

## Table of Contents

<i>Foreword</i> .....	<i>v</i>
<i>Preface</i> .....	<i>vii</i>
<i>Table of Cases</i> .....	<i>li</i>
<i>Table of Conventions, Agreements, and Treaties</i> .....	<i>lxxi</i>
<i>Table of Statutes and Sections</i> .....	<i>lxxv</i>
<i>Table of Rules and Regulations</i> .....	<i>lxxxix</i>
<b>Chapter 1. Customs Control</b> .....	<b>1</b>
<b>I. INDIA—THE CUSTOMS ACT, 1962</b> .....	<b>1</b>
1.0 Introduction .....	1
1.1 Legal framework .....	6
1.2 Definitions.....	7
1.2.1 Judicial interpretation of a few defined terms.....	8
1.3 Organizational machinery .....	11
1.3.1 Powers of customs officers.....	11
1.4 Illegal importation/exportation .....	12
1.5 Legislative authority to levy duties of customs .....	13
1.6 Valuation of goods .....	14
1.6.1 Tariff values .....	14
1.6.2 Methods of valuation.....	14
1.6.2.1 Primary and subsidiary methods .....	14
1.6.2.1.1 Transaction value .....	15
1.6.2.1.2 Landing charges .....	21
1.6.2.1.3 Royalties and licence fees .....	22
1.6.2.1.4 Related persons .....	24
1.6.2.1.5 Post-import depreciation .....	28

1.6.2.2	Subsidiary methods .....	28
1.6.2.3	Date for determination (imports).....	29
1.6.2.3.1	Date for determination (exports) .....	30
1.6.2.4	Valuation appeals.....	31
1.7	Assessment of duty .....	31
1.7.1	Self-assessment.....	31
1.7.2	Release of goods from Customs .....	31
1.7.3	Re-assessment .....	32
1.7.4	Provisional assessment .....	32
1.8	Advance rulings.....	32
1.9	Payment of duties.....	35
1.9.1	Requirement to indicate duty on sale price.....	35
1.9.2	Deferral of duties.....	36
1.9.3	Refunds .....	36
1.9.4	Drawbacks.....	37
1.10	Special provisions for baggage, postal/courier imports/exports, stores .....	37
1.10.1	Baggage .....	37
1.10.2	Foreign and Indian currency .....	38
1.10.3	Firearms .....	39
1.10.4	Pet animals .....	39
1.10.5	Departing travellers.....	39
1.10.6	Postal imports.....	39
1.10.6.1	Dutiable goods .....	40
1.10.6.2	Gifts.....	40
1.10.6.3	Indian and foreign currency .....	41
1.10.6.4	Export.....	41
1.10.7	Import/export through courier .....	41
1.10.7.1	Imports allowed .....	42
1.10.7.2	Exports .....	42
1.10.8	Ships/aircraft stores.....	42
1.10.8.1	Export of stores .....	42
1.11	Obligations of travellers on arrival in India.....	43
1.11.1	Departing travellers.....	43

1.11.2 Powers of officers.....	44
1.12 Conveyances arriving in India.....	44
1.12.1 Loading of export goods.....	45
1.13 Clearance of imported goods from vessels and aircraft.....	45
1.13.1 Clearance for home consumption .....	46
1.13.2 Storage of goods before clearance .....	46
1.13.3 Disposal of uncleared goods by custodians.....	46
1.13.4 Clearance of export goods.....	47
1.14 Transit and transhipment of imported goods .....	47
1.14.1 Transit .....	47
1.14.2 Transhipment outside India.....	47
1.14.3 Transhipment to ports within India.....	47
1.14.4 Liability to duty.....	48
1.14.5 Transport by land .....	48
1.15 Warehousing.....	48
1.15.1 Public and private warehouses.....	48
1.15.2 Warehousing bond .....	48
1.15.3 Maximum period of deposit .....	49
1.15.4 Control over warehoused goods .....	49
1.15.5 Owner's privileges .....	49
1.15.6 Clearance of warehoused goods.....	50
1.15.6.1 Clearance for home consumption .....	50
1.15.6.2 Clearance for export.....	50
1.15.6.3 Goods improperly removed .....	50
1.16 Powers of officers .....	51
1.16.1 Search of premises .....	51
1.16.2 Stop and search conveyances.....	51
1.16.3 Inspect goods, examine and summon persons.....	52
1.16.3.1 Enter place, search and inspect.....	52
1.16.3.2 Examine persons .....	52
1.16.3.3 Summon persons .....	52
1.16.3.4 Produce order permitting clearance.....	52
1.17 Power to seize goods, things and documents .....	52
1.18 Confiscation of goods.....	53

1.18.1 Goods liable.....	53
1.18.1.1 Goods improperly imported .....	53
1.18.1.2 Penalties for contravention .....	58
1.18.2 Goods attempted to be improperly exported .....	58
1.18.2.1 Application of section 113 .....	59
1.18.2.2 Penalties for contravention .....	60
1.18.3 Confiscation of conveyances.....	60
1.18.4 Confiscation of packages and contents .....	61
1.18.5 Confiscation of smuggled goods .....	61
1.18.6 Confiscation of sale proceeds of smuggled goods.....	61
1.19 Monetary penalties for improper importation .....	61
1.19.1 Improper importation .....	62
1.19.2 Attempt to export improperly .....	63
1.19.3 Short-levy or non-levy of duty .....	63
1.19.4 Using false and incorrect material .....	63
1.19.5 Failure to account.....	63
1.19.6 Contraventions not expressly mentioned.....	64
1.20 Adjudication of confiscation and penalties: Show cause notice.....	64
1.20.1 Procedure.....	65
1.20.2 Burden of proof .....	65
1.20.3 Redemption of confiscated goods and limitation of SCN.....	65
1.21 Alternative dispute resolution: Settlement Commission .....	68
1.21.1 Jurisdiction .....	68
1.21.2 Procedure.....	69
1.21.3 Immunity from prosecution.....	69
1.21.4 Revocation of immunity.....	69
1.21.5 Order of settlement conclusive.....	70
1.21.6 Proceedings deemed judicial .....	70
1.22 Appeals and revision.....	70
1.22.1 Deposit pending appeal.....	70
1.22.2 Appeal to Commissioner of Customs (Appeals).....	71
1.22.3 Procedure.....	71

1.23 Appeal to the Customs, Excise and Service Tax Appellate Tribunal.....	72
1.23.1 Orders beyond CESTAT's jurisdiction.....	72
1.23.2 Power to refuse to admit appeal.....	73
1.23.3 Proceedings.....	73
1.23.4 Decision of majority.....	73
1.23.5 Orders of CESTAT.....	74
1.23.6 Power to amend.....	74
1.23.7 Other powers.....	74
1.23.8 Proceedings deemed judicial.....	74
1.24 Appeal to High Court.....	75
1.24.1 Hearing.....	75
1.24.2 Powers.....	75
1.24.3 Majority decision.....	76
1.24.4 High Court's writ jurisdiction.....	76
1.25 Appeals to Supreme Court.....	77
1.25.1 Hearing.....	77
1.25.2 Appeals and revision.....	77
1.26 Sums due must be paid notwithstanding appeals, reference, etc. ....	77
1.26.1 Seizure of imported goods in possession of bona fide purchaser.....	77
1.27 Offences and criminal penalties.....	79
1.27.1 Cognizance of offences.....	80
1.27.2 Compounding.....	80
1.27.3 Summary trial.....	82
1.27.4 Presumption of culpable mental state.....	82
1.27.5 Offences and punishment.....	82
1.27.6 Double jeopardy.....	84
1.27.7 Second and subsequent offences.....	84
1.27.8 Preparation.....	84
1.27.9 Offences of customs officers and punishment.....	85
1.27.10 Offences of companies and defence of due diligence ...	85
1.28 Power of court to publish name of convicted offenders.....	86

