

Table of Contents

PREFACE	III
ABOUT THE AUTHOR	V
Foreword. Politics Matter	1

PART ONE. WORLD TRADE LAW

Chapter 1. World Trade Law	7
INTRODUCTION	8
§ 1.0 Trade Deficits, Patterns and Treaties	8
§ 1.1 The General Agreement on Tariffs and Trade (GATT 1947)	21
§ 1.2 The GATT 1947 Multinational Trade Negotiations (Rounds)	26
THE WORLD TRADE ORGANIZATION	28
§ 1.3 The World Trade Organization (WTO 1995).....	28
§ 1.4 WTO Decision-Making	34
§ 1.5 WTO Agreements and U.S. Law	36
§ 1.6 Import/Export Quotas and Licensing, Textiles and Clothing	37
§ 1.7 GATT/WTO Nontariff Trade Barrier Codes.....	39
§ 1.8 The WTO Agreement on Agriculture	42
§ 1.9 The General Agreement on Trade in Services (GATS).....	43
§ 1.10 The WTO and Rules of Origin.....	46
§ 1.11 The Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPs)	47
§ 1.12 The Trade-Related Investment Measures Agreement (TRIMs).....	52
§ 1.13 The Optional WTO Public Procurement Code	53
§ 1.14 WTO Dispute Settlement	55
§ 1.15 U.S. Involvement in WTO Disputes	65
§ 1.16 China Involvement in WTO Disputes	69

PART TWO. CUSTOMS AND IMPORT LAW

Chapter 2. United States Trade and Tariff Law	75
U.S. TRADE LEGISLATION AND ADMINISTRATIVE AUTHORITIES.....	76
§ 2.1 U.S. International Trade Administration (ITA)	76
§ 2.2 U.S. International Trade Commission (ITC)	77
§ 2.3 U.S. Court of International Trade (CIT)	78

§ 2.4	The USTR, Free Trade Agreements and U.S. Fast Track Negotiations	80
	UNITED STATES TARIFFS	83
§ 2.5	Overview of U.S. Tariffs and Duty-Free Entry.....	83
§ 2.6	The Origins of United States Tariffs	86
§ 2.7	Column 1 U.S. Tariffs and the GATT/WTO	87
§ 2.8	Column 2 U.S. Tariffs.....	88
§ 2.9	The Jackson-Vanik Amendment.....	89
	DUTY-FREE ENTRY TO THE UNITED STATES.....	91
§ 2.10	U.S. Generalized System of Tariff Preferences (GSP)— Statutory Authorization	91
§ 2.11	U.S. GSP—USTR Petition Procedures.....	92
§ 2.12	U.S. GSP—Competitive Need Limitations	93
§ 2.13	U.S. GSP—Country Eligibility.....	94
§ 2.14	U.S. GSP—Product Eligibility	97
§ 2.15	U.S. GSP—Graduation.....	99
§ 2.16	U.S. GSP—Judicial and Administrative Remedies	99
§ 2.17	U.S. Caribbean Basin Initiative (CBI)	100
§ 2.18	CBI Country Eligibility	101
§ 2.19	CBI Product Eligibility	103
§ 2.20	U.S. Andean Trade Preferences.....	105
§ 2.21	U.S. African Trade Preferences	105
§ 2.22	Section 9802.00.80 of the USHTS.....	106
§ 2.23	Maquiladoras	107
§ 2.24	Section 9802.00.80 Case Law.....	110
§ 2.25	Duty-Free Access to Multiple Markets.....	112
 Chapter 3. Customs Classification, Valuation and		
	Origin	115
	CLEARING U.S. CUSTOMS	116
§ 3.1	Entry Formalities	116
§ 3.2	The U.S. Customs Service	117
§ 3.3	The Customs Cooperation Council (CCC)	118
§ 3.4	Customs Documentation and Liability.....	118
	U.S. CUSTOMS CLASSIFICATION.....	121
§ 3.5	Calculating U.S. Customs	122
§ 3.6	International Sources of Law on Classification of Goods and Valuation	124
§ 3.7	Classification of Goods—Sample Provisions of the U.S. Harmonized Tariff System.....	126
§ 3.8	Classification of Goods—Headings in the USHTS	129
§ 3.9	Classification of Goods—Notes in the USHTS	129
§ 3.10	Classification of Goods—Columns in the USHTS	129
§ 3.11	Classification of Goods—Applying the HTS General Rules of Interpretation	130

