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# The U.S.-Canada Free Trade Agreement and Collective Bargaining

*George W. Adams\**

## I. FTA BACKGROUND

**W**hile there has been much speculation and debate with respect to the merits of entering into a free trade agreement with the United States, few attempts have been made to interpret the effect of such an agreement on specific sectors of the Canadian economy. This Article will discuss the provisions of the Free Trade Agreement ("FTA") which is to come into effect on January 1, 1989, and assess its likely impact on collective bargaining.

On its face, an open trading relationship with the United States makes sense. First, Canada is a trading nation; fully 30% of its gross domestic product is attributable to exports. Second, 75% of that trading activity is with the United States. As a result, Canada is both the U.S. best customer and principal supplier. After the 1987 Tokyo Round of the General Agreement on Tariffs and Trade ("GATT") negotiations are fully implemented, 75 to 80% of Canada-U.S. trade will occur tariff-free. This figure does not account for non-tariff barriers ("NTBs") and the reduction of trade in sectors where there are tariffs in place. Economists have welcomed closer economic ties between the United States and Canada on the basis that such an arrangement would create economies of scale and specialization that would rationalize not only Canadian relationships with the United States, but also make Canada more competitive with the rest of the world. A stable and liberal trade relationship with the United States is therefore *prima facie* crucial to Canadian prosperity.

Opponents of the concept of free trade with the United States often point to the benefits of multilateral arrangements on trade such as the GATT. However, bilateral arrangements need not, and according to article XXIV of the GATT must not, inhibit multilateral trade. Moreover, one of the aims of free trade with the United States is to rationalize Canadian industry and thereby make Canada more competitive worldwide.

Proponents of the concept of free trade place great faith in the doctrine of comparative advantage. This doctrine provides that a country should produce for export the commodities it produces at low cost and import goods which it cannot so produce. The *Macdonald Commission*

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*Report* recognizes that strong sectors of the Canadian economy such as urban transit and forestry products should respond positively to freer trade.<sup>1</sup>

Secondary manufacturing is one major sector which may be weakened by free trade.<sup>2</sup> Studies commissioned by provincial and federal governments and interested lobby groups have strongly disagreed as to the net effect of free trade on the labour force, but most agree that a great deal of adjustment will be necessary. The problem of adjustment is not a new one in Canada. Labour markets are continually adjusting to technological change, deregulation, inflation, and currency fluctuations. The 1970 Textile Policy and the 1983 Canadian Industrial Renewal Program have been the most comprehensive government responses to declining sectors. However, the lack of developed intergovernmental structures in industrial policy have increased the tendency toward "ad hocism."<sup>3</sup> Mobility programs, employment centers and single purpose agencies have aided particular industries, but most intervention to date has been support rather than adjustment oriented.

Under the FTA, all tariffs on Canada-U.S. trade of goods are to be eliminated in one of three manners. First, tariffs in sectors where Canadian industry is competitive with American industry will be eliminated on January 1, 1989. These areas include computers and equipment, leather, furs, and whiskey. Second, in other industries such as subway cars, printed matter, paints, and hardwood plywood, tariffs will be eliminated in five equal steps over five years beginning on January 1, 1989. Finally, the remaining tariffs will be eliminated in ten steps over ten years beginning on January 1, 1989. The latter schedule will apply to: most agricultural products, textiles and apparel, softwood plywood, railcars, steel, appliances, pleasure craft and tires. This tripartite division is an attempt to ease the burdens of adjustment to the FTA while allowing some competitive sectors to take advantage of the new market immediately. Attempts are being made to completely eliminate tariffs on an increased number of goods by January 1, 1989.

## II. IMPACT OF THE FTA ON THE CANADIAN ECONOMY

Since at least 30% of Canada's income is derived from trade, any agreement which affects trade relationships will necessitate significant adjustments within the Canadian economy. Moreover, Canada accounts for approximately 25% of America's trade, so there will be significant adjustments within the United States as well. Many studies have looked at the possible breadth and depth of these adjustments. However, most of the studies conducted on the impact of free trade on industry and

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<sup>1</sup> 1 MACDONALD COMMISSION REPORT 343.

<sup>2</sup> *Id.* at 345.

