

TABLE OF CONTENTS

	Page
Chapter 1 Money, Currency and Finance in International Trade	1
§ 1.01 Foreign Exchange Transactions	2
[1] Money and Currency	2
[2] Foreign Exchange	3
[3] Foreign Exchange Markets	5
[4] Regulating Foreign Exchange Rates	5
[a] The Gold Standard	7
[b] The Bretton Woods Agreement	8
[c] The Contemporary Floating Rate System	9
[5] Managing Foreign Exchange Risk	10
[a] Derivatives in General	10
[b] Forward Contracts	11
[c] Currency Futures Contracts	13
[d] Options	14
[e] Swaps	15
[i] Interest Rate Swaps	16
[ii] Currency Swaps	18
[f] Asset Securitization	20
§ 1.02 International Payments	23
[1] International Banking Regulation	23
[a] The Basel Accord	24
[b] Basel II	25
[2] Electronic Systems	26
[a] Wholesale Electronic Funds Transfer (EFT)	26
[b] Herstatt Risk	27
[c] SWIFT Payment Instructions	28
[d] Fedwire	28
[e] Clearing House Interbank Payment System (CHIPS)	30

	Page
[f] Foreign Funds Transfer Systems	33
[3] Countertrade	34
[a] Barter	34
[b] Counterpurchase	35
[c] Buyback, Offset and Swap Transactions	35
§ 1.03 The International Monetary Fund	36
[1] Organization	36
[2] Contributions and Quotas	37
[3] Loans and Exchange Transactions	37
[a] Lending Criteria	38
[b] Conditionality	39
[c] Criticisms of Conditionality	41
[4] Other IMF Functions	43
[a] Currency Exchange Rate Surveillance	43
[b] Technical Training and Assistance	44
§ 1.04 The World Bank	44
[1] General Structure and Operation	44
[2] Lending Activities	45
[3] Criticisms of World Bank Activities	46
 Chapter 2 The Rules of International Trade	 49
§ 2.01 General Considerations	50
[1] Free Trade and Comparative Advantage	50
[2] Tariffs	51
§ 2.02 The World Trade Organization (WTO)	52
[1] History — GATT to WTO	52
[2] Membership and Organization	53
[a] Membership	53
[b] Joining the WTO — The Accession of China	54
[c] Organization	56
[3] The Basic Agreements	57
[4] Specific Agreements	58
[a] GATT and Tariff Bindings	59
[b] Uruguay Round Agricultural Agreement (URAA)	59

	Page
[c] Agreement on Sanitary and Phytosanitary Measures (SPS)	60
[d] Agreement on Textiles and Clothing (ATC)	62
[e] The General Agreement on Trade in Services (GATS)	63
[f] Trade Related Aspects of Intellectual Property Rights (TRIPS)	65
[5] Unfair Trade Practices and Safeguards	69
[a] Anti-Dumping Agreement	69
[b] Agreement on Subsidies and Countervailing Measures (SCM)	70
[c] Agreement on Safeguards	74
[6] Non-tariff Barriers	75
[a] Technical Barriers to Trade (TBT)	76
[i] Customs Valuations	77
[ii] Rules of Origin	77
[iii] Import Licensing and Preshipment Inspection	78
[7] Dispute Resolution Mechanism	78
[a] Dispute Resolution Procedure	79
[b] Concerns About the Dispute Resolution Mechanism	82
§ 2.03 Environmental Protection and Trade	82
[1] Multilateral Environmental Agreements	83
[2] The WTO Committee on Trade and Environment	85
[3] WTO Environmental-Trade Disputes	86
[4] NAFTA Chapter 11 Disputes	90
§ 2.04 International Intellectual Property Rights	94
[1] The World Intellectual Property Organization (WIPO)	95
[2] Trade Related Intellectual Property Agreement (TRIPS)	95
[3] Patents	96
[4] Trademarks	97
[5] Copyrights	99
[6] Trade Secrets	100

