least \$421,926) made over 26.3 times more than the bottom 99% of families (those with gross incomes of no more than \$50,107).<sup>21</sup> The growing divide is a nationwide phenomenon: from 2009 to 2015, the family income gap between the top 1% and bottom 99% increased in 43 States and the District of Columbia. In contrast, between 1928 and 1973, the share of income held by America's top 1% declined in nearly every State. Simply put, income growth for the bottom 99% has been sluggish, but for the top 1% has been breathtaking, for nearly 50 years.

So breathtaking that there is a new socioeconomic class, the *über-rich*. That 82% of the world's wealth is held (as of January 2018) by 1% of the world's population, and that the poorest half of the world's population got no increase in money generated, are shocking testaments to the widening top-bottom gap.<sup>22</sup> So, too, is the fact that just 42 people (in 2018) had as much wealth as the poorest half of the world's population (meaning greater concentration of wealth, as the figure was 61 in 2017). 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."<sup>23</sup> While hardly alone to blame, the rules some of them work to bend include those of the GATT-WTO and FTA regimes.

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21. See Estelle Sommeiller & Mark Price, *The New Gilded Age: Income Inequality in the U.S. by State, Metropolitan Area, and County*, Economic Policy Institute 19 July 2018, [www.epi.org/publication/the-new-gilded-age-income-inequality-in-the-u-s-by-state-metropolitan-area-and-county/](http://www.epi.org/publication/the-new-gilded-age-income-inequality-in-the-u-s-by-state-metropolitan-area-and-county/); Carmen Reinicke, *U.S. Income Inequality Continues to Grow*, CNBC, 19 July 2018, [www.cnbc.com/2018/07/19/income-inequality-continues-to-grow-in-the-united-states.html](http://www.cnbc.com/2018/07/19/income-inequality-continues-to-grow-in-the-united-states.html).

22. See Katie Hope, "World's Richest 1% Get 82% of the Wealth," *Says Oxfam*, BBC NEWS, 22 January 2018, [www.bbc.com/news/business-42745853](http://www.bbc.com/news/business-42745853).

Oxfam's analysis relies on the *Credit Suisse Global Wealth Report*, [www.credit-suisse.com/corporate/en/research/research-institute/global-wealth-report.html](http://www.credit-suisse.com/corporate/en/research/research-institute/global-wealth-report.html). This *Report* measures the net worth of an individual's assets, *i.e.*, the total value of real and personal property she owns, minus her indebtedness. Thus excluded are wages or income, which for millions in developing countries such as India and Vietnam have risen. And, indebted persons who may have a high-future income earning potential (*e.g.*, students), are cast as poor. Nevertheless, if the combined wealth of the world's poorest half is adjusted to exclude net indebted persons, the wealth of that poorest half sums to that of the 128 (rather than 42) of the richest people—still a highly skewed distribution.

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

Inequality has a worrying negative psychological externality: stress. Research by Richard Wilkinson (1943–) and Kate Pickett (1965–), FRSA, British social epidemiologists at the University of York, presented in their 2019 book, *The Inner Level: How More Equal Societies Reduce Stress, Restore Sanity and Improve Everyone's Well-being*, which builds on their 2009 book, *The Spirit Level: Why More Equal Societies Almost Always Do Better*, helps explain why “[t]he world’s richest large country [America], the city on a hill, sometimes seems to be coming apart.” Their books, in turn, advance the work of German-American social psychologist Erich Fromm (1900–1980), who in *The Sane Society* (1955), chronicled the strains American put on themselves by working long hours to afford and accumulate ever-more consumer goods.

Professors Wilkinson and Pickett point out that mental illness is higher in less equal societies—one in 10 Germans and Japanese, versus one in five Australians and Britishers, versus one in four Americans. Their explanation for the connection between mental health and inequality is “status anxiety,” that is:

stress related to fears about individuals’ places in social hierarchies. Anxiety declines as incomes rise, . . . but is higher at all levels in more unequal countries—to the extent that the richest 10% of people in high-inequality countries are more socially anxious than all but the bottom 10% in low-inequality countries. . . . [In essence,] it is a person’s relative position rather than absolute income that matters most. . . . It is not enough to lift all boats . . . if the poshest vessels are always buoyed up more than the humblest.

. . .