<sup>3</sup> M. TREBILCOCK, *THE POLITICAL ECONOMY OF ECONOMIC ADJUSTMENT: THE CASE OF DECLINING SECTORS* 43 (1986).

labour were made before the specifics of the FTA were known. The ten year period provided by the FTA for the elimination of tariffs means that many of the economic models upon which conclusions have been based will be inaccurate. The gradual elimination of tariffs will allow for an adjustment period that a more abrupt change-producing force would not permit.

Although the Canadian government has given assurances that the FTA is merely an economic agreement, opponents of the Agreement suggest that it is a thinly veiled attempt to destroy social welfare legislation. Throughout the negotiations, the American negotiating team continually referred to the need for a "level playing field" as a basis for fairer trade. This would necessitate greater harmony with respect to national laws concerning taxation, labour standards, collective bargaining, environmental, health and safety standards, and pay equity legislation. As a result, Canadian businesses will be pressing for measures which will reduce labour costs and will be resisting any programs that increase costs.

In Canada, the development of extensive social insurance programs and protective labour legislation are indicative of the view that private markets have failed to adequately protect workers. Such programs and legislation are far less comprehensive in the United States than in almost any other western country. For example, in the United States there is no legislation prohibiting mandatory overtime, most workers are not protected against unjust dismissal, and only four states have adopted advance notice and severance pay requirements with respect to plant closings.<sup>4</sup>

The Macdonald Commission found that "on balance, long-term gains from bilateral free trade will almost certainly heavily outweigh short-term adjustment costs."<sup>5</sup> The proponents argue that as Canadian firms are more completely exposed to the rigours of competition, they will become more efficient and hence more profitable. U.S. trade action affected (Can) \$5.3 billion in Canadian exports or about 5% of total merchandise exports to the United States.<sup>6</sup> In comparison, Canadian actions affected only about (Can) \$215 million of American exports or about 0.2% of U.S. exports to Canada. It may be concluded that free trade would involve little dislocation of Canadian primary sector workers and may even allow for increases in employment due to stable trading environments in forestry, potash and agriculture.

While the adjustments Canadian workers will face as a result of the FTA no doubt will be considerable, they are not likely to be greater than the adjustments faced in the past few years as a result of fluctuating exchange rates and falling commodity prices. Between 1981 and 1984 at

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<sup>4</sup> 8 R. EHRENBERG, RESEARCH IN LABOUR ECONOMICS B (1986).

<sup>5</sup> MACDONALD COMMISSION REPORT, *supra* note 1, at 333.

<sup>6</sup> K. MACMILLAN, FREE TRADE AND CANADIAN WOMEN: AN OPPORTUNITY FOR A BETTER FUTURE 30 (1987).

least one million Canadian workers lost full time jobs and were not recalled, 36% of these being due to plant closures. Canadian and American workers have had to perform massive adjustments in response to automation, mechanization, electronics, computers, the 1973 and 1979 OPEC price shocks, and increased international competition. Both governments have responded to these economic alterations on a somewhat piecemeal basis. These responses have been primarily compensatory and made in reaction to political pressure rather than for the purpose of implementing long-term adjustment proposals. Such programs have rewarded attempts at survival in failing industries rather than encouraged the wise utilization and re-deployment of resources. The division of policy making powers in both countries has also hindered the development of comprehensive national industrial policies.

There can be little doubt that free trade will have a substantial impact on the productivity and competitiveness of Canada's manufacturing industries. Greater net income may result in increased government revenue to support social programs geared to dealing with adjustments. The FTA will require a restructuring of Canadian industry that will lead to increased specialization and possibly economies of scale that will rationalize means of production. However, to simply extrapolate from the elimination of tariffs and NTBs that greater economies of scale will be created is too simplistic.

The maintenance of tariffs and quotas involve large social and private costs from which the Canadian economy will gradually be released. In 1978 the economic waste attributed to tariffs and NTBs in manufacturing industries totaled (Can) \$740 million or (Can) \$18,500 per job protected.<sup>7</sup> In 1979 the cost of tariffs and quotas on clothing imports reviewed totaled (Can) \$500 million or (Can) \$33,000 per job saved.<sup>8</sup> Such industrial assistance programs have a further cost to the economy in that they promote the inefficient use of the country's resources.

Import restrictions have resulted in the Canadian manufacturing sector's short production runs, excessive product diversity and sub-optimal plant size. Tariffs, while not high enough to offset the greater costs of Canadian production, make it difficult to structure facilities so as to compete within the United States. Tariffs and NTBs also prevent third countries from exporting to Canada's relatively small market.