§ 3.12	Classification of Goods—Additional U.S. Rules of Interpretation.....	135
§ 3.13	Classification of Goods—United States Customs Service, Guidance for Interpretation of Harmonized System	136
§ 3.14	Classification of Goods—U.S. Court Decisions	138
RULES OF ORIGIN		139
§ 3.15	Determining Origin Under U.S. Rules	141
§ 3.16	U.S. Rules of Origin—Sources of Law	142
§ 3.17	Rules of Origin—U.S. Substantial Transformation Test	145
CUSTOMS VALUATION		147
§ 3.18	Valuation—the Law of the GATT/WTO	148
§ 3.19	Valuation—United States Law	148
§ 3.20	Valuation—Appraisal of Imported Merchandise	149
§ 3.21	Valuation—Transaction Value	149
§ 3.22	Valuation—Deductive Value.....	153
§ 3.23	Valuation—Computed Value	154
§ 3.24	Valuation—Value When Other Methods Are Not Effective.....	156
Chapter 4. Antidumping Duties		157
INTRODUCTION.....		158
§ 4.0	Antidumping and Countervailing Duties.....	158
§ 4.1	WTO Authorized Trade Remedies	158
§ 4.2	Dumping—What Is It and Why Is It Done?.....	159
§ 4.3	The WTO Antidumping Agreement (1994)	160
U.S. ANTIDUMPING LAW		162
§ 4.4	The Evolution of U.S. Antidumping Law	162
§ 4.5	The Basic U.S. Dumping Determination.....	164
§ 4.6	Foreign Market Value (“Normal Value”).....	165
§ 4.7	Sales Below Cost Disregarded	167
§ 4.8	Nonmarket Economy Constructed Values, Surrogate Countries	167
§ 4.9	Market Economy Constructed Values	169
§ 4.10	United States Price.....	170
§ 4.11	“Foreign Like Product” Determinations and Required Adjustments	171
§ 4.12	The U.S. Injury Determination.....	173
§ 4.13	The “Like Product” and Relevant Domestic Industry Determinations	174
§ 4.14	Material Domestic U.S. Injury.....	175
§ 4.15	Threat of Material Domestic U.S. Injury	179
§ 4.16	Material Retardation of a U.S. Industry	181
§ 4.17	Causation	181

§ 4.18	Cumulative Causation.....	183
§ 4.19	Negligible Dumping.....	184
§ 4.20	Other U.S. Antidumping Law Issues	184
§ 4.21	U.S. Antidumping Procedures—Petition and Response.....	185
§ 4.22	U.S. Antidumping Administrative Determinations	187
§ 4.23	The Importance of the ITA Preliminary Dumping Determination.....	190
§ 4.24	U.S. Antidumping Duty Reviews.....	191
§ 4.25	U.S. Anti-Circumvention Rules	191
§ 4.26	Appeals—United States Courts.....	192
§ 4.27	WTO and NAFTA/USMCA Appeals	193
§ 4.28	WTO Rulings on U.S. Antidumping Law, Zeroing, the Byrd Amendment	194
§ 4.29	Text of WTO Antidumping Agreement	196
Chapter 5. Subsidies and Countervailing Duties		215
INTRODUCTION.....		216
§ 5.1	Subsidies and International Trade.....	216
§ 5.2	Historical Introduction to U.S. CVD Law	219
U.S. COUNTERVAILING DUTY LAW		220
§ 5.3	Two U.S. Statutory Tests	220
§ 5.4	U.S. Implementation of the WTO SCM Agreement	221
§ 5.5	The U.S. Subsidy Requirement.....	222
§ 5.6	The U.S. Specificity Requirement.....	223
§ 5.7	Export Subsidies	224
§ 5.8	Domestic U.S. Subsidies.....	225
§ 5.9	Upstream Subsidies.....	226
§ 5.10	<i>De Minimis</i> Subsidies	227
§ 5.11	U.S. CVDs and Nonmarket Economies	227
§ 5.12	The U.S. Injury Determination.....	229
§ 5.13	“Like Product” and Relevant U.S. Industry Determinations	230
§ 5.14	Material U.S. Injury	231
§ 5.15	Threat of U.S. Material Injury.....	233
§ 5.16	Material Retardation.....	234
§ 5.17	Causation	234
§ 5.18	Cumulative Causation.....	235
§ 5.19	U.S. Countervailing Duty Procedures	236
§ 5.20	U.S. Administrative Determinations.....	237
§ 5.21	The Importance of the ITA Preliminary Subsidy Determination.....	240
§ 5.22	CVDs and Anti-Circumvention	241
§ 5.23	U.S. Court Appeals, Binational NAFTA/USMCA Panels	242

