

DICTIONARY OF INTERNATIONAL TRADE LAW

Third Edition

Including FTA and Historical Research Tools

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Wikipedia Entry:

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

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DEDICATION

To my wife and best friend, Kara, whose support defines the word “love.”

PREFACE TO THE 3RD EDITION

Why write a dictionary? Surely it is a most pedestrian of pursuits? Surely it allows the mind to escape hard research towards a cogent book or article? On the one hand, surely the mental faculties will atrophy? The mind will descend into the complacency of writing a few paragraphs about an idiosyncratic medley of terms. On the other hand, surely the task is an impossible one? Even when a dictionary is confined to a specific subject, as is the present volume, the boundaries of the subject enlarge, the vocabulary expands, the contexts in which words are used change, and the theoretical concepts associated with terminology evolve.

One self-indulgent answer is love for words, the concepts they embody, and the environments in which they are deployed. That is my case. Dictionaries always have been a source of fascination and enjoyment. Writing a dictionary is a chance to indulge those intellectual delights. It is a chance to learn more about terms with which I may have passing familiarity, and an opportunity to widen terms in my vocabulary. In so doing, it invites me to study books and articles I have long sought to approach. Yet, that is not the answer – or, at least, not the principal one.

Love for students, is a second, less self-indulgent, more obvious, answer than the first response. International Trade Law is a highly technical field, with a vocabulary of its own. That is increasingly so. To make matters more difficult, and exciting, International Trade Law is inter-disciplinary, thus so, too, is its terminology. Other subject areas, not the least of which is economics, influence the vocabulary of trade. Economics has its own lingo. Thus, a dictionary can serve the needs and interests of students, as well as scholars and practitioners, to de-mystify the terminology of International Trade Law, and allied fields. Put simply, the jargon is a non-tariff barrier (NTB) to entry into the discipline. Why not try to reduce that barrier a bit, especially to encourage newcomers to consider entering this fascinating area?

A third, and the most theoretical, answer veers more towards a sense of the importance of words. Understanding the meaning of words advances our vocabulary and knowledge base. Precision in meaning also helps us identify points of agreement, and narrow points of disagreement. That benefit is critical for lawyers, who, after all, are specially trained to be peacemakers. The more we lawyers know about terms, the more accurate we can be in the way we use them, the more command we will have as professionals, and the better service we can be to others.

In the field of International Trade Law, if there is anything to the theory that trade may enhance peace, then perhaps understanding better the words that constitute the field could support that salubrious outcome. Trade is, after all, a field in which many voices speak with sharper and more rhetoric, in louder volumes. Some of the talking that goes past different sides, and the dialogue of the deaf, might be mitigated if speakers in the trade debate gave great

(or greater) care to defining and even economizing on their words – and lowering the decibel level. In brief, maybe a dictionary can be a reference in service of a desirable global goal.

That answer, of course, depends on the quality of the dictionary. The enterprise of preparing the First and Second Editions of the *Dictionary of International Trade Law* was partly a re-confirmation of how little I know of this marvelous field, and of how much space there is yet into which to grow. It became apparent, and quickly so, that the title *Encyclopedia of International Trade Law* would be too grandiose, and over-sell the volume in a way redolent of how some politicians exaggerate the benefits (or costs) of free trade. But, a journey must start somewhere, with a few steps. The adjective “encyclopedic” was and remains a lodestar for those steps.

Like its predecessor, this Third Edition tries to be comprehensive in defining terms in the field regularly encountered by students, scholars, and practitioners everyday around the world. It seeks, further, to cover as many terms in the related disciplines of Development Economics and International Economics, as they are relevant to International Trade Law, as possible. In so doing, like an encyclopedia, the *Dictionary of International Trade Law* provides references to additional reading for many entries. Note, then, the three audiences: students (again, especially in law and allied graduate programs); scholars (in law schools and allied graduate programs); and practicing attorneys (whether in government, the private sector, non-governmental organizations (NGOs), or international organizations). These audiences are global, because trade tautologically is.

Supplementing the definitions of terms, elaborations of the contexts in which they are used, and exposition of the theories underlying terms, are Free Trade Agreement and Historical Research Tools. They are set forth in Annexes A and B, respectively. International Trade Law is a field in which careful research is indispensable, but – alas – time is precious. The Annexes, along with the definitions themselves, aim to assist in this asymmetric milieu. Toward that end, a vital innovation in the Third Edition of the *Dictionary* is the Note entitled “Critical Analysis of *Trans Pacific Partnership (TPP)*.”

Also supplementing many of the definitions of terms are *Suggestions for Further Research*. The *Suggestions* are publications in various formats (books, law review articles, book chapters, and other sources), generally from January 1995 through December 2014. These dates are admittedly arbitrary, and some publications of interest either pre- or post-date the boundaries.

