

INTERNATIONAL TRADE AND INVESTMENT LAW IN CANADA, SECOND EDITION. By Robert K. Paterson & Martine M.N. Band with Jock A. Finlayson and Jeffrey S. Thomas. Toronto: Carswell, 1994. Looseleaf. (\$165.00 ).

The pioneering *Canadian Regulation of International Trade and Investment*,<sup>1</sup> when published in 1986, represented the first comprehensive Canadian treatment of international trade law. Since then, Canada has entered into the *Canada-United States Free Trade Agreement* (FTA),<sup>2</sup> the *North American Free Trade Agreement* (NAFTA),<sup>3</sup> and the *Agreement Establishing the World Trade Organization* (WTO).<sup>4</sup> Negotiations have begun with a view to Chilean accession to NAFTA, working groups were mandated to begin preparatory work at the Denver meeting of Trade Ministers of the Americas in June, 1995<sup>5</sup> to lay the foundation for a "Free Trade Agreement of the Americas", and leaders of Organization of Economic Cooperation and Development (OECD) member countries announced their intention to pursue negotiation of a "Multilateral Agreement on Investment" around the same time.<sup>6</sup> According to co-authors Robert K. Paterson and Martine M.N. Band,<sup>7</sup> *International Trade and Investment Law in Canada* is designed to take account of this "almost overwhelming number of developments affecting Canadian international trade and investment law"<sup>8</sup> since the publication of the first edition.

The book is aimed at the growing number of government, academic, private sector and non-governmental organization lawyers as well as law students interested in international trade in general, and in Canadian perspectives in particular. It purports to offer a comprehensive, single-volume desk reference, sold by subscription in loose-leaf format with promised periodic updates, on topics related to "government regulation of international commercial transactions".<sup>9</sup> As an introduction to and overview of trade regulation in Canada, the book indeed provides an excellent sense of the increasing breadth of international trade law, the relation between international disciplines and domestic norms, and the increasing judicialization of remedies at both the national and international level. Part One, entitled simply "Treaties", surveys trade regulation at the international level, comprising one chapter each on the General Agreement on Tariffs and Trade (GATT), the FTA and the NAFTA. Part Two, styled "International Trade Law in Canada", contains an introduction to Canadian trade regulation, and separate chapters

<sup>1</sup> R.K. Paterson *et al.*, *Canadian Regulation of International Trade and Investment* (Toronto: Carswell, 1986).

<sup>2</sup> 22 December 1987, Can. T.S. 1989 No. 3. Implemented in Canada by the *Canada-U.S. Free Trade Agreement Implementation Act*, S.C. 1988, c. 65.

<sup>3</sup> (1993) 32 I.L.M. 289-456, 605-799. Implemented in Canada by the *North American Free Trade Agreement Implementation Act*, S.C. 1993, c. 44.

<sup>4</sup> The Agreement has not yet been officially published; however, see GATT, *The Results of the Uruguay Round of Multilateral Trade Negotiations* (Geneva: GATT Secretariat, June 1994). It has been implemented in Canada by *World Trade Organization Agreement Implementation Act*, S.C. 1994, c. 47.

<sup>5</sup> Summit of the Americas Trade Ministerial, Denver, Colorado, June 30, 1995, Final Joint Declaration.

<sup>6</sup> OECD, Communiqué SG/Press 95/41, "Meeting of the OECD Council at Ministerial Level" (Paris, 24 May 1995).

<sup>7</sup> Jock A. Finlayson also contributed a chapter on "Canada and International Trade Regulation: The General Agreement on Tariffs and Trade", and Jeffrey Thomas contributed a chapter on "The North American Free Trade Agreement".

<sup>8</sup> P. iii.

<sup>9</sup> *Ibid.*

on Canadian customs law, import and export controls, government procurement, dumping and subsidies, and Canadian official export financing. Part Three on "Canadian Foreign Investment Law" includes chapters on international regulation of barriers to foreign direct investment and trade in services, legal restrictions on foreign investment in Canada, and investment risk protection in developing countries.

