

## BOOK REVIEW

**TRADE-OFFS ON FREE TRADE: THE CANADA-U.S. FREE TRADE AGREEMENT.** Edited by M. Gold and D. Leyton-Brown. Toronto, Calgary and Vancouver: The Carswell Company Limited, 1988. Pp. 458.

The Canada-United States Free Trade Agreement (Agreement or FTA)<sup>1</sup>, which was signed on January 2, 1988, and entered into force on January 1, 1989, is a landmark in the bilateral relationship between the two nations. The Agreement is an attempt to reinforce the substantial trade and investment flows moving between Canada and the United States with a legal framework that regulates bilateral trade in goods, trade in services, investment, and temporary business travel and creates a sophisticated structure for the resolution of disputes arising out of the relationship.

The creation of the FTA has generated numerous commentaries on the scope of the Agreement and its potential effects both on the international trade system and the domestic affairs of the two countries. The latter issue has been the particular concern of Canadian authors for a number of reasons including Canada's heavy reliance on the U.S. market for its exports and imports, the superior economic strength of the United States in relation to Canada, and the different political and social philosophies inherent in each country. These considerations have produced a split in views on the desirability of the negotiation of the FTA and on its substance and effect.

The text, *Trade-Offs on Free Trade*, is a paradigm of the polarity of opinion on the necessity for and ramifications of the Agreement. It is a compilation of papers presented at a conference organized by the Centre for Research on Public Law and Public Policy, Osgoode Hall Law School of York University, Toronto, Canada on March 17-19, 1988. Most of the essays are written by Canadians, which results in a collection that focuses on the FTA from a Canadian viewpoint. The editors assembled commentators from different sectors of society and fields of study to produce a multidisciplinary publication. As a consequence, the reader is provided with a variety of perspectives and positions on the Agreement.

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1. Canada-United States Free Trade Agreement, January 2, 1988, *reprinted in* 27 I.L.M. 281 (1988); Canada-United States Free Trade Agreement Implementation Act of 1988, Pub. L. No. 100-49, 102 Stat. 1851 (1988).

The publication is composed of fifty-two papers that have been positioned under one of four main themes. The first theme is an analysis of the evolving international economic environment in which the FTA will operate and will itself, in turn, influence. The second concerns the Canadian domestic, constitutional, and political issues that are raised by the FTA. The third addresses the major substantive elements of the actual Agreement, and the fourth theme is an examination of the effect of the FTA on labour and on prospects for the independence of Canadian policy-setting. Out of these topics, thirteen chapters were generated to collect related papers, with the editors writing an introduction to each chapter to provide contextual material and to weave sometimes disparate essays into the thematic drapery.

The essays are all relatively brief, most are between seven and ten pages in length, and range from the provocative and polemical to the placid and academic. A thorough analysis of the text reveals a number of essays that are of particular interest.

Addressing the theme of the impact of the international economic environment, papers by Rugman, Tremblay, Courchene, and Lipsey all support the proposition that the evolution of the international economic system requires the negotiation of a bilateral free trade agreement between Canada and the United States. Their arguments are those that are favoured by Canadian proponents of the FTA: the articulation of the position that it is in Canada's best economic interest to enter into such an agreement.

In this vein, Rugman looks to the configuration of the contemporary global economy and sees it dominated by the large multinational enterprises originating in the United States, Western Europe, and Japan. In drawing upon Kenichi Ohmae's work on the triad power of these multinationals,<sup>2</sup> Rugman argues that Canada must obtain assured entry into one of the triad markets, the United States, in order to survive in the fiercely competitive forum that has resulted.

Tremblay's essay complements Rugman's arguments by viewing the substantial increase in Canadian merchandise trade exports to the United States and a corresponding massive decline in Canadian trade with Great Britain as crucial factors mandating the negotiation of the FTA in order to protect Canada's trade dependency on the United States with legal cover.

Courchene scrutinizes the effect of the FTA in the broader context of the "multinational free trade" system, concluding that the gains from

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2. See K. Ohmae, *TRIAD POWER: THE COMING SHAPE OF GLOBAL COMPETITION* (1985).

the Agreement will be of greater benefit to Canada than any positive results obtained in the multinational forum in the medium-term. Further, he views the FTA as a crucial stepping stone which allows Canada to position itself so that it can compete effectively in the global trade system in the future. Lipsey has a similar thesis — that the FTA will be of greatest benefit to Canada by improving the access of Canadian business to its most important market, in conjunction with the General Agreement on Tariffs and Trade<sup>3</sup>, as the Uruguay Round of multilateral trade negotiations is attempting to liberalize further the multilateral system.