Confessedly, when I began the First Edition of the *Dictionary*, I had in my research files publications dating to at least the mid-1990s. That happenstance explains the starting date for the *Suggestions*. The Second Edition was a roughly 100 percent expansion from the First Edition (1,228 versus 690 pages, respectively). So, to continue to list sources would have put the *Dictionary* on an unsustainable trajectory: the *Dictionary* would have become more of a source index than a lexicographic resource. The *Suggestions* would have dwarfed definitional entries. That explains the ending date for the

Suggestions of December 2014. Of course, a scholar or attorney competent in the field of International Trade Law could justify this end point as being of special importance in the history of this field, namely, from the birth of the World Trade Organization (WTO) into roughly the first two decades of the life of the WTO.

In any event, scholarship in the field of International Trade Law has burgeoned, while informational technology and its search engines have become faster and more thorough. So, it is neither possible nor necessary to list all potentially relevant publications as *Suggestions*. That the *Suggestions* are adequate to commence further research, *i.e.*, they are a reasonable starting point, is what matters.

I eschew listing any of my own publications in the *Suggestions*. Indeed, I recommend strongly that the work of others be consulted. Should the reader be interested in my publications, the reader may find them on the University of Kansas School of Law website (www.law.ku.edu). Virtually all of them are freely downloadable from the Social Science Research Network (SSRN) and KU ScholarWorks.

No dictionary is a static reference. To maintain, and better yet enhance, its quality, new editions are necessary. Each Edition is a commitment to that upward trajectory. That commitment could not be made without the marvelous support of Research Assistants (RAs) at the University of Kansas School of Law – past, present, and future. With their contributions, the importance of which I cannot overstate, and the comments of readers who consult this *Dictionary* – even if for little purpose other than to check a narrow point – the volume might gain the reputation of “encyclopedic.”

With all good wishes,

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Simply put, this *Dictionary* is not possible without the contributions of my world-class Research Assistants (RAs) at the University of Kansas School of Law (KU Law). Each worked diligently and with enthusiasm, even under considerable time pressure, on many facets of the *Dictionary*. Each added at least one distinct signature to the final product, thus putting their specialization at KU Law in International Trade and Finance to immediate use. I am deeply thankful to all of them.

- **Elaine Nobel Albach** (J.D. expected 2016) came to KU Law after earning undergraduate degrees in International Business and Political Science at Oklahoma State University, which involved coursework in Egypt just before the Arab Spring. Following her 1L year, she studied law Turkey and Ireland. She plans to practice International Trade Law in Texas and/or abroad.
- **Burke C. Barnett** (J.D. expected 2017) came to KU Law after receiving his degree in International Political Science from Drury University. He plans a career in International Law, particularly involving the United States and China. He lived in China, worked for the Office of Textiles and Apparel at the Department of Commerce, and continues to study Mandarin.
- **Joshua Allen DeMoss** (J.D., MA (Russian, Eastern European, and Eurasian Studies) expected 2017) came to KU Law from the United States Air Force, in which he enlisted and from which he received a scholarship to study Russian language. He is proficient in Russian and Ukrainian. He used his linguistic talents in various internships in Russia at think tanks, such as the Institute of Europe at the Russian Academy of Sciences, and at the law firm Egorov, Puginsky, Afanasiev, and Partners. Josh has a passion for the former Soviet Union, and for International Trade and Finance. Thus, he plans to help foster economic and political stability by working in International Trade Law, or as a Foreign Service Officer.
- **Alex Gilmore** (J.D. expected 2016) earned his Bachelor of Arts in Classical Antiquity with Minors in Philosophy and Art History at KU. His background in Art History led him to pursue an Externship working at KU's Spencer Museum of Art. Evincing his hard work at the Law School, Alex earned a CALI Award for the top performance in the *Advanced International Trade Law* course for his paper discussing on India's National Solar Mission. He plans to practice International Trade Law.
- **Owen Andrew Grieb** (J.D. 2007) practiced international business law, making good use of his fluency in Japanese, in Tokyo. He managed to place second in a major New York-based customs and international

trade law writing competition while working on the *Dictionary*. He meticulously checked a large number of entries, and filled in many missing pieces. Owen is now Amazon Japan's supply chain finance manager, leading a team responsible for optimizing Amazon's cost structure and customer experience.