§ 5.24	WTO SCM Proceedings	243
§ 5.25	Text of WTO Agreement on Subsidies and Countervailing Measures (SCM)	245

Chapter 6. Safeguard Proceedings, Trade Adjustment

Assistance	273
INTRODUCTION	273
§ 6.1 Temporary Relief from Import Competition	273
§ 6.2 The Impact of Limited U.S. Judicial Review	274
§ 6.3 The WTO Safeguards Agreement	275
U.S. SAFEGUARD PROCEEDINGS	277
§ 6.4 U.S. Safeguard Proceedings—Petitions	277
§ 6.5 USITC Investigations	278
§ 6.6 U.S. Statutory Criteria for Safeguard Relief	279
§ 6.7 Relevant Domestic U.S. Industry	279
§ 6.8 Substantial Causation	281
§ 6.9 Serious U.S. Domestic Industry Injury	283
§ 6.10 USITC Safeguard Relief Recommendations	285
§ 6.11 Presidential Relief Decisions	286
§ 6.12 Special U.S. Safeguard Rules for Chinese Imports	290
§ 6.13 WTO Rulings on U.S. Safeguard Actions	291
U.S. TRADE ADJUSTMENT ASSISTANCE	293
§ 6.14 U.S. Trade Adjustment Assistance—Individual and Company Assistance Criteria	293
§ 6.15 Secretary of Labor Determinations	296
§ 6.16 Text of WTO Agreement on Safeguards	298

Chapter 7. U.S. Nontariff Trade Barriers and Disputes... 305

§ 7.1 U.S. Import Quotas and Restraints	305
§ 7.2 U.S. Nontariff Trade Barriers (NTBs)	312
§ 7.3 U.S. Public Procurement Preferences as NTBs	319
§ 7.4 U.S. TBT Code Disputes	324
§ 7.5 U.S. Import Labeling TBT Disputes	327
§ 7.6 U.S. Foreign Trade Zones and Bonded Warehouses	330

Chapter 8. Counterfeit and IP Infringing Imports..... 333

INTRODUCTION	333
§ 8.1 Trade in Counterfeit Goods	333
§ 8.2 Counterfeit Goods, U.S. Remedies	334
§ 8.3 U.S. Customs Service Remedies and Seizures	335
§ 8.4 Infringement Actions in U.S. Courts	338
§ 8.5 U.S. Criminal Prosecutions	339
§ 8.6 International Solutions to Counterfeiting	340
U.S. SECTION 337 PROCEEDINGS	341
§ 8.7 U.S. Section 337 Proceedings	341
§ 8.8 Section 337 Proceedings—Complaint and Response	343