Appendix 1. Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.....	87
Appendix 2. Customs (Provisional Duty Assessment) Regulations, 2011.....	92
Appendix 3. Customs (Appeals) Rules, 1982.....	93
Appendix 4. Compounding Rules.....	94
II. CANADA—THE CUSTOMS ACT.....	97
C1.0 Introduction.....	97
C1.1 Basic obligations.....	98
C1.1.1 Obligation to report.....	98
C1.1.2 Persons required to report.....	99
C1.1.3 Failure to declare and report.....	99
C1.1.4 Movement of goods after report.....	100
C1.1.5 Release of goods.....	100
C1.1.5.1 Release prior to accounting and payment of duties.....	101
C1.1.6 Abandoned and unclaimed goods.....	101
C1.1.7 Prohibited goods.....	101
C1.1.7.1 Tariff item 9897.00.00.....	102
C1.1.7.2 Tariff item 9898.00.00.....	102
C1.1.7.3 Tariff item 9899.00.00.....	102
C1.2 Licences under the Customs Act and Customs Tariff.....	103
C1.2.1 Need of a licence.....	103
C1.2.2 Broker’s licence.....	104
C1.2.3 Warehouse licence.....	104
C1.2.3.1 Sufferance and bonded warehouses.....	104
C1.2.3.2 Highway frontier warehouses.....	104
C1.2.3.3 Queen’s warehouses.....	105
C1.2.4 Accounting and payment of duties.....	105
C1.2.4.1 Documentation.....	105
C1.2.4.1.1 Release on minimum documentation.....	105
C1.2.4.1.2 Other documents.....	105
C1.2.4.1.3 Certificate of origin.....	105

C1.2.4.1.4 Low value shipments .....	105
C1.2.4.2 Final accounting package .....	106
C1.2.5 Customs self-assessment program (CSA) .....	106
C1.2.6 Advance rulings.....	106
C1.3 Valuation of imported goods.....	107
C1.3.1 Determination of value for duty .....	107
C1.3.2 Ad valorem .....	107
C1.3.3 Six methods of valuation.....	108
C1.3.3.1 Transaction value method.....	108
C1.3.3.1.1 Sale for export to purchaser in Canada ...	108
C1.3.3.1.2 Price paid or payable must be ascertainable .....	109
C1.3.3.1.3 Purchaser in Canada.....	109
C1.3.3.1.4 Purchaser and vendor not related.....	110
C1.3.3.1.5 Adjustments to transaction value of goods .....	111
C1.3.3.1.6 Buying and selling commissions .....	112
C1.3.3.1.7 Royalties and licence fees.....	113
C1.3.3.1.8 Deductions .....	113
C1.3.3.2 Transaction value of identical goods.....	114
C1.3.3.3 Two or more transaction values.....	114
C1.3.3.4 Computed value .....	114
C1.3.3.5 Residual method of valuation .....	115
C1.3.3.6 Correction of errors.....	115
C1.3.4 Marking of goods.....	117
C1.3.4.1 Marking requirement.....	117
C1.3.4.2 Marking regulations .....	117
C1.3.5 Administrative determination of appeals.....	118
C1.3.5.1 Determination of value for duty, tariff classification, and origin.....	118
C1.3.5.2 Duties and taxes must be paid before filing appeal .....	118
C1.3.5.3 Determination by designated officer.....	119
C1.3.5.4 Request for re-determination by another CBSA officer .....	119
C1.3.5.5 Re-determination following audit.....	119

C1.3.5.6 Re-determination and further re-determination by CBSA President.....	119
C1.3.5.7 Extension of time limit .....	119
C1.3.5.7.1 CBSA President’s additional powers .....	121
C1.3.5.8 Appeals to the Tribunal.....	121
C1.3.5.8.1 Filing an appeal.....	121
C1.3.5.8.2 Hearing and decision .....	122
C1.3.5.9 Right of appeal.....	122
C1.3.5.9.1 Appeals to Federal Court of Appeal .....	122
C1.3.5.9.2 Disposition .....	123
C1.3.5.10 Further appeal.....	123
C1.3.5.11 References to Tribunal.....	123
C1.3.6 Appeals to provincial courts.....	124
C1.3.7 Seizure and forfeiture of goods or conveyances .....	124
C1.4 Abatement, deferral, drawback and refund of duties .....	124
C1.4.1 Abatement .....	124
C1.4.2 Deferral.....	124
C1.4.3 Duties relief.....	125
C1.4.4 Exemptions .....	125
C1.4.5 Refunds.....	125
C1.4.6 Refunds under the Customs Tariff .....	126
C1.4.7 Deemed re-determination .....	127
C1.4.8 Remission of duties and taxes.....	127
C1.5 Enforcement .....	127
C1.5.1 Powers of officers.....	127
C1.5.2 Administrative and investigative powers distinguished .....	128
C1.5.2.1 Enforcement powers .....	129
C1.5.2.2 Search of the person .....	129
C1.5.2.3 Examination of goods.....	130
C1.5.2.4 Seizure of goods and conveyances.....	130
C1.5.2.5 Forfeiture .....	131
C1.5.2.5.1 Effecting forfeiture.....	132
C1.5.2.5.2 In rem action .....	132
C1.5.2.5.3 Limitation period.....	132
C1.5.2.6 Ascertained forfeiture .....	132



C1.5.2.7 Appeals .....	133
C1.5.2.8 Third party claims .....	133
C1.5.2.8.1 Late applications.....	133
C.1.5.2.8.2 Conditions .....	134
C1.5.2.9 Appeal against Minister's decision .....	134
C1.5.2.9.1 Appeal against provincial superior court's decision .....	135
C1.5.2.9.2 Goods or conveyance to be given to successful applicant .....	135
C1.5.2.10 Administrative monetary penalties .....	135
C1.5.2.10.1 Penalty for violation of designated provisions.....	135
C1.5.2.10.2 Appeal .....	136
C1.5.2.10.3 Appeal to Minister .....	137
C1.5.2.10.4 Appeal to Federal Court .....	137
C1.6 Criminal offences and punishment .....	137
C1.6.1 General offences.....	137
C1.6.2 Smuggling .....	139
C1.6.3 Offences by corporation .....	139
C1.6.4 Punishment for general offences .....	139
C1.6.4.1 Obstructing an officer.....	139
C1.6.4.2 Punishment for other offences .....	139
C1.6.4.3 Limitation period .....	140
C1.7 Protection of officers.....	140
C1.7.1 Immunity .....	140
<b>Chapter 2. Customs Tariff.....</b>	<b>141</b>
I. INDIA'S CUSTOMS TARIFF ACT .....	141
2.0 Introduction .....	141
2.1 Legal framework .....	141
A. TARIFF CLASSIFICATION.....	142
2.2 Classification of goods .....	142
2.2.1 Classification of imported goods.....	142

2.2.2	Classification of export goods.....	142
2.2.3	Commodity classification scheme.....	142
2.2.4	General Rules of Interpretation.....	143
2.2.5	Judicial decisions on classification.....	144
2.2.5.1	General rule.....	144
2.2.5.2	Rule 2(a).....	145
2.2.5.3	Rules 3(a) and (b).....	147
2.2.5.4	Ingredients vs. complete product.....	150
2.2.5.5	Competing tariff items.....	152
2.2.5.6	Tariff Headings 84.71 and 85.24.....	162
2.2.5.7	Tariff Headings 85.28 and 85.43.....	163
2.2.5.8	Chapters 84 and 90.....	167
2.2.6	Classification of parts and accessories.....	169
2.2.6.1	General note on definition of parts and accessories.....	169
2.2.6.2	Decisions of the Tribunal and courts.....	170
<b>B.</b>	<b>CUSTOMS TARIFFS AND TRADE AGREEMENTS.....</b>	<b>171</b>
2.3	Rates of duty.....	171
2.3.1	Customs duty, additional duties and Cess.....	172
2.3.2	Basic customs duty.....	172
2.3.2.1	Discontinuance, increase or decrease of preferential rate.....	172
2.3.3	Tariff preferences.....	172
2.3.3.1	Claiming preferential tariff rate.....	173
2.3.3.2	Rules of origin.....	173
2.3.3.2.1	Rules determining origin.....	173
2.3.4	Other duties levied under the Act.....	174
2.3.4.1	Additional duty.....	174
2.3.4.2	Special additional duty.....	175
2.3.4.3	Education and higher education cess.....	176
2.3.5	Duty-free, tariff preference scheme.....	176
<b>II.</b>	<b>CANADA'S CUSTOMS TARIFF.....</b>	<b>177</b>
C2.1	Legal framework.....	177
<b>A.</b>	<b>CLASSIFICATION.....</b>	<b>178</b>