[A]s inequality rises, differences in status become harder to ignore. There is more to be gained or lost by moving from one rung on the ladder to another. . . . The steeper the income gradient, the less secure everyone becomes, in both their self-respect and their sense of the community’s esteem.<sup>24</sup>

The specific mental ills are well-known: depression, narcissism, and schizophrenia. Americans compensate by:

tak[ing] pills, to steel their nerves or dull the pain. Some cut themselves. Some adopt a more submissive posture, avoiding contact with others. . . .

Others respond in the opposite way, by behaving more aggressively and egotistically. [Indeed,] . . . narcissistic tendencies showed a steep increase between 1982 and 2006 . . . : 30% more Americans displayed narcissistic characteristics at the end of the period than at the beginning. . . .

Domineering responses to anxiety are associated with loss of empathy and delusions of grandeur. . . . [T]he rich are generally less empathetic and more likely to think they deserve special treatment than others.<sup>25</sup>

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24. *The Crack-Up*, THE ECONOMIST, 71–72, 16 June 2018 (reviewing *The Inner Level*). [Hereinafter, *The Crack-Up*.]

25. *The Crack-Up*.

Is free trade to blame for these woes? Of course not. At least, trade liberalization is not the sole cause, nor even a major one. Moreover, there are many intervening variables between laws that free up trade, on the one hand, and socioeconomic status and mental states, on the other hand. Yet, free trade is part of the American *laissez-faire* Capitalist ethic, and “[m]odern Capitalism . . . selects for assertiveness, for a lack of sentimentality in business and comfort in sacking underlings, and for showy displays of strength.”<sup>26</sup> Trade liberalization can have salubrious psychological externalities, opening up a world of opportunities to realize dreams unimaginable under autarky, and fostering a joyful cosmopolitan demeanor appreciative global interdependence. It also can produce some nasty, insecure characters.

Corresponding with the rise in inequality and mental illness, 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, international trade supported one out of every 10 American jobs.<sup>27</sup> Two decades later, roughly spanning the period between the 1st and 4th editions of this Textbook, trade accounted for one out of every five 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 (1949–), 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.

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26. *The Crack-Up*.

27. See Len Bracken, *Ryan Says TPA Is Top Priority, Outlines Extensive Trade Agenda*, 32 International Trade Reporter (BNA) 334 (12 February 2015) (quoting Representative Paul Ryan (Republican-Wisconsin), Chairman, House Ways and Means Committee).

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.<sup>28</sup>

Mr. Trumpka had empirical support for his position: 72% of Mexico's exports went to the U.S. (as of 2017).<sup>29</sup> That fact bespeaks not only Mexico's dependence on the American market (which, amidst difficult *NAFTA* renegotiations, it sought to reduce by boosting trade with Asia, the EU, and South America), but also the extent to which Mexican imports penetrated the American market (and thus could be blamed for U.S. job losses and wage declines). Asked succinctly, then, ever since *NAFTA*, has American trade policy been "corporatized," resulting in growth and poverty?

Again, free (or freer) trade is not necessarily the most important cause of these woes, or a 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. So, too, is an inability to adapt to ineluctable automation. Human capital enhancement is essential.

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28. Quoted in Michael Rose, *Trumpka Outlines AFL-CIO Priorities For Future Trade Agreements Including TPP*, 31 *International Trade Reporter* (BNA) 620 (3 April 2014).

29. See Eric Martin & Toluse Olorunnipa, *Mexico Wants August NAFTA Deal as Trump Vows "Dramatic" Action*, 35 *International Trade Reporter* (BNA) 106 (26 July 2018).

## 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.<sup>30</sup> 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. (In October 2015, the World Bank updated the definition of “extreme poverty” to approximately \$1.90 per day, thus adding 148 million to its ranks, with 136 million of the increase in Asia and 8 million in Africa.<sup>31</sup>) But, they lack the hallmark of the middle class: financial security. The Asian Development Bank defines “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 traveler in the Non-Western World. They are 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

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30. 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 April 2014, at 7. Many of the points, and more, are treated in Thomas Piketty’s best-seller, *Capital in the Twenty-First Century* (2014).

31. See Shawn Donnan, *Rise in World Bank Poverty Threshold Set to Push Millions More Below the Line*, FINANCIAL TIMES, 24 September 2015, at 1. The World Bank inaugurated the dollar-a-day metric in 1990, and was criticized for statistical arbitrariness in settling on a figure.