§ 8.9	Section 337 Proceedings—Temporary Relief	345
§ 8.10	Section 337 Proceedings—Administrative Process	346
§ 8.11	Section 337 Proceedings—Sanctions	347
§ 8.12	Section 337 Proceedings—Settlements	347
§ 8.13	Section 337 Proceedings—ITC Public Interest Review	348
§ 8.14	Section 337 Proceedings—ITC General Exclusion and Cease and Desist Orders	349
§ 8.15	Section 337 Proceedings—Presidential Veto	350
§ 8.16	Section 337 Proceedings—ITC Opinion Letters	351
§ 8.17	Section 337 Proceedings—Exclusion of Patent Infringing Imports	351
§ 8.18	Text of Section 337 (19 U.S.C.A. § 1337).....	354
Chapter 9. Gray Market Imports		365
§ 9.1	Trade in Gray Market Goods	365
§ 9.2	U.S. Genuine Goods Exclusion Act.....	366
§ 9.3	U.S. Section 337 Remedies.....	368
§ 9.4	U.S. Trademark, Copyright and Patent Remedies.....	368
§ 9.5	Treatment of Gray Market Imports in Non-U.S. Jurisdictions	371

PART THREE. EXPORT LAW

Chapter 10. United States Export Controls, Boycotts and Sanctions.....		377
§ 10.0	International and U.S. Trade Law on Exports	378
EXPORT ADMINISTRATION CONTROLS (EAR)		379
§ 10.1	EAR Governance of Exports, Deemed Technology Exports, ECRA Amendments, CFIUS Links	379
§ 10.2	The Meaning of a “License” to Export	384
§ 10.3	U.S. Export Administration Regulations (EAR), Enhanced Proliferation Control Initiative (EPIC).....	385
§ 10.4	Steps for Using the U.S. EAR	386
§ 10.5	EAR—General Prohibitions	387
§ 10.6	EAR—Determination of the Applicability of the General Prohibitions, Re-Exports.....	387
§ 10.7	Overview of BIS Export Controls	388
§ 10.8	The U.S. Commerce Control List (CCL).....	388
§ 10.9	U.S. License Requirements and Exceptions	390
§ 10.10	The U.S. Commerce Country Chart (CCC)	391
§ 10.11	Determining the Need for a License.....	391
§ 10.12	U.S. Export Licenses—Advisory Opinions	392
§ 10.13	Issuance and/or Denial of U.S. Export Applications	393
§ 10.14	Timetable for Application Review	394
§ 10.15	Issuance of a U.S. Export License	394

§ 10.16	Revocation or Suspension of a License	394
§ 10.17	Review of Export Applications by International Agencies.....	395
§ 10.18	Shipper's U.S. Export Declaration (SED)	395
§ 10.19	Sanctions for EAR Violations.....	396
§ 10.20	U.S. Administrative Proceedings and Denial Orders	399
INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR).....		400
§ 10.21	Traffic in Arms Regulations (ITAR)	400
U.S. BOYCOTTS		404
§ 10.22	U.S. Boycotts	404
§ 10.23	OFAC Regulations and Sanctions	405
§ 10.24	Specially Designated Nationals and Entities, SDN Blacklists	408
Chapter 11. The United States Boycott of Cuba.....		413
§ 11.1	The Boycott of Cuba, Normalization Ups and Downs	413
Chapter 12. United States Anti-Boycott Law		423
§ 12.1	The Arab Boycott of Israel	423
§ 12.2	U.S. Federal Anti-Boycott Law	424
§ 12.3	U.S. Export Administration Act (EAA)	425
§ 12.4	Export Administration Regulations (EAR)	425
§ 12.5	Prohibited Intentional Actions.....	426
§ 12.6	Refusals to Deal	426
§ 12.7	Discriminatory Actions.....	428
§ 12.8	Furnishing Information Regarding Race, Religion, Sex or National Origin	429
§ 12.9	Furnishing Information Regarding Business Relationships—"Blacklists".....	430
§ 12.10	Prohibition of Intentional Evasion	432
§ 12.11	Reporting Requirements for Requests	432
§ 12.12	U.S. Anti-Boycott Violations and Enforcement	436
§ 12.13	U.S. Private Rights of Action	437
Chapter 13. Foreign Corrupt Practices.....		439
INTRODUCTION		439
§ 13.0	The U.S. Foreign Corrupt Practices Act (FCPA)	440
§ 13.1	History of the FCPA	441
§ 13.2	FCPA Amendments in 1988 and 1998	442
§ 13.3	Summary of FCPA Prohibitions and Sanctions.....	443
U.S. FCPA AND GLOBAL ANTI-CORRUPTION RULES		445
§ 13.4	FCPA—Who Is Covered?.....	445

