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Foreword

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JUDGE JUDITH M. BARZILAY*

It is my pleasure this year to join my colleagues on the bench of the U.S. Court of International Trade ("CIT") who have previously introduced this worthy commentary on our yearly jurisprudence to our bar and other interested members of the legal community. The Court appreciates the hard work and many hours it took to research, write, edit and publish these fine articles.

When I joined the Justice Department's International Trade Field Office in 1984, I had little idea how important customs and trade law would be to my professional future. I quickly recognized, though, that something about this very specialized area of the law was extremely appealing. Despite the esoteric nature of the legal concepts with which our bar engages, their sweeping and material impact is readily apparent. In particular, I continue to take great pleasure in dealing with and learning about tangible products, from the wood flooring at issue in the first case I tried as a new Justice Department attorney to Russian nesting dolls, electronics and complex chemicals. To this day, as I continue to learn the intricacies of our field, I find that the application of conceptual legal principles to concrete business transactions is endlessly fascinating.

The articles in this volume demonstrate this interesting interplay by examining the spectrum of recent cases to come before the CIT and the Court of Appeals for the Federal Circuit ("CAFC"). In the trade remedies arena alone, namely those cases governed by 28 U.S.C. § 1581(c) and increasingly arising under the Court's "residual jurisdiction" pursuant to 28 U.S.C. § 1581(i), our Court and the CAFC considered a number of important questions: Whose goods will be affected by antidumping and countervailing duty orders and the setting of those margins? What degree of evidence and analysis must the International Trade Commission produce to ensure that its injury determinations will pass muster upon judicial review? What will be the effective date of an agency redetermination implementing a World Trade Organization ruling adverse to U.S. practice? How should goods from a purported non-market economy be treated and can they be subject to both antidumping and countervailing duties? Our court addressed all these questions in 2010, and several are now on appeal at

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the CAFC. In addition, the issue of zeroing in antidumping investigations and reviews has resurfaced and our Court and the CAFC have issued several important opinions on the use of facts available, especially in the context of adverse facts available. Decisions on these issues and others like them have far-reaching consequences for a variety of businesses in the United States and around the world.

As usual, several customs cases brought under 28 U.S.C. § 1581(a) in 2010 dealt with important procedural issues, including the implication of the two Supreme Court decisions that arguably changed the standard governing the sufficiency of pleadings: *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). (The *Twombly/Iqbal* standard also arose in an antidumping case and in the civil penalty and liquidated damages context.) While narrow, the issue of the impact of these two decisions stands to affect in concrete ways the burden placed on plaintiffs in cases before the CIT. Several other § 1581(a) cases involved claims relating to the liquidation process in antidumping and countervailing duty proceedings. The majority of these cases, however, dealt with the classification of merchandise, which, as our bar knows well, governs the admissibility of goods into the country and the amount of duty importers pay and, therefore, is a vitally important issue for the entire business community. Interesting classification issues involved goods ranging from parts of furniture to merchandise entered under various headings and subheadings of the frequently litigated luggage and data processing provisions.

In short, the normal work of the Court goes on. In 2010, the Court issued 142 opinions, 83 involving antidumping and countervailing duty cases and 28 under the denied protest provision of § 1581(a). In only seven cases did the government as plaintiff seek to collect penalties, duties or liquidated damages. As new issues arise before the Court in 2011, looking back on the previous year's jurisprudence is not only useful but is a truly necessary endeavor.

After thirteen years on the bench of the CIT, I assumed senior status in June 2011. As I leave the ranks of active judges, I would like, once again, to thank our bar for its excellent standards of legal advocacy, the courtesy and civility it almost always displays during litigation before us and its willingness to engage in thoughtful reflection about the Court and the impact of its jurisprudence on litigants and global trade, as exemplified by the excellent articles prepared for this issue of the *Georgetown Journal of International Law*. I know the Court and the CAFC, as well as all attorneys who practice before them, will profit greatly from the scholarship and expertise demonstrated in these pages.