The reallocation of resources within the Canadian economy will require some re-thinking of worker adjustment legislation. A common fault of previous programs in both Canada and the United States have been the attempts to isolate tariff and other policy changes as the sole cause of worker displacement. Compensation programs are more effec-

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<sup>7</sup> T. HAZELDINE, *THE COSTS OF PROTECTING JOBS IN 100 CANADIAN MANUFACTURING INDUSTRIES* 2 (1981).

<sup>8</sup> G. GLENDAY, G. JENKINS & J. EVANS, *WORKER ADJUSTMENT POLICIES: AN ALTERNATIVE TO PROTECTIONISM* (1982).

tive when wider nets are thrown. Both the U.S. Trade Act of 1974 and Canada's Labour Adjustment Benefits Program suffer from the fact they create work disincentives because the relief provided is only receivable while workers are unemployed. According to an Ontario Federation of Labour paper on free trade at least 7% of the labour force will experience "serious adjustment costs."<sup>9</sup> It has been found that free trade will cause a shift from labour-intensive to high-technology industries.<sup>10</sup> Over the long-term this will lead to increased productivity and wages; in the short-term it signifies that a great deal of re-training will be required.

One study of the likely impact on the Canadian economy of the FTA has estimated that 60% of new jobs will appear in the service sector. These jobs will be divided among the retail trade, the wholesale trade, business services, and personal services.<sup>11</sup> Primary industries such as forestry, agriculture and fishing will also benefit by the removal of NTBs. Access to the large U.S. market will permit longer production runs that will reduce unit production costs. It is also postulated that the increased competition with the United States will increase the pace of technological changes effected to achieve greater efficiency.<sup>12</sup>

Industries such as rubber and plastics, leather, textiles, knitting mills, electrical products and chemical products that are currently highly protected will suffer from competition with low-paying American companies located primarily in the southern States. Up to 10,000 jobs may be lost in this sector, but the manufacturing sector should gain overall at least 30,000 jobs.<sup>13</sup> Restrictions on Canada's imports have resulted in excessive product diversity among Canadian manufacturing firms. This makes them less efficient than larger scale operations in the United States. This may partially account for the fact that Canadian manufacturing labour productivity was only about 74% of that found in the United States in 1986.<sup>14</sup>

An intangible in assessing the effect of free trade is the extent to which Canadian goods will be able to penetrate the American market. The elimination of tariffs should reduce prices and therefore increase the real income of consumers on both sides of the border. Also the provisions of the FTA which ease the restrictions on Canadian manufacturers servicing their products in the United States should aid export penetration. Free trade may reduce trade with third countries whose imports are still subject to duty. However, as Canada currently conducts more than 75% of its trade with the United States such costs are expected to

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<sup>9</sup> ONTARIO FED'N OF LAB., *IT'S NOT FREE: THE CONSEQUENCES OF FREE TRADE WITH THE U.S.* 8 (1987).

<sup>10</sup> ECONOMIC COUNCIL OF CANADIAN PAPER No. 331, *IMPACT OF CANADA-U.S. FREE TRADE ON THE CANADIAN ECONOMY* (1987) [hereinafter PAPER No. 331].

<sup>11</sup> AU COURANT, 8 *THE IMPACT OF A TRADE ACCORD* 9 (1987).

<sup>12</sup> *Id.* at 3.

<sup>13</sup> ECON. COUNS. OF CAN., *VENTURING FORTH* 23 (1988).

<sup>14</sup> PAPER No. 331, *supra* note 10, at 9.

be minimal.<sup>15</sup>

Some of the principal findings of *Paper No. 331*<sup>16</sup> were; tariff protection is high for labour-intensive manufacturing in both countries though the rates are about 50% higher in Canada; small Canadian plants may not be able to take advantage of scale economies unless they can be brought up to minimum efficient scale levels; there will be an increase in output, real income employment and investment, a reduction of prices, government deficits and a strengthening of the Canadian dollar compared to the U.S. dollar; twenty-nine of thirty-six industries studied will experience gains in output and employment due to the indirect effects of free trade including increased consumer expenditure and business investment; of the seven industries which will be hampered by the free trade initiative, six are in the non-durable manufacturing sector; an estimated gain of 251,000 jobs as a result of the creation of 439,000 jobs and the loss of 188,000 jobs over a ten year period. The manufacturing sector itself should gain approximately 20,000 jobs.<sup>17</sup>

These conclusions are in striking contrast to those found by an Ontario Ministry of Industry, Trade and Technology study.<sup>18</sup> That study concluded that close to one-third of all jobs in Ontario's manufacturing sector (approximately 281,000 workers) were at high risk as a result of free trade. The study concluded that the liberalization of trade would allow large U.S. firms to abandon their Canadian branch plants and rationalize their production facilities in areas in the United States where labour is cheaper and workers are more adaptable to new technologies. This conclusion explains to a large degree Premier Peterson's opposition to free trade as Ontario will be forced to absorb much of the adjustment costs.