Unfortunately, four major shortcomings discussed in detail below, unless rectified in future loose-leaf inserts,<sup>10</sup> prevent this work from serving either as an exhaustive checklist for counsel for traders and investors or as a reliable reference work for the legal communities concerned. First, with the entry into force of the WTO on January 1, 1995, a good number of the chapters already require significant revision to take account of the resulting changes wrought at both the international level and in Canadian law. Second, the book fails to include any meaningful discussion of either technical barriers to trade and sanitary and phytosanitary measures, the two major areas of standards regulation most often constituting non-tariff barriers, or of trade-related intellectual property measures exhaustively addressed in the NAFTA, the WTO Agreement on this subject and Canadian implementing legislation. Third, in several areas, certain errors, not necessarily apparent to the casual reader, could mislead those relying on the text as authority. And finally, less-than-careful editing results in a good deal of repetition, limited cross-references from one chapter to another only partially compensated for by the index, and analyses that vary from one chapter to the next.

Jock Finlayson's chapter on the GATT comprises two distinct sections. The 46-page first section provides a readable historical review of GATT negotiations through the 1970's, up to and including the Tokyo Round, and a succinct summary of major GATT provisions affecting trade in goods. Its discussion of the concept of "most-favoured-nation" (MFN), among the most basic of GATT principles, and the evolution of "conditional MFN", places its evolution in its proper negotiating and policy context. As a policy paper, the chapter thus provides a good sense of multilateral trade negotiations. As a legal text, however, it falls somewhat short. For example, the author's discussion of the fundamental national treatment principle<sup>11</sup> states that "Paragraph 4 of Article III outlines the legal obligations of GATT Contracting Parties", and does not deal at all with the key provisions of paragraphs 1 and 2 of that Article,<sup>12</sup> which deal with internal taxes and other charges. Further, only the GATT panel reports on the *Foreign Investment Review Act*<sup>13</sup> and on Canadian liquor board pricing were chosen as illustrations. Although the desire to provide some Canadian context is laudable, the discussion should not be at the expense of more seminal GATT practice. The Chapter also lacks any footnotes or citations identifying where more detailed discussion of various topics may be found: for instance, although Finlayson admirably draws the reader's attention to the

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<sup>10</sup> As of July, 1995, a first insert had been published, but includes only a Table of Statutes and an Index.

<sup>11</sup> See section 1.4(c) at 1-18.

<sup>12</sup> See for example, GATT Panel Reports on *Japan — Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages*, GATT Doc. 34S/83 (1987); *United States — Measures Affecting Alcoholic and Malt Beverages*, GATT Doc. 39S/206 (1992); *United States — Taxes on Petroleum and Certain Imported Substances*, GATT Doc. 34S/136 (1987); *EEC — Regulation on Imports of Parts and Components*, GATT Doc. 37S/132 (1990); and *Canada — Import, Distribution and Sale of Certain Alcoholic Drinks by Provincial Marketing Agencies*, GATT Doc. 39/S27 (1992).

<sup>13</sup> S.C. 1973-74, c. 46.

fact that the principal laws governing tariffs in Canada are the *Customs Act*<sup>14</sup> and the *Customs Tariff*,<sup>15</sup> nothing in the text flags the fact that Chapter Five contains a detailed review of these two domestic measures; conversely the Table of Statutes fails to identify Finlayson's discussion in Chapter One.

Regrettably, despite Finlayson's impressive feel for the political, economic and legal dimensions of international trade regulation, he devotes only five pages to the Uruguay Round of Multilateral Trade Negotiations. With the "Dunkel Text" in the public domain since late 1991 and the Final Act adopted at Marrakesh in April, 1994, a more profound discussion of the first significant overhaul of the multilateral trading system since 1947 would have been in order.