However, the Bank also said extreme poverty, meaning those below the new \$1.90 per day figure, had fallen from 12.8% in 2012 to 9.6% at year-end 2015 (and from 37.1% in 1990 and 29% in 1999 of the world’s population). The drop was due to progress in East Asia and the Pacific (with a decline in that region from 7.2% to 4.1% of its population, and from 60% in 1990). The worst afflicted regions were Sub-Saharan Africa, areas dependent on commodity exports, and conflict zones. See World Bank: *Extreme Poverty “To Fall Below 10%,”* BBC NEWS, 5 October 2015, [www.bbc.com/news/world-34440567](http://www.bbc.com/news/world-34440567).



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. They 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 traveler—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) 50% of world GDP.<sup>32</sup> But, assuming cooler heads prevail in the Non-Western World, then heed should be paid to certain facts and projections.

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

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.

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.<sup>33</sup>

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.”<sup>34</sup>

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.<sup>35</sup> 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.

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

34. *Beaker*.

35. See Ye Xie, *Made-in-America Revival Signals Emerging Trouble: Currencies*, 31 International Trade Reporter (BNA) 932 (22 May 2014).



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.<sup>36</sup>

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.<sup>37</sup> The U.S. “will retain its central role, because it will remain the only country able to mobilize coalitions to address global challenges.”<sup>38</sup>

Hence, as the NCI put it, America in 2030 still will be “first among equals.”<sup>39</sup> 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

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

37. 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 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 October 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.”

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

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

endearment with Europe justified by comfort zones but not facts or forecasts, with consequent Euro-centrism 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 behind it?

Though hopefully not, perhaps so. That is because of demographics (Europe is full of grey hair), finances (Europe is effectively bankrupt), vigor (Europe is tired), secularism (Europe denies its roots), Brexit (Europe lost its second largest economy on 29 March 2019), and chaos (for example, over refugee and asylum policy). No less than the first non-European Pope in 1,300 years, Francis (1936–), said as much in November 2014 in a speech to the European Parliament (the legislature for the then 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 by] the *bureaucratic technicalities of its institutions*. . . .

. . .

Europe seems to give the impression of being somewhat *elderly and haggard*, feeling 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.<sup>40</sup>

These realities, not to mention the feeling in the cities, towns, villages, market-places, 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

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40. *Pope Calls European Parliament to Rejuvenate “Grandmother” of Europe*, CATHOLIC NEWS SERVICE, 25 November 2014, [www.catholicnews.com/data/stories/cns/1404908.htm](http://www.catholicnews.com/data/stories/cns/1404908.htm) (emphasis added).

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. Consider his statement to the 2014 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.<sup>41</sup>

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 to change or get exemptions from rules—so called “differentiated” treatment.

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

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41. *Message of Pope Francis to the World Economic Forum in Davos*, 17 January 2014, [www.news.va/en/news/message-of-pope-francis-to-the-world-economic-foru](http://www.news.va/en/news/message-of-pope-francis-to-the-world-economic-foru).

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."<sup>42</sup> 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.<sup>43</sup> 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 increased production capacity at its four plants in Alabama, Indiana, and Ohio. As America's fifth 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?<sup>44</sup>

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

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

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

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 its birth: there was a show of hands to approve the accession of Ecuador.<sup>45</sup> 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 one country, one 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.”<sup>46</sup> 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.”<sup>47</sup> 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.<sup>48</sup> Signed in December 1992, *NAFTA* dis-

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45. See Daniel Pruzin, *WTO Bali Package in Limbo; Cuba, Latin American Allies Block Deal*, 30 International Trade Reporter (BNA) 1920 (12 December 2013).

46. See Daniel Pruzin, *G-20 Leaders to Call for Greater Transparency in Regional Free Trade Talks*, 30 International Trade Reporter (BNA) 1339 (5 September 2013).

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

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

cussions 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 “mega-regionalism,” 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 one smaller deal between two countries by one of them entering another smaller deal with a third country is less 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.<sup>49</sup>

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49. 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 two 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 all 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 December 2013, at 11 (citing research by Edward Allen, Council on Foreign Relations); Edward Alden, *Obama: Building Trade to Build Growth*, *REUTERS*, 5 December 2013; <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. That also is true for other developed countries, even with respect to advanced developing countries like Mexico.



## 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 another dimension of power. Geopolitics is making way for geoeconomics.<sup>50</sup>

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 gun-boat 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

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Mexico (as of March 2017) has an average MFN tariff on manufactured goods of 8%, and 20% on agricultural goods.

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 November 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.

50. Philip Stephens, *Trade Trumps Missiles in Today's Global Power Plays*, *FINANCIAL TIMES*, 22 November 2013, at 9.



Palestine (with respect to the disputed boundary of the two 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. They combat gross income disparities and argue they need 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 everyday Indians have enjoyed since Independence from Britain on 15 August 1947.<sup>51</sup> 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).