C2.2 Classification of goods.....	178
C2.2.1 Schedule to Customs Tariff.....	178
C2.2.2 Determination of classification.....	178
C2.2.3 Tribunal and judicial decisions on classification.....	180
C2.2.3.1 Limitations on Tribunal’s rulings.....	180
C2.2.3.2 Deference to Tribunal’s decisions.....	181
C2.2.3.3 Interpretation of tariff items.....	181
C2.2.3.3.1 Application of General Rules.....	181
C2.2.3.3.2 Rule 2.....	182
C2.2.3.3.3 Rule 3.....	183
C2.2.3.3.4 Rule 4.....	189
C2.2.3.4 Illustrative Tribunal decisions on classification	189
C2.2.3.4.1 Section I (Chapters 1 to 5).....	189
C2.2.3.4.2 Section IV (Chapters 16 to 24).....	191
C2.2.3.4.3 Section VI (Chapters 28 to 38).....	194
C2.2.3.4.4 Section VII (Chapters 39 and 40).....	195
C2.2.3.4.5 Section VIII (Chapters 41 to 43).....	197
C2.2.3.4.6 Section XI (Chapters 50 to 63).....	198
C2.2.3.4.7 Section XIII (Chapters 68 to 70).....	200
C2.2.3.4.8 Section XV (Chapters 72 to 83).....	201
C2.2.3.4.9 Section XVI (Chapters 84 and 85).....	203
C2.2.3.4.10 Section XX (Chapters 94 to 96).....	208
C2.2.3.5 General note on definition of parts and accessories.....	230
C2.2.3.6 Tribunal’s decisions on parts and accessories.....	231
C2.2.3.6.1 Section VII (Chapters 39 and 40).....	232
C2.2.3.6.2 Section XI (Chapters 50 to 63).....	232
C2.2.3.6.3 Section XV (Chapters 82 and 83).....	233
C2.2.3.6.4 Section XVI (Chapters 84 and 85).....	236
C2.2.3.6.5 Section XVII (Chapter 87).....	239
C2.2.3.6.6 Section XX (Chapters 94 to 96).....	240
C2.2.3.7 Provisions in the Customs Tariff.....	241
C2.2.3.7.1 Test for “use in”.....	242
C2.2.3.7.2 “Wrought into, attached to or incorporated”.....	242
C2.2.3.7.3 Tariff item 9908.00.00.....	244

C2.2.3.7.4	Tariff item 9948.00.00 (data processing machines).....	245
C2.2.3.7.5	Tariff item 9979.00.00 (assists for persons with disabilities) .....	245
C2.2.3.7.6	Tariff item 9986.00.00 (religious statues, figures, plaques, etc.).....	249
C2.2.3.8	Chapter 98 Part I.....	250
	ORIGIN OF GOODS AND MARKING.....	251
C2.3	Origin of goods.....	252
C2.3.1	Rules determining origin .....	252
C2.3.1.1	Wholly produced in country of origin.....	252
C2.3.1.2	Substantially manufactured or processed .....	253
C2.3.1.3	Direct shipment and transshipment .....	253
C2.3.1.4	Change to tariff when goods are in transit.....	254
C2.3.2	Marking of goods .....	254
<b>B.</b>	<b>CUSTOMS TARIFFS AND TRADE AGREEMENTS .....</b>	<b>255</b>
C2.4	Tariffs and tariff treatment .....	255
C2.4.1	Most-Favoured-Nation (MFN) tariff treatment.....	255
C2.4.2	Free trade agreements .....	255
C2.4.3	Claiming duty-free or preferential tariff.....	256
C2.4.4	Grant of more preferred status.....	257
C2.4.5	General Preferential Tariff.....	257
C2.4.5.1	Extension and withdrawal of GPT.....	257
C2.4.5.2	Expiry date.....	258
C2.4.6	Least-Developed-Country Tariff (LDCT) .....	258
C2.4.6.1	Tariff Rate Quota (TRQ) .....	258
C2.4.6.2	Expiry date.....	258
C2.4.7	Commonwealth Caribbean Countries Tariff (CCCT).....	258
C2.4.7.1	Tariff Rate Quota (TRQ) .....	259
C2.4.8	Australia Tariff (AUT) and New Zealand Tariff (NZT) .....	259
C2.5	General tariff.....	259

<b>Chapter 3. Special Trade Measures</b> .....	261
3.0 Introduction .....	261
<b>I. SAFEGUARD MEASURES</b> .....	263
3.1 WTO Agreement on Safeguards .....	263
<b>A. INDIA—SAFEGUARD MEASURES</b> .....	266
3.2 Safeguard measures .....	266
3.2.1 Protective duty.....	266
3.2.2 Emergency power to increase import duties.....	267
3.2.3 Safeguard duty.....	267
3.2.4 Principles governing investigations .....	268
3.2.5 Duration of safeguard duty.....	268
3.2.6 Limitation.....	268
3.2.7 Non-discriminatory application.....	269
3.2.8 Exemptions.....	269
3.2.9 Central Government rules.....	269
3.2.10 Application of the Customs Act .....	269
3.3 Product specific safeguard duty under section 8C (imports from the People’s Republic of China) .....	269
3.3.1 Provisional and final determination.....	269
3.3.2 Definitions .....	270
3.3.3 Rules of application same as for safeguard duty .....	270
3.3.4 Central Government rules.....	270
<b>B. CANADA—SAFEGUARD MEASURES</b> .....	271
C3.2 Introduction.....	271
C3.2.1 Injury investigations .....	271
C3.2.2 Global emergency measures.....	272
C3.2.3 Tribunal inquiries .....	273
C3.2.4 Surtaxes on goods from a free trade partner.....	274
C3.2.5 Surtax order must not contravene WTO Agreement ...	274
C3.2.6 Bilateral emergency measures .....	274
C3.3 Safeguard measures in respect of the People’s Republic of China.....	274

C3.3.1	Duration and cessation of surtax order .....	275
II.	ANTI-DUMPING MEASURES .....	275
3.4	WTO Agreement on Implementation of Article VI of GATT, 1994.....	275
A.	INDIA.....	288
3.4.1	Introduction .....	288
3.4.2	Legislative authority to impose anti-dumping duty.....	288
3.4.3	Meaning of dumping .....	289
3.4.4	Normal value.....	289
3.4.5	Constructed export price.....	289
3.4.6	Material injury or retardation .....	289
3.4.7	Standing .....	289
3.4.8	Amount of duty.....	289
3.4.9	No article subject to both countervailing and anti-dumping duty.....	290
3.4.10	Central Government Rules.....	290
3.4.11	Appeal against orders.....	290
3.4.12	Appeal to WTO Dispute Settlement Body.....	290
3.4.13	Observations of writers .....	291
B.	CANADA.....	292
C3.4.1	Anti-dumping duty.....	292
C3.4.1.1	Meaning and occurrence of dumping, “margin of dumping,” “insignificant margin,” “negligible volume” .....	293
C3.4.1.2	Interpretation of SIMA provisions that apply to both dumping and subsidizing.....	293
C3.4.1.3	Regional markets.....	293
C3.4.1.4	Determination of normal value and export price.....	294
C3.4.1.4.1	Primary method.....	294
C3.4.1.4.2	Alternative methods.....	294
C3.4.1.5	Export price .....	295
C3.4.1.5.1	Constructed export price.....	295
C3.4.1.6	Liability for anti-dumping duties .....	296
C3.4.1.6.1	Imposition of duties.....	296