- **Beau Jackson** (J.D. 2009) practices international trade law in Kansas City with the Washington, D.C.-based firm of Adduci, Mastriani & Schaumberg, L.L.P., specializing in Section 337 litigation, trade remedies investigations, customs matters, and trade policy. He previously held internships at the Office of the United States Trade Representative (USTR) and U.S. House of Representatives Ways and Means Trade Subcommittee. Beau puts his proficiency in Portuguese – gained while in the Peace Corps in Cape Verde – to good use. Beau added considerable substance to the many entries concerning Africa.
- **David Roy Jackson** (J.D. 2007), who passed the Customs Broker examination while helping with this *Dictionary*, and interned at the United States Department of Agriculture (USDA), practiced Customs and International Trade Law in Kansas City with the renowned Miller & Company law firm, employing to good ends his fluency in Chinese. David Jackson's work on the Free Trade Agreement (FTA) Tables, his extraordinary efforts on the Tables concerning the EU and China, plus his help with agricultural terms, was at the level of a seasoned trade lawyer. After KU Law School, he earned a Masters (LL.M.) degree in Food and Agriculture Law from the University of Arkansas, and joined a law firm specializing in international trade and food and drug law in Washington, D.C. He is now a Customs and Licensing Manager (practicing Customs, Alcohol, Tobacco, Firearms (ATF), and Export Control Law) with Pacific Architects and Engineers in the Washington, D.C. area.
- **Shannon B. Keating** (J.D. 2013) came to KU Law after working on trade and development issues with a consulting firm (Fontheim International) and a non-governmental organization (NGO) (the Trade, Aid, and Security Coalition), both in Washington, D.C., and while in Law School did international business work with Sprint in Kansas City. Shannon Keating re-vamped several entries of key terms. Her record at KU Law in the *International Trade Law* and *Advanced International Trade Law* classes was brilliant, evidenced by a CALI Award for the top performance on the *Trade* final examination. Shannon practices International Trade and Development Law in Washington, D.C. as an Attorney for with an NGO, New Markets Lab, and as such travels to Africa.
- **Elizabeth Landau** (J.D. 2012) came to KU Law after getting credentialed and gaining experience as a Minister. While interning in Kansas City and Washington, D.C., and completing her final year of legal studies, Elizabeth worked on intricate topics such as the *Harbor Maintenance Tax* case, and briefed a number of WTO Appellate Body

reports. Evidencing her hard work at KU Law, she earned a CALI Award for the top performance on the final *International Trade Law* course examination. She practices Family and Human Rights Law in the New York and Washington, D.C. areas.

- **Heidi Minnihan** (J.D., M.B.A. 2014) meticulously analyzed the environmental provisions in America's FTAs. She put her business acumen to work, served in senior leadership positions of the Women in Law group at KU Law, and continued horseback riding. After interning with the FBI in Kansas City, Heidi joined Ernst & Young in Chicago, where she specializes in Global Regulation and Compliance.
- **Matt Odom** (J.D. 2010) came to KU Law after serving as a United States Army Enlisted Infantryman. He is a Veteran of Operation Iraqi Freedom, with experience in Baghdad (2005-2006). That led to a keen interest in International and Comparative Law, including Human Rights and Humanitarian Law. After earning his J.D. degree, Matt earned advanced degrees in Library Science and Tax. He is a licensed Customs Broker, and practices in Colorado.
- **Sarah Schmidt** (J.D., MA (Economics) 2013) joined KU Law after working at a large law firm in Washington, D.C. While working on this *Dictionary*, she completed not only her law degree, but also a Master's degree in Economics, plus an internship at the European Union (EU) in Washington, D.C. Evidencing the breadth of her knowledge and interests, Sarah earned the top performance on the final examination in *Islamic Law (Shari'a)* at KU Law. Sarah contributed roughly 30 new entries from scratch, and updated scores more. She also single-handedly produced the table on Japan's Economic Partnership Agreements (EPAs). She is an Attorney in Dubai, United Arab Emirates (UAE) for Middle East Broadcasting (MBC).
- **Devin S. Sikes** (J.D. 2008) clerked on the United States Court of International Trade (CIT), and thereafter joined the Department of Commerce (Import Administration) as an Attorney working on trade remedy cases, including at the World Trade Organization (WTO). Devin Sikes provided much fine research on entries concerning Latin America, provided first-class information, on short notice, for some other critical entries, and was dogged in his pursuit of *Statements of Administrative Action*. He continues to put his fluency in Spanish to good use, and most recently clerked for the Court of Appeals for the Federal Circuit.
- **Chaline Tinaves** (J.D. 2014) applied her legal acumen to the labor provisions in all of America's FTAs, which she compared and contrasted. A native of Thailand and avid traveler, Chaline was an intern after her 1L year with the USTR, and an extern with the DOC in Washington, D.C., as a 3L. Chaline is an Attorney in private practice in Houston and Washington, D.C., specializing in Export Controls and Trade Sanctions.