	Page
Chapter 3 United States Trade Laws	103
§ 3.01 Import Restrictions	104
[1] General Considerations	104
[2] Tariffs	105
[a] The Harmonized Tariff Schedule	106
[b] Country of Origin Rules	107
[c] Special Entry Status	108
[3] Preferential Tariff Rates	108
[a] Most Favored Nation (MFN) or Normal Trade Relations (NTR)	108
[b] Special Tariff Reduction Programs	109
§ 3.02 Trade Remedy Laws	110
[1] Interaction of U.S. and WTO Rules	110
[2] Subsidies and Countervailing Duties (CVD)	112
[a] CVD Investigations	113
[b] Countervailable Subsidies	113
[3] Anti-Dumping Law	114
[a] AD Proceedings	115
[b] Third Country Dumping	116
[4] CVD and AD Procedures	116
[a] Investigations	116
[b] Preliminary Determinations	117
[c] Final Determinations	118
[d] Determining Material Injury for CVD and AD Purposes	118
[e] Termination or Suspension of Investigations	119
[f] The AD or CVD Order	120
[g] Administrative Review	120
[h] Sunset Review	121
[i] Anti-Circumvention Authority	122
[j] Appeals	123
[5] <i>Safeguard</i> Import Relief	124
[a] Petitions and Investigations	124
[b] Action Decisions	125

	Page
[c] Monitoring, Modification, and Termination	126
[6] Unfair Import Practices — Section 337	127
[a] Procedure	127
[b] Remedies	128
[7] Section 301 Proceedings	129
[a] Petitions and Investigations	130
[b] Mandatory and Discretionary Action	131
[c] Implementation of Action	132
[d] Special 301: Intellectual Property Rights Disputes	133
§ 3.03 Export Controls	134
[1] Multi-Lateral Export Control Regimes	134
[a] Background	134
[b] Wassenaar Arrangement	134
[2] U.S. Export Controls	135
[a] Regulatory Agencies	136
[b] Department of Commerce Export Controls	136
[c] Items and Activities Subject to Export Control Rules	137
[d] Deemed Exports	138
[e] End-Use or End-User Restrictions	139
[f] Restricted Persons	139
[g] Country Controls	140
[h] Penalties	140
[3] Economic Sanctions	141
[4] Anti-Boycott Laws	143
[a] Prohibited Activities	144
[b] Reporting Requirements	146
[c] Penalties	146
[d] Anti-Boycott Tax Legislation	146
[5] Foreign Corrupt Practices Act	147
[a] Coordination With the OECD Bribery Convention	147
[b] Accounting Rules	148
[c] Bribery Rules	149

	Page
[d] Penalties	150
[e] Company Compliance Programs	150
Chapter 4 International Sales	151
§ 4.01 International Contracts for the Sale of Goods	153
[1] In General	153
[2] The Convention on Contracts for the International Sale of Goods (CISG)	154
[a] “Opting out” of the CISG	155
[b] Scope of Application of the CISG	156
[c] Contract Formation	157
[d] Battle of the Forms	158
[e] Statute of Frauds and Parol Evidence	159
[f] Assurances of Performance	160
[g] Buyer’s and Seller’s Obligations and Remedies . .	161
[h] Seller’s Right to Cure	162
[i] Risk of Loss	163
[j] <i>Force Majeure</i>	163
§ 4.02 Incoterms	164
[1] Group E — Departure	165
[a] EXW (Ex Works, Factory)	165
[2] Group F — Carriage Unpaid	165
[a] FCA (Free Carrier)	165
[b] FAS (Free Alongside Ship)	166
[c] FOB (Free Onboard Ship)	166
[3] Group C — Carriage Paid	167
[a] CFR (Cost & Freight)	167
[b] CIF (Cost, Insurance & Freight)	167
[c] CPT (Carriage Paid To)	167
[d] CIP (Carriage & Insurance Paid To)	168
[4] Group D — Arrival	168
[a] DAF (Deliver At Frontier)	168
[b] DES (Delivered Ex Ship)	168
[c] DEQ (Delivered Ex Quay)	168