§ 13.5	FCPA—Prohibited and Exempted Payments, Sanctions	445
§ 13.6	FCPA—Accounting Standards.....	447
§ 13.7	FCPA—What Is Given?	448
§ 13.8	FCPA—Acting “Corruptly”	448
§ 13.9	FCPA—Foreign Officials	449
§ 13.10	FCPA—Foreign Political Party, Official or Candidate	450
§ 13.11	FCPA—Any Person “While Knowing”	451
§ 13.12	FCPA—“Grease” Payments.....	451
§ 13.13	FCPA—Payments Lawful Under “Written” Laws	453
§ 13.14	FCPA—“Reasonable and Bona Fide Expenditures”	453
§ 13.15	FCPA—U.S. Enforcement Actions.....	454
§ 13.16	FCPA—Consent Decrees	458
§ 13.17	FCPA—DOJ Review Process	458
§ 13.18	U.S. Private Rights of Action	459
§ 13.19	U.S. Employee Suits	459
§ 13.20	U.S. Suits Charging Competitor with Violation of FCPA	461
§ 13.21	OECD and United Nations Conventions, British Bribery Act	462
§ 13.22	Corrupt Practices Compliance Programs, Warning Signs	464
§ 13.23	Text of the Foreign Corrupt Practices Act	467
§ 13.24	DOJ and SEC FCPA Resource Guide Link (2020)	473

Chapter 14. Unilateral U.S. Section 301 Trade

	Sanctions	475
§ 14.1	Foreign Country Practices and U.S. Export Access	475
§ 14.2	The Evolution of Section 301	476
§ 14.3	The Impact of the WTO Dispute Settlement Understanding, Trump Tariffs	478
§ 14.4	Section 301—Mandatory Versus Discretionary Offenses and Remedies.....	479
§ 14.5	Section 301—Statutory Definitions	481
§ 14.6	Section 301—Petitioning and Procedures	482
§ 14.7	Section 301—USTR Determinations	485
§ 14.8	Section 301 in Action Prior to the WTO	485
§ 14.9	Text of Section 301 (19 U.S.C.A. § 2411).....	489

PART FOUR. TECHNOLOGY TRANSFERS ACROSS BORDERS

	Chapter 15. Technology Transfers Across Borders.....	499
	TRADEMARKS AND FRANCHISING.....	501
§ 15.1	Franchising Abroad	501

§ 15.2	International Trademark Protection	502
§ 15.3	Quality Controls in Franchising	504
§ 15.4	Copyright Protection in Franchising	504
§ 15.5	Protection of Franchise Trade Secrets	505
§ 15.6	The Franchise Agreement, U.S. Franchising	506
§ 15.7	Regulation of International Franchising	509
§ 15.8	The Paris Convention as Applied to Trademarks.....	511
§ 15.9	The Nice Agreement on Trademark Classification	512
§ 15.10	International Trademark Registration Treaties	512
	COPYRIGHTS	513
§ 15.11	Protecting Copyrights.....	513
§ 15.12	International Copyright Protection	514
	PATENTS, KNOWHOW AND LICENSING	516
§ 15.13	Patents and Knowhow.....	516
§ 15.14	Protecting Patents	516
§ 15.15	International Acquisition of Patents	518
§ 15.16	Protecting Knowhow and Trade Secrets	520
§ 15.17	International Patent and Knowhow Licensing.....	521
	TECHNOLOGY TRANSFER AGREEMENTS.....	523
§ 15.18	Technology Transfer Agreements	523
§ 15.19	Developing World Regulation of Technology Transfers (TT)	525
§ 15.20	Technology Transfer Agreements as Part of Foreign Direct Investment.....	527
§ 15.21	The Impact of U.S. Antitrust Law on Technology Transfers	528
	CHINA TECHNOLOGY TRANSFERS.....	530
§ 15.22	China IP Law	530
§ 15.23	Technology Transfers to the PRC	533
§ 15.24	Made in China 2025.....	536
	EU TECHNOLOGY TRANSFERS.....	540
§ 15.25	EU Technology Transfer Regulations	540
§ 15.26	Text of EU Technology Transfer Regulation 772/2004	544
§ 15.27	Text of EU Technology Transfer Regulation 316/2014	555