- **Cody Wood** (J.D. expected 2017) became interested in International Trade Law through his fascination with how transnational networks form and influence the development of global society. He earned his undergraduate degrees at KU in Economics and Philosophy. While at KU Law, Cody worked not only as an RA, but also in Ulaanbaatar at the National Legal Institute of the Government of Mongolia. There, he helped economic and social reforms in the Mongolian legal with a view to foreign arenas. Cody plans a career in which he can facilitate creation of novel solutions to legal conflicts that inevitably arise when emerging markets integrate with the world economy.

We were blessed to have great fun amidst our productive endeavors. It is a great consolation to know they are professionally – and, more importantly, personally – happy.

Of course, I take full responsibility for any and all errors in the *Dictionary*, and am most grateful if the reader kindly brings them to my attention at the above coordinates.

NOTE ON SOURCES

This *Dictionary* is drawn from a prodigious number of sources. Space does not permit a full list of the hundreds of law books, book chapters, and articles I have examined, in varying degrees of intensity, over the years, and to which I remain indebted. That list grows daily. I am indebted to each source for teaching me something new about International Trade Law. The convention I follow is to cite a source, by way of a footnote, in instances of a direct quote from, or direct dependence on, that source. Any other approach would turn this *Dictionary* into little else than a long list of sources.

Yet, it is only proper to acknowledge certain exceptionally high-quality sources explicitly. They cover, in particular, international economics and development economics. They are standard references, core texts, and assorted materials. I consult them extensively and joyfully:

- AUSTRALIAN BUREAU OF AGRICULTURAL AND RESOURCE ECONOMICS, REFORMING WORLD AGRICULTURAL TRADE POLICIES (1999)
- P.T. BAUER, DISSENT ON DEVELOPMENT (1976)
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- IMMANUEL WALLERSTEIN, *THE ESSENTIAL WALLERSTEIN* (2000)
- CHARLES J. WOELFEL, *ENCYCLOPEDIA OF BANKING & FINANCE* (10th ed. 1994)

To prepare this *Dictionary*, I also rely on a monstrously large number of news stories from the *International Trade Reporter* (BNA), *Economist*, and *Financial Times* beginning as far back as 1993. In my humble estimation, these publications include the finest journalists on international trade in the English language. Their stories, which stuff three file cabinets in my garage, help keep my students and me current. It is quite literally impossible to cite every story I have used. In any event, I suspect the reader would find little value added by a nearly endless list of media stories.

However, special mention deservedly should be made for the many pieces by Toshio Aritake, Bryce Baschuk, Len Bracken, Rossella Brevetti, Lucien O. Chauvin, Stephanie Cohen, Amrit Dhillon, Tony Dutra, Brian Flood, Tom Gilroy, Joe Kirwin, Peter Menyasaz, Rick Mitchell, Leslie A. Pappas, Daniel Pruzin, Madhur Singh, Amy Tsui, and Gary G. Yerkey in the *International Trade Reporter*, which Bloomberg BNA publishes, and by Alan Beattie, Guy de 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, the *Dictionary* would be nothing but a multi-volume citation list, were I not to adopt a simple policy: a footnote appears to accompany a direct quote, or extensive use of key data. In brief, may I express my deepest thanks and respect for these publications and their staff? May I also express gratitude to *Al Jazeera*, *Khaleej Times*, *Gulf News*, and *The Gulf Today*, for their coverage of developments concerning trade and the Islamic world?

Similarly, several entries of the *Dictionary* benefit from a large number of official publications of the United Nations (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 what I believe to be 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 *Dictionary* editions resonates in the present edition. Space does not permit a full list of the hundreds of law books, book chapters, and articles I have examined over the years, and to which I remain indebted. That list grows daily. The same policy applies to legal sources: a footnote accompanies a direct quote or great dependence.

Finally, it is readily apparent none of my own publications are mentioned above. That omission is purposeful. It is essential the reader know the *Dictionary* is not intended to be a recycling bin, or a marketing device, for my prior work. To be sure, efficiency dictates some degree of overlap with earlier work. Still, adding value mandates examining new and different sources from around the globe. The result ought to be new, insightful, and synthetic. Should the reader find it relevant to pursue any of my other works, they may be found through a variety of search tools, and are listed on the University of Kansas School of Law website (<http://www.law.ku.edu>).

NOTE ON FREE, ONLINE, DOWNLOADABLE DOCUMENTS

All pertinent primary source International Trade Law documents, and several secondary materials, are posted *gratis* on the website of the University of Kansas Wheat Law Library. The links are:

General University of Kansas Wheat Law Library:

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

International Trade Law Documents:

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

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