C3.4.1.6.2 Duties when massive importation causes injury and goods already released.....	296
C3.4.1.6.3 When liability to pay arises.....	296
C3.4.1.6.4 Liability where undertaking accepted .....	297
C3.4.1.6.5 Liability imposed on importer.....	297
C3.4.1.6.6 Payment during court proceedings .....	297
C3.4.1.7 General rules relating to payment of duty.....	297
C3.4.1.7.1 Where both or portion of duties payable .....	297
C3.4.1.7.2 Duty, other than provisional duty, payable by importer in Canada .....	298
C3.4.1.8 Refund of duties.....	298
C3.4.1.8.1 Return of provisional duty.....	298
C3.4.1.8.2 Return of duty paid .....	298
C3.4.1.9 Request for review when exporter or producer establishes not to be associated .....	298
C3.4.1.9.1 Expedited review.....	298
C3.4.1.10 Undertakings .....	299
C3.4.1.10.1 Meaning of undertaking.....	299
C3.4.1.10.2 Acceptance of undertaking.....	299
C3.4.1.10.3 Rejection of undertaking.....	299
C3.4.1.10.4 Termination of investigation .....	299
C3.4.1.10.5 Termination of undertaking .....	299
C3.4.1.10.6 Further undertakings.....	300
C3.4.1.10.7 Expiry and renewal of undertakings .....	300
C3.4.1.11 Administrative procedures and appeals .....	301
C3.4.1.11.1 CBSA initiation and notice of investigation.....	302
C3.4.1.11.2 Termination of investigation by the CBSA.....	303
C3.4.1.11.3 CBSA's determination of dumping .....	303
C3.4.1.11.4 Final determination of dumping.....	304
C3.4.1.11.5 Reconsideration of final determination ..	304
C3.4.1.11.6 Tribunal's preliminary injury inquiry.....	305
C3.4.1.11.7 Tribunal's preliminary determination of injury .....	305
C3.4.1.11.8 Final determination of injury .....	305

C3.4.1.11.9 Tribunal’s order or finding.....	305
C3.4.1.11.10 Product exclusions.....	306
C3.4.1.11.11 Notification and publication of order ..	306
C3.4.1.11.12 Recommencement following judicial review .....	306
C3.4.2 Public interest inquiries .....	307
C3.4.2.1 Factors to be considered by the Tribunal.....	307
C3.4.2.2 Public interest inquiry PB-2013-001 .....	308
C3.4.2.3 “Concrete rebar” PII .....	309
C3.4.3 Termination of proceedings/inquiry .....	310
C3.4.3.1 CBSA action on final determination, order, or finding .....	310
C3.4.3.2 Determination by designated officer.....	311
C3.4.3.3 Goods subsequently imported.....	311
C3.4.3.4 Re-determination.....	311
C3.4.3.5 Further re-determination by the CBSA .....	312
C3.4.3.6 Permissive re-determination .....	312
C3.4.3.7 Effect of re-determination.....	312
C3.4.4 Appeals against re-determination.....	312
C3.4.4.1 Appeal to the Tribunal .....	312
C3.4.4.2 Appeal to the Federal Court of Appeal .....	314
C3.4.5 Duration and review of anti-dumping duties and price undertakings .....	314
C3.4.5.1 Tribunal’s review of orders and findings of injury.....	314
C3.4.5.2 Termination of order or findings .....	315
C3.4.6 Judicial review.....	315
III. SUBSIDIES AND COUNTERVAILING MEASURES.....	316
3.5 WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) .....	316
3.5.1 Meaning of subsidy.....	316
3.5.2 Prohibited subsidy .....	317
3.5.3 Actionable subsidy.....	318
3.5.3.1 Injury to the domestic industry .....	318
3.5.3.2 Serious prejudice .....	319
3.5.3.3 Serious prejudice not to be found.....	319



3.5.3.4 Adverse effects actionable .....	319
3.5.4 Non-actionable subsidy .....	319
3.5.5 Countervailing measures .....	320
3.5.6 Provisional measures .....	321
3.5.7 Undertakings .....	321
3.5.8 Imposition and collection of countervailing duty .....	322
3.5.9 Retroactivity and limitation on recovery .....	322
3.5.10 Duration of countervailing duties .....	323
3.5.11 Review of countervailing duties and undertakings .....	323
3.5.12 Judicial review .....	323
3.5.13 Committee on Subsidies and Countervailing Measures .....	324
3.5.14 Dispute resolution .....	324
A. INDIA .....	324
3.5 Countervailing duties on bounty-fed (subsidized) goods .....	324
3.5.1 Legislative authority .....	324
B. CANADA .....	325
C3.5 Legal framework .....	325
C3.5.1 Subsidy and financial contribution .....	325
C3.5.1.1 Meaning of financial contribution .....	325
C3.5.2 Non-actionable subsidy .....	326
C3.5.2.3 Insignificant subsidy .....	326
C3.5.2.4 Non-specific and specific subsidy; prohibited subsidy .....	326
C3.5.2.5 Prohibited subsidy .....	327
C3.5.2.6 Amount of subsidy .....	327
C3.5.3 Countervailing duty on prohibited subsidy .....	327
C3.5.3.1 When liability to pay arises .....	328
C3.5.4 Where both or portion of duties payable .....	328
C3.5.5 Undertaking .....	328
C3.5.6 Investigations and inquiries .....	328
C3.5.7 Canada's obligations to developing countries .....	329
C3.5.8 Imposition of duties .....	329
C3.5.9 Termination of proceedings/inquiry .....	329
C3.5.10 Tribunal's review of orders and findings of injury .....	329

APPENDIX TO A. INDIA: COUNTERVAILING AND ANTI-DUMPING RULES .....	329
<b>Chapter 4. Regulation and Control of Foreign Trade.....</b>	<b>345</b>
I.    INDIA .....	345
4.1 Legislative framework.....	345
A.    FOREIGN TRADE DEVELOPMENT AND REGULATION.....	345
4.2 The Foreign Trade (Development and Regulation) Act .....	345
4.3 Application of other laws not barred .....	346
4.4 Highlights of the FTD&R Act.....	347
4.4.1 Development and regulation of foreign trade .....	347
4.4.2 General rule.....	347
4.5 Foreign trade policy (FTP).....	347
4.5.1 Policy announcement .....	347
4.5.2 Importer-exporter code .....	347
4.5.3 Licence to import.....	348
4.6 Quantitative restrictions.....	348
4.6.1 Power to impose restrictions .....	348
4.6.2 Identifying imported goods .....	348
4.6.3 Exemption to developing countries.....	349
4.7 No export or import except in accordance with the FTD&R Act.....	349
4.7.1 Penalty for contravention.....	349
4.7.2 Procedure to be complied with.....	349
4.7.3 Settlement of penalty .....	349
4.7.4 Settlement Commission .....	349
4.7.5 Penalties under other laws not barred .....	350
4.8 Export of specified goods, services and technology .....	350
4.8.1 Weapons of mass destruction.....	350
4.8.2 Prohibition of export .....	350
4.8.3 Penalty for contravention.....	350
4.9 Appeal and review.....	350

4.9.1 Administrative appeal .....	350
4.9.2 Powers of Appellate Authority.....	351
4.9.3 Order final.....	351
4.9.4 Review.....	351
4.9.5 Accidental slips or omissions.....	351
4.9.6 Powers of civil court .....	352
4.10 Central Government Rules.....	352
4.10.1 Scope .....	352
4.10.2 Tabling of Rules .....	352
<b>B. FOREIGN TRADE POLICY.....</b>	<b>352</b>
4.11 Foreign trade policy.....	352
4.11.1 Judicial deference .....	353
4.12 Highlights of the foreign trade policy.....	354
4.12.1 Principal components .....	354
4.12.2 Export or import only under FTD&R Act and FTP ...	354
4.12.3 “Free,” unless regulated .....	354
4.12.4 Actual user condition .....	354
4.12.5 Second-hand goods .....	354
4.13 Gifts, baggage, etc. ....	355
4.14 Importer-exporter code number (IEC number).....	355
4.14.1 Application .....	355
4.14.2 “Specified goods or services or technology” .....	356
4.14.3 Suspension and cancellation .....	356
4.14.4 Special licence .....	356
4.14.5 Conditions of licence.....	356
4.14.6 Compliance with licence conditions .....	357
4.14.7 Issue, amendment, suspension, cancellation .....	357
4.15 Prohibition of imports or exports from certain countries.....	357
4.15.1 Prohibition.....	357
4.16 Principles of restriction .....	358
4.16.1 DGFT notifications .....	358
4.16.2 Canalisation.....	358
4.16.3 Export/import of restricted goods/services.....	359