	Page
[d] DDU (Delivered Duty Unpaid)	168
[e] DDP (Delivered Duty Paid)	169
§ 4.03 Dispute Resolution	169
[1] In General	169
[2] Litigation and Forum Selection	169
[3] Alternate Dispute Resolution	170
[a] International Commercial Mediation	170
[b] International Commercial Arbitration	171
[c] Arbitration Proceedings	172
[d] Arbitration Clause	172
[e] Advantages and Disadvantages of Arbitration . .	173
§ 4.04 Transport Documents	174
[1] Bill of Lading	174
[2] Other Documents	176
[3] Carrier's Liability Under the Carriage of Goods by Sea Act (COGSA)	177
§ 4.05 Payment Methods	178
[1] In General	178
[a] Cash in Advance	178
[b] Open Account	178
[c] Consignment	178
[d] Documentary Collection — Document Against Payment	179
[e] Documentary Collection — Trade Acceptance . . .	179
[f] Documentary Letter of Credit	179
[2] The Letter of Credit	180
[a] Commercial Letter of Credit	182
[b] Issuance of Letter of Credit	183
[c] Payment on Letter of Credit	183
[d] Law Governing Commercial Letter of Credit . . .	184
[e] Drafting a Letter of Credit	185
[f] Issuer's Obligations	186
[g] Fraud	187
[h] Confirmed Letter of Credit — Sample	187
[i] Standby Letter of Credit	188

	Page
[j] Standby Letter of Credit — Sample	189
§ 4.06 Electronic Contracts and Documents	190
[1] UNCITRAL Model Law on Electronic Data Interchange (EDI)	190
[a] Legal Requirements Applicable to Data Messages	191
[b] Electronic Signatures	192
[c] Communicating Data Messages	192
[2] Uniform Electronic Transactions Act (UETA)	193
[a] Electronic Signatures	195
[b] Errors in Transmission	195
[c] Automated Contract Formation	196
[d] Electronic Records	196
[3] Electronic Signatures in Global and National Commerce Act (E-sign)	198
[a] E-sign Operating Provisions	198
[b] E-sign Preemption of UETA	200
[4] Electronic Commerce in the EU	201
[a] Directive on Distance Contracts	201
[b] Directive on Electronic Commerce	202
[c] Directive on Digital Signatures	203
[5] Electronic Transport Documents	204
[a] CMI Rules for Electronic Bills of Lading	206
[b] The Bolero (Bills of Lading for Europe) System	206
Chapter 5 Operating In Foreign Markets	209
§ 5.01 Entering a Foreign Market	211
[1] General Considerations	211
[2] Direct Sales	211
[3] Sales Representative	211
[4] Sales Agency	212
[5] Distributorship	214
[6] Licensing	216
[a] Technology Licenses	217
[b] License Contracts	217

	Page
[7] Franchising	218
[a] Franchise Contracts	219
[b] Master Franchise Arrangements	220
[8] Joint Ventures	223
[a] Disadvantages of Joint Ventures	224
[b] Joint Venture Agreements	225
[c] Termination of Joint Ventures	226
[9] Foreign Direct Investment	227
[a] FDI in Developing Economies	228
[b] Bilateral Investment Treaties (BITs)	229
[c] Multilateral Agreement on Investment (MAI)	231
[d] Trade Related Investment Measures (TRIMs)	232
[10] Financing International Transactions — The Export Import Bank	233
§ 5.02 Managing International Investment Risk	235
[1] Risks of Foreign Investment	235
[a] Credit Risk	235
[b] Political Risk	236
[c] Currency Risk	236
[d] Expropriation and Government Action	237
[e] Political Violence and Instability	237
[2] Insuring Risks	238
[a] Overseas Private Investment Corporation (OPIC)	238
[b] Export-Import Bank of the U.S.	240
[c] Multilateral Investment Guarantee Agency (MIGA)	241
[d] Cooperative Underwriting Program	243
§ 5.03 Choosing the Appropriate Business Entity	244
[1] U.S. Business Entities	244
[2] Characteristics of Business Entities	245
[a] Limited Liability	245
[b] Management and Control	245
[c] Capital Structure	246
[d] Transferability of Interests	246

