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CANADIAN TRADE LAW: PRACTICE AND PROCEDURE LAWRENCE L. HERMAN, B.A. (Sask.), LL.B. (Toronto) Release No. 1, January 2022

Highlights

- **Chapter 1—Introduction—2021—The Year in Review**—This update summarizes the Tribunal's activities under the *Special Import Measures Act* ("SIMA") up to the fourth quarter of 2021. As in previous years, it reviews noteworthy decisions made during the year on key issues of law and policy, hopefully providing parties and counsel some useful guidance on how these might be dealt with in future trade remedy cases. During the past year, the Tribunal continued to be faced with the twin challenges of a heavy caseload and restrictions on physical proceedings resulting from the COVID-19 pandemic. This has meant continued adjustment of procedures in two main areas: (1) cancellation of in-person hearings with limited video presentations; and (2) decisions based largely on written materials. With respect to decision deadlines, while new federal legislation provided for the extension of these under the *Time Limits and Other Periods Act (COVID-19)*, S.C. 2020, c. 11, s. 11, all SIMA proceedings in 2021 were completed within normal statutory timelines.

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- **Chapter 5—Injury and Causation—2021 Developments**—As is well understood, the central feature of the Tribunal’s mandate is to determine causation — i.e., whether dumped or subsidized imports have caused or are threatening to cause material injury to Canadian production. In considering causation, the Tribunal takes into account a range of factors (macro and micro) that have a bearing on causation, including factors unattributed to imports. Attribution is a central element: the WTO Agreement provides that domestic agencies cannot attribute injury caused by these other factors to the imports in question. Under Canadian law, s. 37.1(3)(b) of the *Special Import Measures Regulations* implements this treaty obligation by directing the Tribunal to consider whether any factors other than the subject goods have caused or are threatening to cause injury.
- **Chapter 8—Compendium of Negative Injury Determinations—Non-injurious Imports—2021 Developments**—Continuing with some of the elements reviewed in the previous chapter, the Tribunal declined to make a positive injury finding in *Decorative and Other Non-Structural Plywood from China* (NQ-2020-002, reasons, 19 February 2021). The complaint was filed by a number of plywood manufacturers from across Canada, supported by UNIFOR and the United Steel Workers. Imports and sales of plywood from those exporters whose goods were found by the CBSA to not have been dumped and to not have been subsidized or to have insignificant amounts of subsidy, were considered non-subject imports in the Tribunal’s revised investigation report (i.e., they were not considered subject goods).

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