

Trade Agreement (henceforth referred to as the FTA) are far and away the most significant, although the ramifications of the single European market will gain importance as 1992 approaches. Domestically, the challenges are probably best reflected in recent declarations by the two largest trust companies, Canada Trust and Royal Trust, that they are considering abandoning their federal charters if new legislation at the federal level is not soon forthcoming. The purpose of this chapter is to focus on various of these financial sector milestones, beginning with the FTA.

## B. International Developments

### The FTA and Financial Services

Financial services in the insurance area are an integral part of the FTA and, as such, are subject to the full range of provisions including, for example, the dispute-settlement mechanism. The remainder of financial services are covered in Chapter 17 of the FTA which, except for a few specified provisions, is effectively a separate agreement. In Chapter 17, there is no specific obligation on either party to accord "national treatment".

The Committee's purpose in focussing on the FTA (or more correctly, on Chapter 17) is not so much the larger issue of whether Canada gave up more than it received. On this score, it is probably fair to say that the financial community is prepared to live with the FTA and in their brief to the Committee the Consumers Association of Canada, after assessing the advantages and disadvantages, concludes that in the longer run the FTA "will most likely be beneficial to consumers". These generalizations aside, the Committee's concern here is to sort out the implications of some specific provisions.

- *The 10/25 Rule*

Among the most important provisions of Chapter 17 of the FTA is Article 1703, which exempts U.S. residents from limits on foreign ownership of Canadian federally regulated financial institutions. As applied to federally regulated non-bank financial institutions, the so-called "10/25" rule prevents any single non-resident from acquiring more than ten per cent of an institution's shares and non-residents from acquiring in aggregate more than 25 per cent of those shares. With respect to Schedule I banks, no single investor may own more than ten per cent of the shares of these institutions. This restriction, which applies to both residents and non-residents, remains intact, but U.S. residents are exempted from the 25 per cent limit on aggregate foreign ownership of the shares of any Schedule I bank. In other words, for federally regulated financial institutions, U.S. residents now have the same ownership rights as Canadians. Presumably what this means is that Americans can buy any of the large federally-chartered trusts, loan companies and insurance companies subject only to the same ministerial review that would apply to Canadians and to any legislative constraints such as those found in the *Bank Act*.

One interpretation given to all of this by many who appeared before the Committee is that the large trusts are now open to American takeover. To keep the trusts in Canadian hands, one obvious solution would be to subject them, like the banks, to the ten per cent rule.

While the Committee agrees that the FTA may have exposed the trusts to takeover, in terms of technicalities the previous paragraph is incorrect. Indeed, the Schedule I banks are the only Canadian financial institutions that could become wholly U.S. owned in the time it takes to read this report. Specifically, ten non-associated Americans could each make a bid for ten per cent of, say, the Toronto Dominion Bank. Alternatively, 100,000 Americans could also buy up the shares. No ministerial approval is required. What is true, however, is that these ten Americans (as with ten Canadians) could not vote their ownership as a block, because this would be in violation of the ten per cent rule. What ultimately keeps the Schedule I banks Canadian-controlled (which is not the same as Canadian owned) is: a) that shareholders cannot act in concert if more than ten per cent of voting shares are