Chapter Two, "The Canada-U.S. Free Trade Agreement", appears to have been written well before the FTA was suspended pursuant to an Exchange of Notes between Canada and the United States concurrent with the entry into force for both countries of the NAFTA, and thus unfortunately implies that the agreement remains in operation.<sup>16</sup> The text suggests, for instance, that disputes between Canada and the United States regarding agricultural trade "will be resolved...on an *ad hoc* basis by decisions of Chapter Eighteen and Nineteen dispute settlement panels",<sup>17</sup> whereas any government-to-government dispute would now be conducted under NAFTA Chapter Twenty instead. In discussing the temporary entry provisions of the FTA, the author asserts that "Chapter Fifteen is, however, less likely than some chapters of the FTA to inspire solutions to similar trade problems at the multilateral level",<sup>18</sup> without regard to the WTO *Decision on Negotiations on Movement of Natural Persons* that sets out modalities for a future multilateral agreement modelled along FTA lines. Section 2.4, in discussing the Canadian constitutional implications of FTA implementation, suggests that FTA Article 103 was intended to impose a higher threshold on the two federal states to obtain sub-national compliance than the standard imposed by GATT Article XXIV:12, even though (as the Canadian *Statement on Implementation of the NAFTA*<sup>19</sup> makes clear in respect of the equivalent NAFTA provision) the Parties considered that they were merely codifying the GATT standard in accordance with recent GATT panel practice.

Further, although the Chapter offers a largely objective description of FTA disciplines, certain errors might have been avoided with more careful editing: for example, whereas the author asserts that GATT exceptions regarding measures taken for balance of payment reasons "will continue as between Canada and the United States",<sup>20</sup> FTA Article 2002 imposes much tighter rules on the potential invocation of GATT Article XII. The text also suggests that the parties incorporated into the FTA not only

<sup>14</sup> R.S.C. 1985, c. 1 (2nd supp.).

<sup>15</sup> R.S.C. 1985, c. C-54. See p. 1-17.

<sup>16</sup> For example, at p. 2-6, the author suggests that "many issues *will arise* concerning the meaning of its provisions." (emphasis added) despite the fact that the operation of the FTA has been suspended, and also that "certain provisions of the FTA...[are] forerunners of future multilateral economic agreements to be developed under GATT auspices.", despite the conclusion of the Uruguay Round and the entry into force for both countries of the *Agreement Establishing the World Trade Organization*, *supra* note 4. At p. 2-48 n. 189, the author states that the only agreement other than the FTA dealing with financial services is the U.S.-Israel FTA, despite the entry into force of the NAFTA and the WTO before the date of the book's publication.

<sup>17</sup> P. 2-22.

<sup>18</sup> P. 2-43.

<sup>19</sup> C. Gaz. 1994.I.68.

<sup>20</sup> Pp. 2-14 and 2-15.

GATT Article III and its interpretive notes, but “other GATT analyses” as well;<sup>21</sup> however FTA Article 501 is expressly limited to the former, as the only category of GATT jurisprudence that its specifically adopted by the Contracting Parties and made an integral part of the GATT text through the technique of *Ad Articles*. More fundamentally, the Chapter’s discussion of Chapter Nineteen is dated,<sup>22</sup> fails to take full account of experience,<sup>23</sup> and is in some respects misguided. In undertaking a comparison between Chapter Nineteen and GATT disciplines on dumping, subsidies and antidumping and countervailing duty matters, the author wrongly states that relevant GATT standards were incorporated into the FTA and may be subject to FTA interpretation<sup>24</sup> and that “no legal standards originating from the FTA will constrain a Party’s enforcement officials and judges”.<sup>25</sup>

On the other hand, more detailed descriptions of certain chapters of the FTA, such as on automotive trade, are comprehensive, and properly draw the reader’s attention to the link between sector-specific rules and the more general disciplines on market access and rules of origin for trade in goods. The Chapter’s description of the five binational panel reports issued under the FTA<sup>26</sup> provides an excellent summary of the nature of the dispute, the terms of reference, the panel’s findings, and conclusions for each case.

Chapter Three on the NAFTA, written by Jeffrey Thomas, is by contrast for the most part accurate, comprehensive and up-to-date, and thus even standing alone should serve as a remarkably concise desk reference on that agreement. It includes a well-written introduction and exhaustive citations to relevant provisions of Canadian legislation implementing NAFTA’s provisions. It properly notes<sup>27</sup> the suspension of the FTA, contains a careful and accurate discussion of sub-national obligations under GATT Article XXIV:12,<sup>28</sup> the FTA/NAFTA relationship on tariff reduction and related commitments,<sup>29</sup> the manner in which the Parties dealt with GATT Article XI under both agreements,<sup>30</sup> rules specific to the automotive and textile sectors,<sup>31</sup> the “often misunderstood” proportional sharing provisions governing trade in energy goods,<sup>32</sup>

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<sup>21</sup> P. 2-17.