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51. 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 International Trade Reporter (BNA) 1975 (6 November 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).

India boasts the third largest economy in the world, following China and America.<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup> 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 India's progress.<sup>55</sup>

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.

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52. 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.

53. See Stephanie Cohen, *Obama, Modi Agree to High-Level IP Working Group, Financing, Infrastructure Initiative*, 31 International Trade Reporter (BNA) 1748 (2 October 2014).

54. 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.)

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

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 a 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.<sup>56</sup> 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 second 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.<sup>57</sup> 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 second 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 first and second 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 competition from China on an MFN basis is a causal factor in the failure of

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56. 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 March 2013, [www.wto.org](http://www.wto.org).

57. See *China to Overtake*.

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). Marking the end of the 2016 calendar year, senior CCP leader Yu Zhengsheng intoned:

Chinese Catholics must run their church independently, implying at arm's length from the Vatican, and guide believers on a "Sinicisation path". . . .

. . .

Catholics should "run their church independently and better integrate it into society". . . .

"The church should adhere to the principles of self-administration, run religious affairs independently and guide believers to adhere to the Sinicisation path of the religion". . . .

. . .

The Sinicisation of religion is likely a reference to bringing religion under Chinese influence.

Chinese Catholics must "unify patriotism with affection for the Church" and "unite all believers to contribute to construction of the socialism with Chinese characteristics". . . .<sup>58</sup>

"Sinicisation" is an Orwellian term. It means religion should be "under Chinese influence," which in turn means the faithful should put their faith not first in God,

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58. *Catholics in China Should Integrate into Socialist Society*—Senior Party Official, REUTERS, 30 December 2016, <http://mobile.reuters.com/article/worldNews/idUSKBN14J16I>. [Hereinafter, *Catholics in China*.] Yu Zhengsheng, who leads a body associated with the parliament to represent Chinese of different faiths, was speaking at the government-approved Chinese Patriotic Catholic Association and Bishops Conference of Catholic Church of China. See *id.*

but in the CCP.<sup>59</sup> It is anything but separation of Church and state; rather, it is the subordination of Church to state. It is not about rendering unto Caesar the things that are Caesar's, and unto God the things that are God's (Christ's teaching sourced in all three synoptic Gospels—*Matthew* 22:15–22, *Mark* 12:13–17, and *Luke* 20:20–26); rather it is about rendering everything to Caesar, and unto God leftovers Caesar discards. 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 (1935–) (because only one approved by the CCP is authorized) and intervenes in the Apostolic succession dating back over 2,000 years to the Chair of Saint Peter, instituted by Christ, by ordaining bishops without a Papal mandate.<sup>60</sup>

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 two Nobel Peace Prize winners—the Dalai Lama (1989) and Liu Xiaobo (2011)—but persecuting them both. Many WTO Members would subscribe to the principles in Charter '08, authored by Liu Xiaobo (1955–2017). 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.

Now the CCP faces the unprecedented challenge of resolving a Sino-American Trade War catalyzed by the Section 232 and 301 actions brought by the Administration of President Donald J. Trump (1946–, President, 2017–), but caused in part by fundamental ideological and structural problems in the China. Ideologically, can the CCP lead the economy to an advanced, post-industrial state the sources of growth of which are technology, IP, and innovation, when nothing in Marxist-Leninist theory tells it how to move beyond industrialization? Structurally, can the CCP loosen its grip over nearly all aspects of Chinese life to breathe life into the economy to propel it to that state, anticipating that it also will have to embrace political reforms and champion inalienable liberties as they are properly understood in International Human Rights Law?

## 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

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59. *Catholics in China*.

60. See, e.g., John Thavis, *Vatican Condemns Illegitimate Ordination of Bishop in China*, CATHOLIC NEWS SERVICE, 5 July 2011, [www.catholicnews.com](http://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).

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

Consider these grim facts:<sup>61</sup>

- (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 1L 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% two years after graduation, but that still is double the average.)
- (2) Suicide is the third 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).<sup>62</sup> 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 five 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.

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

62. See Susie Steiner, *Top Five Regrets of the Dying*, THE GUARDIAN, 1 February 2013, [www.guardian.co.uk/lifeandstyle/2012/feb/01/top-five-regrets-of-the-dying/print](http://www.guardian.co.uk/lifeandstyle/2012/feb/01/top-five-regrets-of-the-dying/print).

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