4.17 Compliance of imports with domestic laws .....	359
4.17.1 Exemption from policy/procedure .....	359
4.18 Realization of export proceeds .....	359
4.19 Contravention of the FTP.....	360
C. EXPORT QUALITY CONTROL AND INSPECTION .....	360
4.20 Introduction .....	360
4.21 Export Inspection Council .....	360
4.21.1 Appointment of Director.....	361
4.22 Powers of the Central Government .....	361
4.22.1 Quality control and inspection agencies.....	361
4.22.2 Mark or seal denoting conformity .....	361
4.22.3 Other powers .....	362
4.22.4 Option to pay fine.....	362
4.23 Penalty for knowing contraventions .....	362
4.24 Adjudication and appeal of confiscation or penalty.....	362
4.25 Revision .....	363
4.26 Continuance of proceedings .....	363
4.27 Criminal penalties .....	363
4.27.1 Offences of officers and employees of EIC or agency ..	363
4.27.2 Offences of Central Government officers.....	364
4.27.3 Procedure for prosecution .....	364
4.28 Central Government Rules.....	364
4.28.1 Procedures for quality control and inspection.....	364
4.28.2 Amendment, suspension or cancellation of certificate ..	364
4.28.3 Re-examination of goods certified by agencies.....	365
II. CANADA.....	365
C4.1 Legislative framework .....	365
C4.1.1 Objectives of the Export and Import Permits Act .....	365
C4.1.2 Establishment of lists.....	366
C4.1.2.1 Export Control List.....	367

C4.1.2.1.1	Export declarations.....	368
C4.1.2.1.2	Method of declaration .....	368
C4.1.2.2	Area Control List .....	368
C4.1.2.3	Automatic Firearms Country Control List.....	368
C4.1.2.4	Import Control List.....	369
C4.1.2.4.1	Inclusion of goods in Import Control List .....	369
C4.1.2.4.2	Extension order .....	370
C4.1.2.4.3	Information collection.....	370
C4.1.2.4.4	Removal from ICL .....	370
C4.1.2.4.5	Bilateral emergency measures .....	370
C4.1.2.4.6	Import access.....	370
C4.1.3	Export and import permits and certificates.....	371
C4.1.3.1	Permits that are required .....	371
C4.1.3.1.1	Export permits.....	371
C4.1.3.1.2	Import permits.....	371
C4.1.3.1.4	General import or export permits.....	371
C4.1.3.1.5	Permit to import access quantity .....	372
C4.1.3.1.6	Permit to export goods to countries on the ACL.....	372
C4.1.3.1.7	Prohibited firearms and weapons .....	372
C4.1.3.1.8	Import and export certificates .....	372
C4.1.3.1.9	Amendment, suspension, cancellation and reinstatement of permit or certificate .....	373
C4.1.3.1.10	International import certificates .....	373
C4.2	Offences and penalties.....	373
C4.3	Other statutes relating to import and export .....	374
	APPENDIX TO PART I.B. (FOREIGN TRADE POLICY).....	374
	APPENDIX TO PART I.C. (EXPORT QUALITY CONTROL AND INSPECTION).....	378
<b>Chapter 5.</b>	<b>Food Safety and Standards.....</b>	<b>385</b>
5.0	Introduction .....	385
A.	INDIA.....	386

I.	FOOD SAFETY AND STANDARDS LEGISLATION .....	386
	5.1.1 Legal framework.....	386
	5.1.1.1 Power to make regulations .....	386
	5.1.2 Pesticides, veterinary drugs residues, etc.....	388
	5.1.3 Genetically modified foods, organic foods, functional foods, proprietary foods, etc.....	388
	5.1.4 Prohibition of unsafe, misbranded or substandard food .....	389
	5.1.5 Packaging and labelling .....	390
	5.1.6 Food contaminants, toxins and residues.....	392
	5.1.7 Food additives.....	392
	5.1.8 Genetically modified foods, organic foods, etc. ....	392
	5.1.8.1 Import policy .....	393
	5.1.8.2 Labelling.....	393
	5.1.8.3 Declaration on GM packages.....	394
	5.1.9 Irradiation of food.....	394
	5.1.9.1 Licensing of radiation facility .....	394
	5.1.10 Offences and penalties.....	395
	5.1.11 Publication of name, offence .....	396
	5.1.12 Defence of due diligence.....	396
	5.1.13 Defence relating to advertisements .....	397
	5.1.14 Compensation for injury/death of consumer.....	397
	5.1.15 Other penalties.....	397
	5.1.16 Disposal of unsafe or misbranded food .....	397
	5.1.17 Power of court to implead manufacturer, importer, etc.....	397
	5.1.18 Time limit for prosecution.....	398
	5.1.19 Special courts and public prosecutors.....	398
	5.1.20 Other food laws .....	398
II.	LIVESTOCK AND LIVESTOCK PRODUCTS.....	398
	5.2.1 Imports.....	398
	5.2.2 Licence to import live animals and livestock products...399	
	5.2.2.1 Sanitary Import Permit .....	399
	5.2.2.2 Import of livestock products .....	400
	5.2.2.3 Procedure for import of livestock products.....	401

5.2.2.4 Regulations relating to food safety and standards .....	402
5.2.2.4.1 Contaminants, Toxins and Residues Regulations, 2011 .....	402
5.2.2.4.2 Packaging and Labelling Regulations, 2011 .....	403
5.2.3 Export of livestock animals and livestock products .....	404
5.2.3.1 Free exportability .....	404
5.2.3.2 Export status of livestock and livestock products .....	405
5.2.4 The Prevention and Control of Infectious and Contagious Diseases in Animals Act .....	406
B. CANADA .....	407
I. FOOD SAFETY AND STANDARDS LEGISLATION .....	407
C5.1 Legal framework .....	407
C5.1.1 Food and Drugs Act prohibitions .....	408
C5.1.2 Prohibitory provisions of the FDA .....	409
C5.1.2.1 Prohibition against sale of unsafe food .....	409
C5.1.2.2 Prohibition against deceptive labelling and packaging .....	409
C5.1.2.3 Prohibition against deceptive marketing .....	409
C5.1.2.4 Importation of food not complying with prescribed standard .....	409
C5.1.2.5 Prohibition against unsanitary manufacturing etc. ....	410
C5.1.2.6 Foods containing food additives .....	410
C5.1.2.6.1 Declaration of food additives on labels of pre-packaged foods .....	411
C5.1.3 Genetically engineered (GE) foods, etc. ....	411
C5.1.3.1 Pre-market notification .....	412
C5.1.3.2 Labelling of GE/GM products .....	412
C5.1.4 Irradiation of food .....	413
C5.1.4.1 Labelling of irradiated food .....	413
C5.1.5 Safe Food for Canadians Act prohibitions .....	414
C5.1.6 Offences and punishment .....	414
C5.1.6.1 Food and Drugs Act .....	414

C5.1.6.2 Safe Food for Canadians Act (SFC Act) .....	414
C5.1.6.3 Limitation period .....	415
II. LIVESTOCK AND LIVESTOCK PRODUCTS.....	415
C5.2 Import restrictions on certain dairy and farm products .....	415
C5.2.1 Import of animals, animal products and animal by- products.....	416
C5.2.2 Identification of animals upon import .....	416
C5.2.3 Importation of “regulated animals” .....	416
C5.2.4 Import of animal by-products .....	417
C5.2.5 Standards for and grading of meat carcasses .....	417
C5.2.6 Import of packing material, used beehives, used beeswax and bee feeding products, and veterinary biologics...417	
C5.2.7 Import of aquatic animals .....	417
C5.2.8 Export of animals.....	418
C5.2.9 Export of semen of animals and poultry, animal embryos .....	418
C5.2.10 Export of rendering plant products.....	419
C5.2.11 Import and export of meat products.....	420
C5.2.12 Offences and punishment.....	420
III. FISH AND FISH PRODUCTS.....	420
A. INDIA.....	420
5.3.1 Introduction .....	420
5.3.1.1 Main tariff lines .....	421
5.3.2 Legislative framework .....	421
5.3.3 Institutional framework .....	423
5.3.4 Regulation of imports and exports.....	423
5.3.4.1 Import prohibitions.....	424
5.3.4.2 Genetically modified fish and fishery products ....	425
5.3.4.3 Contaminants, toxins and residues .....	425
5.3.4.3.1 Metal contaminants.....	425
5.3.4.3.2 Insecticides .....	426
5.3.4.3.3 Insecticides on food.....	426
5.3.4.3.4 Antibiotics.....	426
5.3.4.3.5 Nitrofurans .....	426
5.3.4.4 Food Products Standards and Additives.....	427