<sup>22</sup> At p. 2-75, for example, the author calculates that 37 panels were established as of date of writing, whereas at p. 3-93, co-author Jeffrey Thomas notes that the process has been invoked over fifty times.

<sup>23</sup> At p. 2-73, the author surmises that “relatively few practising lawyers will qualify for panel membership” even though the vast majority of panellists to date have, in fact, been drawn from the private bar of both countries.

<sup>24</sup> See p. 2-77. FTA Article 1801 makes clear, however, that measures on these matters are *not* subject to FTA dispute settlement for alleged inconsistency with GATT-based rules.

<sup>25</sup> *Ibid.* To the contrary, FTA Article 1904(2) states that “the antidumping and countervailing duty statutes of the Parties, as those statutes may be amended from time to time, are incorporated into this Agreement” and Article 1904(3) makes clear that the standard of review to be applied by binational panels is that set out in Article 1911, i.e. a treaty-based standard.

<sup>26</sup> Pp. 2-58 through 2-70.

<sup>27</sup> P. 3-9, n. 12.

<sup>28</sup> Pp. 3-9 and 3-10. Mr. Thomas rightly highlights the different level of obligation imposed on subnational governments in the areas of technical barriers to trade and sanitary and phytosanitary measures, see p. 3-49.

<sup>29</sup> Pp. 3-13 through 3-18.

<sup>30</sup> Footnote 49 at p. 3-18 discusses the subtle differences between FTA Article 407 and NAFTA Article 309.

<sup>31</sup> Pp. 3-22 through 3-25.

<sup>32</sup> P. 3-34.

water,<sup>33</sup> procurement disciplines and bid challenge procedures,<sup>34</sup> investor-state dispute settlement procedures.<sup>35</sup> It also includes an accurate discussion of Chapter Nineteen (including reference to the reconstituted working groups under NAFTA Article 1907<sup>36</sup>), services, financial services, competition, temporary entry, and intellectual property. Mr. Thomas also meticulously reviews the difficult concept of "nullification or impairment"<sup>37</sup> and provides a useful bibliography on current legal literature addressing the trade-environment interface.<sup>38</sup>

Again, however, on certain finer points errors not immediately apparent could mislead. Although Mr. Thomas asserts that NAFTA contains no exclusion for beer,<sup>39</sup> NAFTA Chapter Seven, by including such products in the definition of "agricultural goods" and incorporating those FTA provisions that preserve the Parties' GATT rights for such goods, has the identical effect as FTA Article 1204. His discussion of prohibited performance requirements<sup>40</sup> does not make clear that the NAFTA includes a closed, rather than an illustrative list of actionable practices. In discussing the "cultural industries" exception, the text states that the "same rights and obligations [as under the FTA] have, through Article 2106, been incorporated into NAFTA".<sup>41</sup> This statement may lead some readers wrongly to assume that Canada may be subject to "measures of equivalent commercial effect"<sup>42</sup> if it were to take action otherwise inconsistent with the NAFTA in respect of cultural industries in an area, such as intellectual property, not covered by the FTA, whereas in fact all rights and obligations in respect of cultural industries are to be determined under NAFTA in accordance with the FTA.

In sum, regarding the book's treatment of the GATT/WTO, FTA and NAFTA, it is hoped that the authors and editors will live up to the promise and potential offered by a loose-leaf service: future supplements should include more up-to-date and exhaustive treatment of WTO rules, integrated treatment of the FTA and NAFTA, and correction of the more obvious errors and omissions.

Part Two deals with "International Trade Law in Canada", and purports to offer a survey of "administrative structures through which Canadian trade policies and laws are developed, implemented, administered and enforced".<sup>43</sup> Although admittedly providing but an overview and including some useful references (for example, to literature on the Canadian Constitution and treaty-making authority<sup>44</sup>), Chapter Four's "Introduction to Canadian Trade Regulation" provides too cursory a discussion of the relationship between international treaties and domestic law to provide much guidance<sup>45</sup> and omits

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<sup>33</sup> P. 3-43.

<sup>34</sup> Pp. 3-52 through 3-58.

<sup>35</sup> Pp. 3-63 through 3-67.

<sup>36</sup> P. 3-99.

<sup>37</sup> P. 2-101 n. 217.

