

KLUWER LAW INTERNATIONAL

GLOBAL TRADE LAW SERIES

TRADE REMEDIES IN NORTH AMERICA

Gregory W. Bowman
Nick Covelli
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Ihn Ho Uhm



Wolters Kluwer
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This book is dedicated to:

Abigail and Ethan, with the wish that they cherish and explore the world their dad 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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About the Authors

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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 trade-remedy 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	Commercial Policy Analysis System
CPE	Computable Partial Equilibrium
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	Secretaría 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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