5.3.4.5 Irridation of seafoods.....	428
5.3.4.5.1 Additional requirements for irradiation .....	428
5.3.4.6 Packaging and labelling.....	428
5.3.4.6.1 Packaging.....	429
5.3.4.6.2 Labelling .....	429
5.3.4.6.3 Labelling of irradiated food.....	430
5.3.5 Export restrictions .....	430
B. CANADA.....	432
C5.3.1 Introduction .....	432
C5.3.1.1 Legal framework .....	433
C5.3.2 Import prohibitions in the Act .....	434
C5.3.2.1 Import prohibitions in the Regulations .....	434
C5.3.2.2 Inspection of imported fish.....	435
C5.3.2.3 Export prohibitions in the Act.....	435
C5.3.2.4 Export prohibitions in the Regulations .....	435
C5.3.2.5 Non-application of Regulations in certain cases .....	436
C5.3.3 Offence and punishment.....	436
IV. DAIRY PRODUCTS .....	436
1. Milk, Butter and Cheese.....	436
A. INDIA.....	436
5.4.1 Introduction .....	436
5.4.1.1 Tariff lines .....	437
5.4.2 Legal framework.....	438
5.4.3 Packaging and labelling of milk and milk products .....	438
5.4.3.1 Packaging .....	438
5.4.3.2 Labelling.....	439
5.4.4 Contaminants, toxins and residues .....	439
5.4.4.1 Metal contaminants .....	439
5.4.4.2 Other metal contaminants .....	440
5.4.4.3 Crop contaminants.....	440
5.4.4.4 Use of insecticides.....	440
5.4.5 Standards for and additives in milk and milk products .....	441
5.4.5.1 Standards.....	441

5.4.5.2 Additives.....	441
5.4.5.2.1 Artificial sweeteners.....	441
5.4.5.2.2 Flavouring agents and related substances ..	442
5.4.5.2.3 Emulsifying and stabilizing agents .....	442
5.4.5.2.4 Flavour enhancers .....	442
5.4.6 Sanitary Import Permit (SIP).....	442
5.4.7 Exports.....	442
<b>B. CANADA.....</b>	<b>442</b>
C5.4.1 Legal framework .....	442
C5.4.2 Grades and grade names .....	443
C5.4.3 Health and safety standards .....	444
C5.4.4 Standardized dairy products .....	444
C5.4.5 Packing, marking and labelling of dairy products .....	444
C5.4.6 Import and export trade.....	445
C5.4.6.1 Import of dairy products .....	445
C5.4.6.2 Export of dairy products .....	446
2. Eggs.....	447
<b>A. INDIA.....</b>	<b>447</b>
5.4.7 Legal framework.....	447
<b>B. CANADA.....</b>	<b>447</b>
C5.4.7 Legal framework .....	447
C5.4.7.1 Requirements and standards.....	447
C5.4.8 Packing and marking.....	448
C5.4.8.1 Packing .....	448
C5.4.8.2 Marking .....	449
C5.4.9 Inspection and certification .....	449
C5.4.10 Import and export trade .....	450
C5.4.10.1 Imports.....	450
C5.4.10.2 Exports.....	451
C5.4.11 Import and export of processed eggs .....	452
C5.4.11.1 Requirements and standards .....	452
C5.4.11.2 Packing and marking.....	452
C5.4.11.2.1 Packing.....	452
C5.4.11.2.2 Marking.....	453

C5.4.11.2.3 Inspection and certification .....	453
C5.4.12 Import and export trade .....	453
C5.4.12.1 Imports.....	453
C5.4.12.1.1 Imports of liquid processed eggs .....	454
C5.4.12.2 Exports.....	455
<b>Chapter 6. Intellectual Property Rights.....</b>	<b>457</b>
6.0 Introduction .....	457
I. PATIENTS .....	457
A. INDIA .....	457
6.1 Legal framework .....	457
6.1.1 Right to patent .....	458
6.1.2 Patent applications.....	459
6.1.2.1 Patent of biological material.....	460
6.1.2.2 Examination of application .....	460
6.1.2.3 Pre-grant opposition.....	460
6.1.2.4 Post-grant opposition.....	461
6.1.3 International and convention applications.....	461
6.1.3.1 International applications.....	461
6.1.3.2 Convention applications.....	462
6.1.4 Term of patent.....	462
6.1.4.1 Term of patent of addition.....	462
6.1.5 Patent owner's rights .....	463
6.1.5.1 Conditions attached to patent .....	463
6.1.5.2 Acquisition of inventions and patents by the Central Government.....	464
6.1.5.3 Compensation for acquisition.....	464
6.1.5.4 Inventions of government employees .....	464
6.1.6 Compulsory licences.....	465
6.1.6.1 Terms of compulsory licence .....	466
6.1.6.2 Licensing of related patents.....	466
6.1.6.3 Termination of compulsory licence.....	467
6.1.6.4 Compulsory licence in national emergency .....	467
6.1.6.5 Revocation of patent for non-working .....	468

6.1.6.6 Appeals to the Intellectual Property Appellate Board .....	468
6.1.7 Parallel imports .....	469
6.1.8 Infringement of patent .....	469
6.1.8.1 Plaintiffs in an infringement action.....	469
6.1.8.2 Reliefs available for infringement .....	469
6.1.8.3 Groundless threats of legal proceedings.....	470
6.1.9 Offences.....	470
B. CANADA.....	470
C6.1 Legal framework.....	470
C6.1.1 Right to patent.....	471
C6.1.2 Application for patent.....	471
C6.1.2.1 Filing date and the claim date .....	472
C6.1.2.2 Where subject-matter of claim previously disclosed.....	472
C6.1.2.3 Improvement to patented invention .....	473
C6.1.2.4 International applications .....	473
C6.1.2.5 Opposition to patent application.....	473
C6.1.3 Term of patent.....	474
C6.1.4 Patent owner's rights.....	474
C6.1.4.1 Exclusive rights not absolute.....	474
C6.1.4.2 Commissioner's powers.....	475
C6.1.5 Use of patents by government .....	476
C6.1.5.1 National emergency or extreme urgency.....	476
C6.1.5.2 International humanitarian purposes.....	476
C6.1.6 Infringement of patent.....	477
C6.1.6.1 Acts not constituting infringement .....	477
C6.1.6.2 Defences to infringement action.....	478
C6.1.7 Re-examination of patent .....	478
C6.1.8 Offences .....	479
II. TRADEMARKS .....	480
A. INDIA.....	480
6.2 Legal framework .....	480
6.2.1 Registrability of trademark .....	481

6.2.1.1	Application procedure for registration .....	482
6.2.1.2	Registration procedure .....	482
6.2.2	Registration of trademark .....	482
6.2.2.1	Duration of registration and renewal.....	483
6.2.2.2	Appeals from Registrar's decisions .....	483
6.2.3	International trademarks.....	483
6.2.4	Rights conferred by registration .....	483
6.2.5	Parallel importation .....	484
6.2.5.1	Importation of goods bearing false trademarks ...	484
6.2.6	Expunction of trademark from trademark register .....	485
6.2.7	Offences.....	485
6.2.7.1	Cognizance of certain offences .....	486
6.2.7.2	Procedure where invalidity of trademark is pleaded .....	486
6.2.7.3	Offences by companies .....	487
6.2.7.4	Limitation period for prosecution.....	487
6.2.8	Forfeiture .....	487
6.2.9	Predicate offences .....	487
<b>B.</b>	<b>CANADA</b> .....	488
C6.2.1	Legal framework .....	488
C6.2.2	Claim of distinctiveness of mark.....	489
C6.2.2.1	Registrability of trademark .....	489
C6.2.2.1.1	Excepted cases .....	490
C6.2.2.2	Prohibited marks .....	490
C6.2.2.3	Prohibition against use of unregistrable marks..	491
C6.2.2.4	Prohibition against use of a plant variety denomination .....	491
C6.2.2.5	Prohibition against registration by others of well-known marks .....	491
C6.2.3	International trademarks .....	492
C6.2.4	Application procedure for registration.....	492
C6.2.4.1	Applications based on registration abroad .....	493
C6.2.4.2	Priority date of application in Canada .....	493
C6.2.4.3	Application based on use to establish distinctiveness.....	494
C6.2.4.4	Disclaimer of right to exclusive use.....	494