It is estimated that every time a plant shuts down the situate community loses \$20,000 per job in lost spending, taxes and services.<sup>19</sup> This indicates that the regions most likely to suffer under the FTA are those small communities which rely heavily upon the jobs generated by one plant. Not only will workers face loss of employment but they will also face a large loss in the equity value of their homes as many workers will simultaneously decide to relocate.

### III. EFFECT ON COLLECTIVE BARGAINING

Few studies have provided insight into the effect of free trade on industrial relations. There can be little doubt that the implementation of

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<sup>15</sup> *Id.* at 11.

<sup>16</sup> *Id.* at 88 (As updated by the EC's VENTURING FORTH report.).

<sup>17</sup> *Id.*

<sup>18</sup> ONTARIO MINISTRY OF INDUSTRY, TRADE AND TECHNOLOGY, THE ASSESSMENT OF DIRECT EMPLOYMENT EFFECTS OF FREE TRADE FOR ONTARIO'S MANUFACTURING INDUSTRIES (1987).

<sup>19</sup> Drache, *Reject Macdonald*, POLICY OPTIONS POLITIQUES 22 (June 1986).

the FTA, though spread over a ten year period, will require widespread adjustment in the Canadian labour market. Moreover, labour market adjustment issues are among the most difficult challenges a society can face. Fortunately the FTA, with its incremental reduction of tariffs, provides some time during which government, labour and management can develop useful and timely adjustment plans. If no coherent adjustment policy is promulgated in advance, both the U.S. and Canadian governments may be pressured into tightening the legislated employment provisions with respect to severance pay, unjust dismissals and plant closures. If these legislative actions are not harmonized they may simply exacerbate existing "competitive difficulties."

Studies of worker adjustment to technological change and deregulation are relevant to this discussion because they provide insight in to the types of adjustment programs both governments should be contemplating. Some have postulated that Canadian workers will suffer under free trade as; "[w]orkers in southern U.S. industries, working under terrible working conditions, low standards of health and safety and sub-standard wages may well become the bench mark for Canadian manufacturing wages. As a result, the incomes of Canadian working families could be severely depressed."<sup>20</sup>

In the short-term it seems likely that there will be a continued emphasis on job security through collective bargaining and legislative change, but a closer relationship with American industry may place Canadian social programs under attack and cause labour negotiations to parallel U.S. patterns. However, it has been argued that Canadian social programs are declining because productivity is not increasing at a rate sufficient to keep the programs viable.<sup>21</sup> Increased productivity of at least 25% as a result of free trade will cause an inflow of capital into Canada.<sup>22</sup> That inflow will initially drive up the Canadian dollar relative to the U.S. dollar; in the long term it will increase productivity and allow for the retention and the expansion of social programs. An increase in the number of jobs should benefit the labour movement unless those jobs are concentrated in service industries which have been difficult to organize.

The importance of collective bargaining in Canada has increased significantly since the Second World War. The unionized proportion of the non-agricultural work force stood at 24% in 1945 and had increased steadily to 40% by 1983.<sup>23</sup> As of 1977, 86% of Canadian employees covered by collective agreements were union members, meaning that approximately 45 to 50% of all non-agricultural workers were parties to such agreements. However, in the United States the proportion of union-

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<sup>20</sup> U.A.W., FREE TRADE COULD COST US CANADA 8 (1987).

<sup>21</sup> C. BEIGIE, THE IMPLICATIONS OF FREE TRADE FOR CANADIAN LABOR MANAGEMENT RELATIONS: A MANAGEMENT VIEW 74 (1986).

<sup>22</sup> *Id.* at 76.

<sup>23</sup> 2 MACDONALD COMMISSION REPORT, *supra* note 1, at 671.

ized non-agricultural workers declined from 35% in 1945 to 19% in 1984.