<sup>38</sup> P. 3-113.

<sup>39</sup> P. 3-20.

<sup>40</sup> P. 3-60.

<sup>41</sup> P. 3-110.

<sup>42</sup> *Ibid.*

<sup>43</sup> P. 4-2.

<sup>44</sup> P. 4-13 n. 48.

<sup>45</sup> See, by contrast, I. Feltham, "Relationship between Domestic Law and International Law" (Workshop on Administrative Law Implications of Dispute Settlement Mechanisms in International Trade, Centre for Trade Policy and Law and Department of Justice Law Reform Fund, Ottawa, November 22, 1994) [publication forthcoming].

reference to the federal power over aliens as an additional head of authority over international trade-related matters. Further, despite the accurate descriptions in Mr. Thomas' chapter, Chapter Four wrongly suggests first that Canada and the United States agreed only to give the NAFTA "priority" over the FTA<sup>46</sup> rather than, as is in fact the case, to suspend the operation of the FTA, second that the GATT, FTA and NAFTA all require federal governments to take "all necessary measures" to ensure compliance by sub-national governments,<sup>47</sup> and third that "many" provinces are "strenuously opposed" to both the FTA and NAFTA.<sup>48</sup> The Chapter's discussion of government organization, which could be a valuable reference for those dealing with the federal bureaucracy on trade-related matters, requires significant updating in the light of reorganizations and consolidations announced by current and former governments in the course of 1993 and 1994.<sup>49</sup>

Chapters Five and Six all deal with the mechanics of importing and exporting in Canada. Chapter Five addresses "Customs". It includes a good discussion of tariff classification,<sup>50</sup> rule of origin<sup>51</sup> and valuation<sup>52</sup> issues. Chapter Six, on "Import and Export Controls", examines import and export licensing and safeguard action through the prism of the *Export and Import Permits Act*;<sup>53</sup> it is, however, somewhat disjointed. It deals with safeguards in three different places<sup>54</sup> that in the result fails to provide the reader with a comprehensive view of this regime, based on GATT Article XIX and on special rules under the NAFTA.<sup>55</sup> Its discussion of FTA and NAFTA disciplines on import and export restrictions largely repeats ground covered by Chapters Two and Three, but without any cross-referencing to draw the reader's attention to more detailed prior discussion, for example concerning the "proportional sharing" obligation noted above. On the other hand, the Chapter includes a good discussion on the administration of import controls<sup>56</sup> and export controls under Canadian law,<sup>57</sup> although again some

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<sup>46</sup> P. 4-11.

<sup>47</sup> P. 4-13.

<sup>48</sup> P. 4-14.

<sup>49</sup> For example, the Chapter states that the former Department of External Affairs is now known as "Foreign Affairs and International Trade Canada", whereas the official name of the Department is the "Department of Foreign Affairs and International Trade"; the "Multilateral Trade Negotiations Branch" described on p. 4-16 no longer exists; and the role of the Minister of Foreign Affairs and his officials for licensing under the *Export and Import Permits Act*, R.S.C. 1985, c. E-19, is not mentioned in the body of the text despite being highlighted in the table at the end of the Chapter. Footnote 16 of Chapter Seven more accurately describes the new Department of Public Works and Government Services than does this Chapter.

<sup>50</sup> Pp. 5-6 through 5-7.

<sup>51</sup> Pp. 5-9 through 5-22.

<sup>52</sup> Pp. 5-26 through 5-29.

<sup>53</sup> *Supra* note 49.

<sup>54</sup> Pp. 6-4, 6-8 and 6-10, and again at p. 6-35ff.

<sup>55</sup> For example, the discussion at p. 6-10 on bilateral safeguard actions under the NAFTA does not set out the applicable threshold test for injury. At p. 6-11, the author suggests that the lack of "binding arbitration" for safeguard actions under the NAFTA represents a significant change from the FTA, despite the fact that under the NAFTA, all government-to-government dispute settlement is binding at the international level in the sense that the offending Party must either comply with a panel report, agree on an alternative solution, or face the prospect of retaliation (retortion) or the obligation to offer compensation.

<sup>56</sup> Pp. 6-17 through 6-21.