C6.2.4.5	Rejection of application.....	494
C6.2.4.6	Subsequent stages of the process.....	494
C6.2.4.7	Acceptance of application.....	495
C6.2.5	Registration of trademark or proposed trademark.....	495
C6.2.5.1	Duration of registration and renewal.....	496
C6.2.6	Rights conferred by registration.....	496
C6.2.7	Infringement.....	497
C6.2.7.1	No infringement where bona fide use made of personal names, geographic indication, etc.....	497
C6.2.7.2	No infringement where Court permits concurrent use of confusing mark.....	497
C6.2.8	Remedies for infringement.....	498
C6.2.8.1	Import (or export) of goods bearing infringing trademark.....	498
C6.2.8.2	Interim custody of infringing goods already imported.....	499
C6.2.8.3	Imported goods must be released if no court action taken.....	499
C6.2.9	Expunction of trademark from trademark registry.....	500
C6.2.9.1	Expunction for non-use.....	500
C6.2.10	Offences.....	501
C6.2.10.1	Punishment.....	501
C6.2.10.2	Offences under the Combating Counterfeit Products Act.....	502
C6.2.10.3	Limitation of prosecution.....	502
C6.2.11	Destruction or disposal of offending goods.....	502
C6.2.12	Offences under the Criminal Code.....	502
C6.2.12.1	Punishment.....	503
III.	GEOGRAPHICAL INDICATION OF GOODS.....	503
A.	INDIA.....	503
6.3.1	Legal framework.....	503
6.3.2	Meaning of geographical indication.....	503
6.3.3	Registration.....	504
6.3.4	Term of protection.....	504
6.3.5	Infringement and penalties.....	504
6.3.6	Parallel imports.....	504

B.	CANADA.....	505
	C6.3.1 Legal framework .....	505
	C6.3.2 Registration of GIs .....	505
	C6.3.3 Rights conferred by registration .....	506
	C6.3.4 Infringement of trademark .....	506
	C6.3.4.1 No infringement .....	506
	C6.3.4.2 Further cases of non-infringement .....	507
	C6.3.5 Importation of wine or spirits with infringing GI .....	508
	C6.3.5.1 Passing off offence.....	508
IV.	COPYRIGHT.....	508
A.	INDIA.....	508
	6.4.1 Legal framework.....	508
	6.4.2 Rights entitlement.....	508
	6.4.3 Rights conferred .....	509
	6.4.3.1 Copyright in designs.....	510
	6.4.3.2 Moral rights.....	510
	6.4.4 Term of protection.....	510
	6.4.5 International registration .....	511
	6.4.6 Compulsory licences.....	511
	6.4.6.1 Compulsory licence to publish translations.....	511
	6.4.6.2 Compulsory licence in other cases .....	512
	6.4.7 Copyright infringement .....	513
	6.4.7.1 Acts deemed not to be infringement .....	513
	6.4.8 Request for assistance in enforcement .....	514
	6.4.9 Remedies for copyright infringement.....	515
	6.4.9.1 Civil remedies.....	515
	6.4.9.2 Recovery of infringing copies and plates .....	515
	6.4.9.3 Criminal penalties .....	515
	6.4.9.4 Predicate offences.....	516
B.	CANADA.....	516
	C6.4.1 Legal framework .....	516
	C6.4.2 Rights of copyright holder.....	517
	C6.4.2.1 Copyright in a work .....	517
	C6.4.2.2 Moral rights .....	518

C6.4.2.3	Copyright in performer’s performance .....	518
C6.4.2.4	Copyright in sound recording .....	519
C6.4.2.5	Copyright in communication signal .....	519
C6.4.3	Term of protection .....	519
C6.4.4	Copyright infringement .....	521
C6.4.4.1	No infringement .....	521
C6.4.4.2	Infringement of moral rights.....	521
C6.4.5	Parallel importation of books.....	521
C6.4.5.1	Import or export prohibition of copyrighted works.....	523
C6.4.5.2	Request for assistance in enforcement.....	523
C6.4.6	Civil remedies.....	523
C6.4.6.1	No injunction in case of a building.....	523
C6.4.6.2	Injunction only remedy when defendant unaware of copyright .....	524
C6.4.6.3	Statutory damages .....	524
C6.4.6.4	Infringement by internet service provider, etc....	524
C6.4.6.5	No other statutory damages .....	525
C6.4.6.6	No statutory damages against educational institutions, etc.....	525
C6.4.7	Jurisdiction of court .....	525
C6.4.8	Offences and penalties .....	525
C6.4.8.1	Penalties .....	526
C6.4.8.2	Limitation period .....	526
V.	INDUSTRIAL DESIGNS .....	526
A.	INDIA.....	526
6.5.1	Legal framework.....	526
6.5.2	Registration and term .....	527
6.5.2.1	International reciprocity applications.....	527
6.5.2.2	Controller’s power to erase registration .....	528
6.5.3	Cancellation of registration.....	528
6.5.4	Parallel imports .....	528
6.5.5	Piracy of industrial design.....	528
6.5.5.1	Defences to a piracy suit .....	529
6.5.5.2	Groundless threats of legal proceedings.....	529
6.5.5.3	Criminal penalties .....	529



B.	CANADA.....	529
	C6.5.1 Legal framework .....	529
	C6.5.2 Registration of design.....	530
	C6.5.2.1 Date of registration and priority .....	530
	C6.5.3 Rights conferred by registration .....	531
	C6.5.3.1 Restriction on protection .....	531
	C6.5.4 Duration of right.....	531
	C6.5.5 Action for infringement.....	531
	C6.5.5.1 No infringement after fifty copies made of design .....	531
	C6.5.5.2 Defence to infringement proceedings.....	532
	C6.5.5.3 Limitation of action.....	532
	C6.5.6 Criminal penalties .....	532
VI.	PROTECTION OF PLANT VARIETIES AND FARMERS’ RIGHTS.....	532
A.	INDIA.....	532
	6.6.1 Legal framework.....	532
	6.6.2 Application for registration of plant variety .....	533
	6.6.3 Registrable plant variety .....	533
	6.6.4 Compulsory variety denomination .....	534
	6.6.5 Certain varieties cannot be registered.....	535
	6.6.6 International applications .....	535
	6.6.7 Further steps in the registration process.....	535
	6.6.7.1 Application to register essentially derived varieties.....	535
	6.6.8 Term of protection.....	536
	6.6.9 Rights granted by the Act.....	536
	6.6.9.1 Farmers’ rights.....	536
	6.6.9.2 Researcher’s rights .....	536
	6.6.10 Benefit sharing.....	536
	6.6.11 Compulsory licences.....	537
	6.6.12 Appeals.....	537
	6.6.13 Infringement and remedies .....	537
	6.6.13.1 Innocent infringement by a farmer .....	537
	6.6.14 Offences and penalties.....	537

6.6.15 Predicate offences.....	538
<b>B. CANADA.....</b>	<b>538</b>
C6.6.1 Legal framework .....	538
C6.6.2 Application for registration .....	538
C6.6.2.1 Priority to applications .....	539
C6.6.2.2 Priority in international applications.....	539
C6.6.2.3 Statutory criteria .....	539
C6.6.3 Term of plant breeder’s rights .....	540
C6.6.4 Rights under the Act.....	540
C6.6.4.1 Effective date of rights.....	541
C6.6.4.2 Designation of suitable denominations.....	541
C6.6.4.3 Non-application of rights.....	542
C6.6.4.4 Farmers’ privilege .....	542
C6.6.4.5 Maintenance of propagating material.....	542
C6.6.5 Non-exclusive compulsory licences .....	543
C6.6.5.1 Right to be heard .....	543
C6.6.5.2 Concurrent compulsory and other licences permissible .....	543
C6.6.5.3 Request for exemption.....	543
C6.6.6 Appeals.....	543
C6.6.7 Infringement and penalties .....	543
C6.6.7.1 Holder required to take proceedings .....	544
C6.6.7.2 Defence to infringement action .....	544
C6.6.7.3 Offences and penalties .....	544
<b>VII. SEMICONDUCTOR INTEGRATED CIRCUITS.....</b>	<b>545</b>
<b>A. INDIA.....</b>	<b>545</b>
6.7.1 Legal framework.....	545
6.7.2 Registrability of topography .....	546
6.7.2.1 Originality of lay-out design.....	546
6.7.2.2 Commercial exploitation .....	546
6.7.2.3 Registration of lay-out design .....	546
6.7.3 Rights conferred by registration.....	547
6.7.4 Duration of registration.....	547
6.7.4.1 Applications based on application or registration in a convention country.....	547