The trends in union density in Canada and in the United States show parallel growth until approximately 1965. The later divergence occurred due to differences in national laws with respect to union certification and the duty to bargain in good faith.<sup>24</sup> Certification procedures provide an example of how the two countries' labour laws differ. Canadian labour laws allow for certification once a specified percentage of employees sign union cards. The U.S. system, on the other hand, requires that an election take place before certification can be granted. These elections are often hard fought and attempts to remedy unfair labour practices are often met with lengthy delays. Once certification has been won, unions still face an uphill fight as 40% of certified unions are unable to negotiate a first contract with the employer.<sup>25</sup> However, due to cultural and political differences between jurisdictions, it is highly unlikely that Canadian provinces will come to mimic U.S. labour law developments.

During the period of 1980-82 Canada lost more time proportionally as a result of strikes and lockouts than any other western nation. Studies have shown that Canadian workers lost almost twice as many working days due to labour disputes as did American workers. However, the actual number of strikes and lockouts experienced in the two countries are very similar. It is unclear how the liberalization of trade as a result of the FTA will affect the prevalence of strikes; however, as the two trading partners become increasingly integrated, there will be pressure on the Canadian and U.S. labour forces to adopt similar procedures. While job security will continue to be a key issue, the impact on collective bargaining may in large measure depend on the U.S. and Canadian labour movement's ability to provide a common front in certain key industries.

Except where there are sectoral agreements, as in the case of automobiles, the Canadian labour movement will have to be responsive to the risk that an employer will relocate in the United States. Even in the automotive industry at least three plants (in Bromont, Quebec, St. Therese, Quebec, and Brampton, Ontario) may be threatened with closure by the early 1990s due to over-capacity.<sup>26</sup> However, many Canadian unions have been dealing with the reality of potential employer relocation for some time. For example, Northern Telecom has plants in Tennessee as well as in Canada. Moreover, there has also always been a concern by unions that if wage rates become too high the employer will subcontract to a non-union firm. Therefore, while the FTA will intensify competition between the Canada and U.S. labour markets, it does not create novel problems.

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<sup>24</sup> *Id.* at 673.

<sup>25</sup> *Id.* at 676.

<sup>26</sup> *Globe and Mail*, Jan. 18, 1988, at B-8.

It has been argued that Canada must develop an industrial policy based on the formation of working groups made up of representatives of government, business and labour.<sup>27</sup> The likelihood of a Canadian union adopting a common industrial policy is small, considering that their central organization is weak and of 216 unions only 16 have more than 50,000 members. International trade unions within individual sectors may become more influential under the FTA. Currently, Canadian labour federations are dominated by public sector unions whose rights differ significantly from those of American public employees. Also, American unions which are analogous to Canadian unions may not wish to merge into one union since U.S. locals may be beneficiaries under the FTA.

Models which have attempted to predict the effects on the labour market of eliminating tariff protection have produced very diverse results depending on the market and cost conditions used. According to one study, some industries which are purported to be protected by tariffs are actually hampered by them.<sup>28</sup> In some cases employment is actually reduced as a result of restricted demand for certain manufactured products through increased prices.

The Mulroney Government has not clarified at this time whether it intends to introduce any new programs for aiding displaced workers. This silence is adding to the opposition to the FTA because of the fear of the unknown. An introductory adjustment program would have as one of its first tasks the identification of the industries which would benefit and those which would be hurt by the new trading environment. Studies have shown that when there is some lead time before employees are dismissed, adjustment programs work best because current job training is not wasted and retraining can begin quickly. The FTA does provide lead time in this respect. Changes to current Canadian adjustment policy could operate through amendments to employment standards legislation. These amendments would involve changes in advance notice, severance pay and unjust dismissal provisions. While this would protect current employees it would do so at the expense of new members of the labour force. Some have argued that adjustment programs are a form of double compensation and therefore unnecessary, as an informed worker would take the probability of displacement into account before accepting employment.<sup>29</sup>

The early 1980s saw a reversal in the United States of the trend of increasing wages, benefits and job security for workers. A new industrial relations order, based on human resource management practices first developed in the 1960s, concession bargaining and workplace innovations,

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<sup>27</sup> Laxer, *Toronto Star*, Jan. 10, 1988, at 134.

<sup>28</sup> T. HAZELDINE, *supra* note 8, at 66.