In opposition, Young, Wilkinson, and Drache attempt to weaken these arguments and persuade the reader that the FTA will have a detrimental effect on the Canadian economic and political structure. Their essays articulate the views of a sizeable body of the Canadian population who are either strongly opposed to the Agreement or who are concerned about its long-term effects on Canadian society.

Young pulls at the assumption that the world is breaking up into isolated trading blocs. He suggests that both intra and inter-bloc trade has increased and concludes that Canada should not limit its freedom to act in the economic sphere, particularly in the services trade and foreign investment sectors, by consenting to the Agreement. Wilkinson takes the position that it would have been of greater advantage to Canada to concentrate on the GATT multilateral trade system rather than negotiate the FTA, analyzing various components of the FTA to illustrate his point. Drache buttresses these counterarguments by describing the Agreement as a treaty between unequal parties, with Canada being in the inferior position and consequently failing to achieve its negotiating objectives and accepting major restrictions on its ability to set independent economic and social policy.

Addressing the legal relationship of the FTA to the GATT, Castel provides a carefully researched piece that asks whether the FTA complies with GATT art. XXIV, which permits GATT contracting parties to enter into free trade areas (or customs unions) if specified criteria are satisfied. His conclusion is that the Agreement does appear to comply with the two nations' GATT obligations.<sup>4</sup>

The essay by Irish sounds the only altruistic note in this debate. She examines the role that the FTA will play in Canada's relationship with lesser developed states. With insight into this concern that is for the

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3. The General Agreement on Tariffs and Trade, Oct. 30, 1947, GATT, 4 B.I.S.D. (1969), 55 U.N.T.S. 194. *See also* the Tokyo Round Agreements, GATT, B.I.S.D. 26th Supp. (1980).

4. A GATT working party has been established to examine the compliance of the FTA with art. XXIV of the GATT. *See* GATT Focus Newsletter No. 60, March/April 1989, at 3.

most part ignored by other commentators, she sees an insular Canada turning its trade policy back to the plight of the Third World.

After the aggressive nature of many of the preceding essays, the series of papers on the Canadian constitutional aspects of the FTA implementation provide a calm interlude. The essays by leading Canadian constitutional scholars rely on mainstream constitutional law precedent and are of the opinion that the federal government of Canada has the constitutional authority to implement the FTA in its entirety.<sup>5</sup> Only Gibson is able to suggest that the judiciary might not agree with the majority view. He employs a variety of arguments, one of which asserts a constitutional principle that Canadian federalism requires that equilibrium between federal and provincial jurisdictions must be maintained.

The third theme of the text, an analysis of the major substantive aspects of the FTA, is engaged by a presentation of clusters of essays on elements of the FTA dealing with dispute resolution, energy and natural resources, automotive trade, trade in services, financial services, and culture. The papers range from general overviews to analyses of specific provisions, the latter being of particular interest to readers focusing on areas of specialization and the impact of the FTA thereon. Essays warranting particular consultation due to their issue-specific nature include Tuohy on the implications of the FTA for the Canadian health services sector, Wonnacott on the auto trade provisions, and the papers on energy and natural resources.

The final section on the effect of the FTA on labour and on Canadian policy independence evidences a number of strong concerns of Canadian commentators. The consequential ramifications of the FTA on employment in certain sectors and among particular groups of workers are discussed and the pressures on autonomous Canadian economic and social policy-making, potentially leading to policy harmonization between the two nations, are debated with conflicting opinions surfacing in both areas.

*Trade-Offs on Free Trade* presents an outlook on the FTA that is both fascinating and troubling to the reader. It is intriguing because it illustrates an almost bewildering variety of perspectives on the Agreement, with many authors expressing either a strong positive or negative viewpoint on the Agreement and its effect on the Canadian system. Yet

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5. Currently, under Canadian constitutional law, although the federal executive branch of government has the authority to negotiate treaties in the international sphere, the power to implement treaty obligations into domestic law lies with the federal or provincial legislative branches depending upon the subject-matter of the treaty. See *Attorney General for Canada v. Attorney General for Ontario*, 1 D.L.R. 673 (J.C.P.C. 1937) (this case is also referred to as the Labor Conventions case). Jurisdiction over classes of subjects is divided between the federal and provincial governments in the Constitution Acts, 1867 to 1982.

the publication is also disturbing since the impression with which one is left after consuming the contents of *Trade-Offs on Free Trade*, despite the rough balance that the editors have achieved between those essays taking a stand for or against the FTA, is the considerable number of essays that do criticize the Agreement and warn of the detrimental effect of the FTA on the Canadian system. Whether these fears are borne out or not remains to be seen. In any event, *Trade-Offs on Free Trade* is an eclectic collection of essays, the reading of which is recommended to obtain a Canadian multidisciplinary commentary on the FTA rather than a purely law-oriented analysis of the Agreement.

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