PART FIVE. FREE TRADE

Chapter 16. Free Trade from NAFTA to Trump	569
INTRODUCTION.....	570
§ 16.0 U.S. Fast Track Procedures and Free Trade Agreements	570
§ 16.1 Canada-U.S. Free Trade (CUSFTA, 1989).....	572
§ 16.2 Getting to NAFTA 1994	583

NAFTA	585
§ 16.3 NAFTA 1994—Goods, Rules of Origin	585
§ 16.4 NAFTA 1994—Energy.....	591
§ 16.5 NAFTA 1994—Services	593
§ 16.6 NAFTA 1994—Foreign Investment.....	597
§ 16.7 NAFTA 1994—Arbitration of Investment Disputes.....	603
§ 16.8 Investor-State Arbitrations Under NAFTA 1994	606
§ 16.9 NAFTA 1994—Intellectual Property.....	613
§ 16.10 NAFTA 1994—Other Provisions.....	620
§ 16.11 Dispute Settlement Under NAFTA 1994	622
§ 16.12 The 1994 Side Agreements on Labor and the Environment	627
§ 16.13 Expanding NAFTA 1994	637
§ 16.14 Quebec and NAFTA.....	638
POST-NAFTA FTAs	639
§ 16.15 Free Trade Agreements (FTAs) After NAFTA 1994.....	639
§ 16.16 Content Changes in U.S. FTAs from NAFTA to President Trump.....	641
§ 16.17 The Canada-EU Comprehensive Economic and Trade Agreement (CETA 2017)	643
§ 16.18 Pacific Rim Free Trade: ASEAN, RCEP, China, Hong Kong, Japan, Russia, South Korea, and India....	644
§ 16.19 European Union FTAs—BREXIT.....	650
Chapter 17. Trump and Biden on Free Trade.....	653
§ 17.1 The Trans-Pacific Partnership (TPP-12, 2016) and TPP-11	653
§ 17.2 KORUS Re-Negotiated (2018).....	657
§ 17.3 The USMCA Agreement (2020)	659
USMCA PROVISIONS WITH LITTLE CHANGE FROM NAFTA	662
NEW OR NOTABLY REVISED USMCA PROVISIONS COMMON TO ALL PARTNERS	663
CANADA UNDER THE USMCA	671
MEXICO UNDER THE USMCA.....	672
RATIFICATION	674
USMCA OVERVIEW	675

PART SIX. BEYOND TRUMP

Chapter 18. International Trade Beyond Trump: Biden	679
§ 18.1 America First and Trump Tariffs	679
§ 18.2 A Tech-Driven U.S.-China Tariff and Trade Sanctions War.....	687

§ 18.3 Trump and Biden on the World Trade Organization696

§ 18.4 The Impact of COVID-19.....698

§ 18.5 U.S. Trade Alliances Beyond Trump700

Documents Appendix 705

1. General Agreement on Tariffs and Trade (GATT)705

2. Agreement Establishing the World Trade Organization (WTO)759

3. Decision on Measures in Favour of Least-Developed Countries770

4. WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)772

5. WTO Agreement on Technical Barriers to Trade (TBT Standards Code)796

6. WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Code).....807

7. WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).....817

Directory of Other Documents Located in Chapters

HTS General Rules of Interpretation.....131

WTO Antidumping Agreement.....196

WTO Subsidies and Countervailing Measures Agreement245

WTO Safeguards Agreement298

Section 337 of U.S. Tariff Act of 1930354

U.S. Genuine Goods Exclusion Act368

U.S. Foreign Corrupt Practices Act.....467

Section 301 of U.S. Trade Act of 1974489

EU Technology Transfer Regulation 772/2004.....544

EU Technology Transfer Regulation 316/2014.....555

TABLE OF CASES843

INDEX849