<sup>29</sup> P. MARTIN, *LABOR DISPLACEMENT AND PUBLIC POLICY 2* (1983).

was responsible for the reversal.<sup>30</sup> While this order was developing, labour pursued "job control unionism" with narrowly delineated tasks and work jurisdictions within managerially-defined purposes.<sup>31</sup>

In the 1970s the American unionized industries began to feel the effects of greater foreign competition and declining employment rates during the recessions of 1970-71 and 1974-75. The 1980s have witnessed the growth and diffusion of the non-union industries. The weak performance of the economy, resulting from lagging production since the late 1970s and a relatively poor performance from U.S. firms in world markets, has stimulated changes in labour relations. Other contributing factors to this non-union growth have been: greater demand for white-collar workers, an enlarged service sector, the growth of employment in the southern states, and the increased inclusion of women in industries which are traditionally non-union.

During the 1970s the widening differential between union and non-union wages made non-union operations even more attractive to employers. By the 1980s companies had introduced strategies to shut down older, unionized plants. Management, to some extent, became more responsive to workers' needs thus reducing incentives to unionize. Simultaneously they began utilizing aggressive tactics to hinder the formation and functioning of unions. The reduction of union membership was also, in part, a function of the changing environment: changes in the structure of the economy, increased opposition to union values, the failure of the labour movement to develop new organization and representation strategies, the increase in service sector employment, and incentives to avoid unions due to changing competitive and cost conditions.

During the 1981-82 recession, management seeking early contract negotiations and deregulation in the airline, trucking and communications sectors produced greater cost competition. Since then unions have concentrated on negotiating job-security pacts. Agreements such as the one signed in 1987 by the Ford Motor Company and General Motors Corporation with the UAW<sup>32</sup> protects jobs except in the case of reduced sales. In return unions are being forced to grant employers greater flexibility on the factory floor.

Another effect of the 1981-82 recession was the decentralization of collective bargaining structures; regional and company deviations emerged. Issue resolution switched from the national level to the company or plant level. Management increasingly bypassed union officials and appealed directly to individual workers with plans to increase em-

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<sup>30</sup> T. KOCHAN, H. KATZ & R. MACKERSIE, *THE TRANSFORMATION OF AMERICAN INDUSTRIAL RELATIONS* (1986) [hereinafter *TRANSFORMATION*].

<sup>31</sup> T. KOCHAN & K. WEVER, *INDUSTRIAL RELATIONS AGENDA FOR CHANGE: THE CASE OF THE UNITED STATES* 4 (1987).

<sup>32</sup> *A Demanding Year for Labour*, *BUS. WK.*, Jan. 11, 1988, at 34.

ployee motivation, simplify work rules and increase flexibility in human relations.

As a result, unions have attempted to become more involved in management, especially in industries where unions are secure and management has no alternative but to work with them. The rise of alternative human resource management systems in the 1960s and 1970s which emphasized employee involvement and commitment has become a part of collective bargaining in the 1980s. Moreover, American employers believe that if they are to compete with the newly industrialized countries they will have to refine these techniques and specialize in areas which make extensive use of technology. As firms become more specialized they become smaller. This allows for even greater flexibility with respect to human resources. It is unclear at present whether market and labour supply conditions in the 1990s will result in massive job losses or a relatively smooth period of adjustment. While it is acknowledged that the National Labour Relations Act needs amendment to counter illegal management tactics during union representation elections and the long delays in appeal and enforcement procedures, it is difficult to contend that the rise of the non-union business sector is a function of this legislative shortcoming.

The prediction that highly unionized firms are likely to continue in the same manner as the New Deal industrial pattern may be relevant to the Canadian environment under the FTA.<sup>33</sup> Public sector and utilities unions in Canada will have little incentive to change as it is unlikely new competitors will develop. In other sectors it is likely that there will be continued pressure to moderate compensation demands and increase flexibility to meet competitive pressures.

A U.S. study of the increased number of collective bargaining contracts which involved wage concessions in the early 1980s found that two forces were largely responsible.<sup>34</sup> The first of these was the impact of deregulation, mainly in the transportation and communications sectors; the second was the increase in foreign competition due to the over-valuation of the U.S. dollar. Concession contracts are settlements which involve wage freezes or wage cuts in the first year of the contract. The concession contract phenomenon began in 1979 with the bailout of Chrysler Corporation by the U.S. federal government. In 1981, concession contracts constituted 3% of all union contracts; by 1985 this figure had risen to 25%. Four percent of all union contracts negotiated between 1981 and 1985 involved the deregulated sector, while 5% of concession contracts came from this sector. This overrepresentation of concession contracts could be indicative of what will happen to unionized industries after the FTA is in force.