<sup>57</sup> Pp. 6-22 through 6-30.

editing in future updates may be in order.<sup>58</sup> More fundamentally, the Chapter's discussion of technical barriers to trade omits any parallel discussion of sanitary and phytosanitary measures, and does not do justice to this important area of border and domestic regulation.

Chapter Seven deals with "Procurement". While providing a good summary of domestic practice and bid challenge review procedures, it mentions only in passing the 1991 *Intergovernmental Agreement on Government Procurement* and does not discuss the *Internal Trade Agreement* of 1994 provisions on procurement.

Chapter Eight is entitled "Dumping and Subsidies", but also deals with anti-dumping and countervailing duty proceedings. The Chapter offers good detail on anti-dumping law in Canada, including a thorough review of the Canadian International Trade Tribunal (CITT) jurisprudence on injury, causation, domestic industry, and like goods, but includes only three pages on subsidies, possibly reflecting the paucity of countervailing duty cases brought under Canadian law. Again, updating in the light of the WTO and better integration with other chapters of the book would be in order. The introductory section<sup>59</sup> does include information on new disciplines resulting from the Uruguay Round, but does not provide sufficient context for understanding such important concepts as "specificity" and "benefit" against the backdrop of U.S. cases concerning softwood lumber. Similarly, the discussion of "undertakings"<sup>60</sup> appears to add the Uruguay Round dimension as an afterthought; it suggests that NAFTA dropped the requirement for reaching conclusions on a "replacement regime", despite the proper description in Chapter Three of the reconstituted Working Groups. The discussion of binational panel review, and particularly of the standard of review to be applied,<sup>61</sup> is unnecessary in the light of its more comprehensive treatment in Chapter Three, and in any event is in error in some material respects.<sup>62</sup>

Chapter Nine provides an overview of "Canadian Official Export Financing", including in particular international disciplines on export credits and the operation of the Export Development Corporation. It includes a thorough review of the development of OECD-based disciplines<sup>63</sup> and a provocative discussion of export credits under the GATT.<sup>64</sup> The discussion tends to emphasize developments through the 1980's, with insufficient emphasis on the important *Helsinki Agreement* of 1993 and its impact on export financing practice since.<sup>65</sup>

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<sup>58</sup> At p. 6-22, for example, ignoring the voluminous literature on the subject and relying instead on two student notes, the author cites "the Uranium Cartel, of which Canada is a member", thereby wrongly implying the existence of some formal intergovernmental anti-competitive agreement, as distinct from the international marketing arrangements of the 1970's in which Canadian industry participated in response to the complete closure of the U.S. market to Canadian uranium exports.

<sup>59</sup> P. 8-5.

<sup>60</sup> Pp. 8-19 and 8-20.

<sup>61</sup> P. 8-52.

<sup>62</sup> For example, at p. 8-53 a two-prong test for Extraordinary Challenge Committee review is set out, as distinct from the three-prong test accurately set out at p. 3-97.

<sup>63</sup> Pp. 9-3 through 9-5 and pp. 9-15 through 9-19.

<sup>64</sup> Pp. 9-19 through 9-25. The author states [at p. 9-9], however, that "the consideration of purely commercial factors alone should, in theory, eliminate the need for the EDC itself". It is debatable, however, whether the private banking system can provide term lending to EDC markets at competitive rates: the experience of New Zealand, which abolished its export credit agency, suggests not.

<sup>65</sup> The author's discussion of EDC Guidelines, for example, states that the threshold Canadian content level is 60 per cent, whereas under revised EDC policies, the threshold is now 50 per cent, and

Part Three groups together three chapters on "Canadian Foreign Investment Law", including Chapter Ten on "International Regulation of Barriers to Foreign Direct Investment and Trade in Services", Chapter Eleven on "Legal Restrictions on Foreign Investment in Canada" and Chapter Twelve on "Investment Risk Protection in Developing Countries". As an introductory matter, in the light of the inclusion of meaningful investment disciplines as part of the FTA, NAFTA and to a lesser extent the *Agreement on Trade-Related Investment Measures* of the WTO, the increasingly artificial segregation of investment issues should be reconsidered in future loose-leaf releases.