6.7.5 Infringement of layout-design .....	547
6.7.5.1 No infringement .....	547
6.7.5.2 No right of action for infringement if lay-out design unregistered .....	548
6.7.6 Penalties .....	549
6.7.6.1 Cognizance of certain offences .....	549
6.7.6.2 Procedure where accused challenges validity of registration .....	549
6.7.7 Forfeiture .....	549
<b>B. CANADA</b> .....	550
C6.7.1 Legal framework .....	550
C6.7.2 Registrability of topography .....	550
C6.7.2.1 Eligibility for registration .....	550
C6.7.3 Registration .....	551
C6.7.4 Rights granted upon registration .....	551
C6.7.5 Duration of exclusive rights .....	552
C6.7.6 Infringement of owner's exclusive rights .....	552
C6.7.6.1 Action for infringement .....	552
C6.7.6.2 Defence to infringement action .....	553
C6.7.6.3 Limitation period .....	553
C6.7.6.4 Importation of infringing integrated circuit product .....	554
ADDENDUM 1 .....	554
ADDENDUM 2 .....	562
<b>Chapter 7. Other Laws Implementing Trade-Related International Conventions</b> .....	567
7.0 Introduction .....	567
7.0.1 India's money-laundering prevention law .....	567
7.0.1.1 Definition .....	568
7.0.1.2 Reciprocal agreements and arrangements .....	568
7.0.1.3 Schedule of offences .....	569
7.0.2 Canada's money-laundering prevention law .....	569
7.0.2.1 Definition .....	569
7.0.2.2 Reciprocal agreements and arrangements .....	569
7.0.2.3 Designated offences .....	570

I.	CITIES AND WILD LIFE.....	570
A.	INDIA.....	570
	7.1 CITES.....	570
	7.1.1 Appendix I species.....	571
	7.1.1.2 Appendix II species.....	571
	7.1.1.3 Appendix III species.....	571
	7.1.2 Legal framework.....	572
	7.1.2.1 Prohibition against hunting of wild animals .....	572
	7.1.3 Specified plants.....	573
	7.1.4 Trophies, animal articles, etc.....	574
	7.1.4.1 Schedule I animal.....	574
	7.1.4.2 Schedule II animal .....	574
	7.1.4.3 Section 49B prohibition.....	575
	7.1.4.4 Penalties.....	575
	7.1.4.5 Cognizance and compounding of offences .....	575
	7.1.5 Operation of other laws not barred.....	576
B.	CANADA.....	576
	C7.1 Legal framework.....	576
	C7.1.1 Regulation of import and export .....	576
	C7.1.2 Offence of knowing possession .....	576
	C7.1.3 CITES permit exemptions .....	577
	C7.1.3.1 Limitations and restrictions .....	577
	C7.1.4 Issue of permits.....	577
II.	ANTIQUITIES AND ART TREASURES.....	578
A.	INDIA.....	578
	7.2 Legal framework .....	578
	7.2.1 Penalty for contravention.....	579
	7.2.2 Application of other laws not barred .....	579
	7.2.3 Other laws prohibiting or controlling export of antiquities .....	580
	7.2.3.1 Offences against the Customs Act .....	580
	7.2.4 International conventions on illicit import, export, etc. .	580
	7.2.4.1 Recovery of illegally exported cultural property ..	581

7.2.4.2	Implementation of Article 13 by India.....	581
7.2.4.3	Convention on the Protection of Cultural Objects in the Event of Armed Conflict .....	583
B.	CANADA.....	585
C7.2	Legal framework.....	585
C7.2.1	Protection in Canada of foreign cultural property .....	585
C7.2.2	Action for recovery by reciprocating State.....	585
C7.2.3	International conventions .....	586
C7.2.3.1	The Second Protocol to the 1954 Hague Convention .....	586
C7.2.4	Amendment to the CPEI Act .....	586
C7.2.5	Amendment to the Criminal Code.....	587
III.	NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES.....	587
7.3	Introduction .....	587
A.	INDIA.....	588
7.3.1	Legal framework.....	588
7.3.2	Prohibition of illegal activity.....	589
7.3.3	Prohibition of import and export .....	589
7.3.4	Powers of the Central Government .....	589
7.3.5	Power to prohibit.....	589
7.3.6	Offences and penalties.....	590
7.3.6.1	Section 23 offence .....	590
7.3.6.2	Section 12 offence .....	590
7.3.6.3	Section 27A offence .....	590
7.3.6.4	Enhanced punishment for repeat offenders.....	590
7.3.6.5	Death penalty after previous conviction .....	590
7.3.6.6	Offences for which no punishment provided.....	591
7.3.6.7	Sentence cannot be suspended, remitted or commuted .....	591
7.3.6.8	Presumption of culpable mental state .....	591
7.3.7	Special courts.....	592
7.3.8	Publication of names, etc., of offenders.....	592
7.3.9	Penalty of forfeiture under Part VA .....	592
7.3.10	The Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Act, 1988 .....	593

7.3.10.1	Definition of “illicit traffic” .....	593
7.3.10.2	Power to detain .....	593
7.3.10.3	Punishment where person absconds .....	593
7.3.10.4	Reference to advisory board .....	593
7.3.11	Prevention of money laundering .....	593
7.3.12	Offences of cross-border implications .....	594
7.3.12.1	Reciprocal arrangements for assistance .....	595
<b>B.</b>	<b>CANADA</b> .....	<b>595</b>
C7.3.1	Legal framework .....	595
C7.3.2	Industrial hemp .....	596
C7.3.2.1	Import, export and possession .....	596
C7.3.2.2	Import of seed, grain, or hemp .....	597
C7.3.2.3	Export of industrial hemp.....	597
C7.3.3	Narcotic Control Regulations.....	597
C7.3.3.1	Import and export .....	597
C7.3.3.2	Permit required.....	598
C7.3.3.3	Narcotics Schedule .....	598
C7.3.3.4	Prohibitions .....	598
C7.3.4	Precursor Control Regulations .....	598
C7.3.4.1	Import and export of Class A precursors .....	598
C7.3.4.1.1	Permit.....	598
C7.3.4.1.2	Authorization .....	599
C7.3.4.1.3	Dealer licensing.....	599
C7.3.4.1.4	Import of Class A precursors .....	599
C7.3.4.1.5	Export of Class A precursors .....	599
C7.3.4.1.5.1	Declaration .....	599
C7.3.4.1.5.2	In-transit and transshipment permits.....	599
C7.3.4.1.5.3	Authorization certificate.....	600
C7.3.4.2	Class B precursors .....	601
C7.3.4.2.1	Limitation on activities and exemption....	601
C7.3.4.2.2	Dealer registration .....	601
C7.3.4.2.3	Export permit .....	601
C7.3.4.2.4	Authorization certificate.....	601
C7.3.5	Offences under the CDS Act and penalties .....	601
C7.3.5.1	“Designated substance offence” .....	602

C7.3.5.2 Possession and trafficking.....	602
C7.3.5.3 Punishment.....	602
C7.3.5.4 Forfeiture of offence-related property .....	603
C7.3.5.5 Offence-related property .....	603
C7.4 Offences under the Criminal Code.....	603
C7.5 Offences under the PML&TF Act.....	603
C7.6 Agreements with foreign states.....	603
C7.6.1 Other reciprocal agreements .....	604
IV. IMPORT AND EXPORT OF ROUGH DIAMONDS.....	604
7.7 Introduction .....	604
A. INDIA.....	604
7.7.1 Legal framework.....	604
7.7.2 Enforcement of prohibition.....	605
B. CANADA.....	605
C7.7.1 Legal framework .....	605
C7.7.2 Export control.....	606
C7.7.3 Import control .....	606
C7.7.4 Offences and punishment.....	606
C7.7.4.1 Punishment.....	607
C7.7.4.2 Offence by non-resident who obtained Canadian Certificate through Canadian resident .....	607
C7.7.4.3 Summary conviction offence .....	607
C7.7.4.4 Punishment.....	607
C7.8 “Designated offence” under the Criminal Code.....	607
<i>Index</i> .....	609