	Page
[e] Death or Other Withdrawal of Owner	247
§ 5.04 International Competition Law	248
[1] Comparing Competition Law Regimes	248
[a] Selected Regimes — The U.S., E.U. and Japan . .	248
[b] Extraterritorial Effect	250
[2] U.S. Antitrust Laws	251
[a] Sherman Act	251
[b] Clayton Act	252
[c] Federal Trade Commission Act	253
[d] Hart-Scott-Rodino Act	253
[e] Export Trading Company Act of 1982	255
[f] Wilson Tariff Act	256
[g] National Cooperative Research and Production Act	256
[h] Webb-Pomerene Act	256
[3] U.S. International Antitrust Enforcement	257
[a] Antitrust Jurisdiction Over Imports	258
[b] Non-Import Jurisdiction	258
[c] Personal Jurisdiction	259
[d] Foreign Government Involvement	260
[e] Comity	261
[f] International Competition Policy Agreements . . .	262
[g] Restrictions on Foreign Investment — The Exon-Florio Amendment	263
[4] EU Competition Law	264
[a] Anticompetitive Agreements (Article 81)	265
[b] Abuse of Dominant Position (Article 82)	266
[c] Government Action	267
[d] Enforcement	267
§ 5.05 Specific National and Regional Markets	269
[1] The European Union	269
[a] Governing Institutions	270
[b] The Common Market	271
[c] Economic and Monetary Union (EMU)	272
[2] China	273

	Page
[a] A Short History of Modern China	273
[b] The Chinese Economy	275
Chapter 6 Taxation of International Transactions	279
§ 6.01 Basic Income Tax Rules	280
[1] Policy Considerations	280
[a] Capital Export Neutrality	281
[b] Capital Import Neutrality	281
[c] National Neutrality	281
[d] Illustrations	282
[2] U.S. Taxation of International Transactions — Basic Principles	282
[3] Outbound Transactions — Taxation of U.S. Persons with Foreign Source Income	283
[a] The Foreign Tax Credit	283
[b] Taxation and Business Structure	284
[c] Anti-Deferral Rules	286
[i] Foreign Personal Holding Companies	286
[ii] Passive Foreign Investment Companies	286
[iii] Controlled Foreign Corporations	287
[d] Tax Classification of Business Entities	288
[e] Hybrid branches	289
[4] Inbound Transactions — Taxation of Foreign Persons Having U.S. Source Income	290
[a] Trade or Business Income	290
[b] The Branch Profits Tax	291
[c] Investment Income	292
[d] Income from U.S. Real Property Interests	292
[e] Disposition of Interests in Real Property	293
§ 6.02 Taxation of International Electronic Commerce (E-commerce)	294
[1] Determining the Source of Income	294
[2] Compliance Issues	296
§ 6.03 Tax Treaties	297
[1] General Provisions	297

	Page
[a] Residence Requirements	297
[b] Taxation of Income	298
[c] Treaty Foreign Tax Credit	299
[d] Limitation on Treaty Benefits for <i>Hybrid</i> Entities	299
[e] Competent Authorities	302
[f] Negotiations	302
§ 6.04 Transfer Pricing	303
[1] Transaction Between Related Entities	303
[2] General Transfer Pricing Rules	304
[a] Reallocation Under I.R.C. Section 482	304
[b] Transfers of Tangible Property	306
[c] Transfers of Intangibles	306
[d] Penalties and Records	307
[e] Advance Pricing Agreements (APA)	308
[3] OECD Rules	308