Chapters Ten and Eleven appear to be almost entirely based on Chapters Eight and Nine of the 1986 first edition, with unfortunately only minor editing appearing to distinguish the two versions. However, they do have the advantage of a good discussion of the evolution of international disciplines in the UN and OECD and an exhaustive discussion of the GATT panel on Canada's *Foreign Investment Review Act* to provide an overview of the international framework. In discussing bilateral agreements, Chapter Ten does not cross-reference Chapter Three's discussion of the important NAFTA and WTO/TRIM's developments and it adopts the U.S. nomenclature of "bilateral investment treaties" (BIT's) rather than the Canadian practice of negotiating "Foreign Investment Protection Agreements" (FIPA's). In addition, it still refers to a recent agreement with "the Soviet Union"<sup>66</sup> and fails to mention other recent bilateral agreements and current negotiations<sup>67</sup> or the well-publicized decision of member-states to begin discussions under OECD auspices on a Multilateral Agreement on Investment.

Chapter Eleven does include a new section on "The NAFTA Investor"<sup>68</sup> but does not acknowledge the multilateralization of the liberalized thresholds included as part of Canada's implementation of the WTO. The same selectivity governs the Chapter's discussion of foreign banks in Canada, where updated citations are included to take account of NAFTA developments<sup>69</sup> but Canadian implementation of Uruguay Round commitments is omitted. Chapter Twelve, again largely based on the first edition, includes some new introductory material, an expanded discussion of the Multilateral Investment Guarantee Agency (MIGA),<sup>70</sup> and an update on the Export Development Corporation in the light of 1993 amending legislation. Again, however, editing seems to have involved the minimum necessary to make the description current: the chapter still refers in large measure to what the *Export Development Act*<sup>71</sup> "formerly" provided<sup>72</sup>

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EDC may show even more flexibility in certain circumstances. Similarly, the Chapter does not cover such new EDC powers as leasing, domestic insurance, and equity. The author's discussion of *credit mixte* practice does not consider the minimum grant element of the OECD Arrangement and its impact, nor the salutary effects of improved Peer Group review of projects notified under *Helsinki V* procedures. It is noteworthy that all such credit now offered by Canada conforms with the international consensus reflected in *Helsinki V*. Today, the only *credit mixte* on offer from Canada on a systematic basis is to China through a \$100 million concessional facility.

<sup>66</sup> P. 10-12.

<sup>67</sup> FIPA's have now been signed with the Ukraine and Latvia, and negotiations are well-advanced with Venezuela and several other countries.

<sup>68</sup> Pp. 11-17 and 11-18.

<sup>69</sup> Pp. 11-33 and 11-34.

<sup>70</sup> Pp. 12-5 and 12-6.

<sup>71</sup> R.S.C. 1985, c. E-20.

<sup>72</sup> See for example, p. 12-14.



and a discussion on international standards for expropriation<sup>73</sup> fails to draw any parallels with relevant FTA and NAFTA provisions.

Reviewing the first edition, Prof. David Stevens said that “[p]erhaps the book is overly ambitious, perhaps not ambitious enough”.<sup>74</sup> Given “the rapid pace of change in the trade law area,”<sup>75</sup> the second edition has many of the same faults. Nonetheless, the fact that Prof. Paterson not only undertook to revise such a sweeping work in the wake of the FTA, the NAFTA and the WTO, but also promises further revisions through loose-leaf supplements, is to be commended. The academic, practising and government legal communities dealing with international trade are growing in number and in sophistication; a one-volume desk reference can be an indispensable tool for guiding them in addressing practical problems and more research oriented issues. The shortcomings identified in this review can indeed be rectified through future supplements. Prof. Paterson is deserving of the continuing support of his co-authors and of Carswell in pursuing this gargantuan task on an ongoing basis. Assuming this to be the case, subscribing to the second edition would be a worthwhile investment, both for the utility of several portions of the work in its current form and particularly with a view to the future promise this work holds.

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<sup>73</sup> P. 12-22.

<sup>74</sup> D. Stevens, Book Review of *Canadian Regulation of International Trade and Investment*, by R.K. Paterson *et al.* (1987) 32 McGill L.J. 968 at 971.

<sup>75</sup> M.J. Trebilcock, Book Review of *Canadian Regulation of International Trade and Investment* by R.K. Paterson *et al.* (1988) 14 Can. Bus. L.J. 375 at 379.

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