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# TRADE REMEDIES IN NORTH AMERICA

Gregory W. Bowman Nick Covelli David A. Gantz Ihn Ho Uhm



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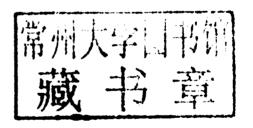
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# **Trade Remedies in North America**

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This book is dedicated to:		
bigail and Ethan, with the wish that they cherish and explore the world their d		
teaches and writes about	Greg Bowman	
Daniel and Sofia	Nick Covelli	
Thomas Ehrlich and Boris Kozolchyk, my teachers and mentors	David Gantz	
Kyoung Za (wife), Manuel (son) and Felicia (daughter-in-law)	Ihn Uhm	

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## **Preface**

There is no question that the North American Free Trade Agreement has considerably enhanced trade among the United States, Canada and Mexico. From 1993 to 2008, three-way trade increased a remarkable 329%, to well over USD 950 billion annually. Still, despite the name of the Agreement, a sizeable portion of trade among the three countries is not 'free' at all. Likewise, notwithstanding successive multilateral trade deals and dozens of bilateral free trade agreements concluded individually by the NAFTA countries with other countries, a great deal of trade between the NAFTA countries and non-NAFTA countries remains subject to various restrictions. Lingering tariffs and non-tariff barriers are the principal barriers to truly free trade. In addition, as anyone familiar with the Canadian lumber, Mexican cement, or Chinese steel industries (among others) can attest, antidumping duties, countervailing duties, and safeguards remain important obstacles to both intra-NAFTA and extra-NAFTA trade.

These so-called trade remedies, as legislated and applied in North America, are the subject matter of this book. Similar books have been published, although not many and none with the same depth and scope as this one. Our aim is to bring together in a single detailed work the laws and practices of trade remedies in all three NAFTA countries, including the role of legal and economic analysis in traderemedy determinations, in light of the relevant international trade rules at the bilateral, NAFTA and WTO levels and their economic and political underpinnings. We also provide for reference brief overviews of the WTO rules governing trade remedies imposed by WTO Members, and an extensive bibliography to aid the readers' further research.

This book is timely. The global financial and economic crisis that began in the United States in the second half of 2008 and has spread to almost every nation will likely result in an increase in trade-remedy actions. As previous recessions have demonstrated, domestic industries are more inclined to seek protection from import competition when they face lower demand, in part because it is easier to

#### Preface

demonstrate injury in a recession. Thus, the comprehensive study and understanding of trade remedies in North America is as important as ever for practitioners, academics, and government officials. It is our sincere hope and expectation that this book will provide readers with such an understanding.

As a final note, we are obliged to stress that the opinions that we express in this book are purely personal and are in no way intended to reflect the views of the government of Canada, including the Trade Law Bureau and the Canadian International Trade Tribunal, or of the other institutions with which some of us are affiliated.

Gregory W. Bowman Nick Covelli David A. Gantz Ihn Ho Uhm

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Finally, Greg Bowman, Nick Covelli and David Gantz wish to acknowledge that the genesis for this book was an idea conceived by Ihn Ho Uhm. They are grateful to him for the opportunity to join this worthwhile endeavour.

## List of Abbreviations

AD Antidumping

ATC Agreement on Textiles and Clothing

CAD Canadian Dollar

CAFC Court of Appeals for the Federal Circuit (US)

CBO Congressional Budget Office (US)

CBP Customs and Border Protection (formerly, US Customs

Service)

CBSA Canada Border Services Agency

CCFTA Canada – Chile Free Trade Agreement

CCFRS Certain Carbon Flat-Rolled Steel

CIFTA Canada – Israel Free Trade Agreement
CIT Court of International Trade (US)
CITT Canadian International Trade Tribunal

COCEX Comisión de Comercio Exterior COMPAS COMPAS COMPAS COMPAS COMPAS COMPAS COMPUTATION COMPUTATION

CUSFTA Canada – United States Free Trade Agreement

CVD Countervailing Duty

DSB Dispute Settlement Body (WTO)

DSU Dispute Settlement Understanding (WTO)

EC European Communities

ECC Extraordinary Challenge Committee

EU European Union FOB Free On Board

FTA Free Trade Agreement

FTC Free Trade Commission (NAFTA)

FTL Foreign Trade Law

#### List of Abbreviations

FY Fiscal Year

GAAP Generally Accepted Accounting Principles
GATT General Agreement on Tariffs and Trade
GAO Government Accountability Office (US)

GDP Gross Domestic Product
GNI Gross National Income
LTFV Less Than Fair Value
MOI Market-Oriented Industry

ME Market Economy

MERCOSUR Mercado Común del Sur MFN Most-Favoured Nation

MTC MERCOSUR Trade Commission
NAFTA North American Free Trade Agreement

NGO Non-governmental Organization

NME Non-market Economy

OECD Organization for Economic Co-operation and Development

OMA Orderly Marketing Arrangement

POI Period of Inquiry or Period of Investigation

POR Period of Review
RFI Request for Information
RTA Regional Trade Agreement

SECOFI Secretaria de Comercio y Fomento Industrial SCM Subsidies and Countervailing Measures

SG Safeguards

SIMA Special Import Measures Act
SLA Softwood Lumber Agreement
STCC Southern Tier Cement Committee

TFJFA Tribunal Federal de Justicia Fiscal y Administrativa

TPA Trade Promotion Authority (US)

UPCI Unidad de Prácticas Comerciales Internacionales

UNCITRAL United Nations Commission on International Trade Law

USD United States Dollar

USITC United States International Trade Commission

USTR United States Trade Representative

VAT Value-added Tax

VRA Voluntary Restraint Agreement WTO World Trade Organization

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