It is difficult to predict how free trade will affect the skill level re-

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<sup>33</sup> TRANSFORMATION, *supra* note 30, at 238-39.

<sup>34</sup> D. MITCHELL, ALTERNATIVE EXPLANATIONS OF UNION WAGE CONCESSIONS (1986).

quirements of the labour force. When American branch plants are rationalized with the parent company it is likely that much of the research and development will be left to the parent. However, increased specialization in the labour market should lead to more rapid utilization of new technologies. This, in turn, will increase demand for new training and result in a more technically skilled work force.

Some resource based industries, such as the supplying of metals, are linked closely to the pace of global economical activity. These industries fluctuate wildly, experiencing periods of strong employment growth followed by sharp reductions. As there are already large adjustment costs present, it is unlikely that free trade will significantly alter collective bargaining in this sector.

The influx of Asian goods into the North American market since the 1970s has led to several adjustments in labour-management relations. There has been expanded employee involvement in the decision-making process and a significant decrease in the number of job classifications. In most cases, concessions on labour rights have been coupled with employment guarantees; therefore, it is not possible to say that the adjustments have been entirely prejudicial to the worker. Moreover, increased competition in the future has the potential of both preserving and increasing jobs while decreasing product prices.

The evolution of labour-management relations within individual companies and facilities has largely been determined by the strength of the union's position. In industries where unions are entrenched, management has increased the scope of labour-management relations to include quality of worklife programs. In sectors with low levels of unionization, management has adopted union avoidance schemes, reducing the incentive for workers to join unions. In situations where a company maintains facilities which are partially unionized two strategies have been favoured; corporate resources may be targeted to non-union plants or unionized facilities may be upgraded in exchange for more flexible job descriptions.<sup>35</sup>

There is no doubt that the FTA will become a major bargaining table topic and also the subject of much management planning. Unions, as a result, may press as they have in the United States for greater participation in business decisions. The duty to bargain and its disclosure obligations may lead to more litigation in this area.

#### IV. CONCLUSION

According to a recent paper, "[o]ne of the striking aspects of the free trade debate in Canada is the lack of empirical evidence on the potential employment effects of an agreement."<sup>36</sup> The FTA will contribute to

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<sup>35</sup> T. KOCHAN & K. WEVER, *supra* note 31, at 33.

<sup>36</sup> A. PORTER & B. CAMERON, *IMPACT OF FREE TRADE ON WOMEN IN MANUFACTURING* 10 (1987).

changes in the collective bargaining and the industrial relations systems but will certainly not result in the extinction of unions. Indeed, one-third of the non-union work force see unionization as a vehicle for improving specific job conditions. The problem for unions is finding a method for translating this interest into membership. In contrast to American developments, public sector trade unions in Canada will continue to enhance the institutional and political strength of unions.

It has been said that many employers in Canada have so far been unable to gain the commitment and loyalty of their employees in their short-term drive to maximize profits for shareholders. This is one reason Canadian productivity has lagged so far behind Japanese productivity. It is unclear whether the enhanced competition sanctioned by the FTA will serve as a catalyst for a change of attitude on this front. However, forces which have been at work since at least the late 1970s will be spurred on by the FTA. These include: the abandonment of pattern bargaining and wage formulas, the decentralization of bargaining structures, the realignment of managerial hierarchies which lower the status of traditional industrial relations practitioners and increase the influence of human resource specialists, the adjustment of work-rule and work organization structures, the proliferation of wage concessions and other contractual modifications, the development of localized and contingent compensation, the spread of team work organization, enhanced job security and broader worker and union involvement in production and strategic decisions.

The FTA will also increase the pressure on Canadian industry to become more competitive both with the United States and in the international market place. It is still unclear whether this will lead to a general deterioration in working conditions or whether the increased rate of diffusion of technological change will lead to improved working conditions. It does seem clear that much of the labour market adjustment will arise in Ontario and Quebec where secondary manufacturing is concentrated. Complicating the assessment is the absence of declared government adjustment assistance programs at the provincial and federal levels to ease the pressure on the affected parties. This silence may be as much a function of differences over who is going to pay for the programs as it is due to an absence of definitive data on expected impact.

It is unlikely that the Canadian collective bargaining system will become ineffectual in the same way that the U.S. system has. Canadian unions are entrenched politically and socially in several key industries making it more likely that the changes to be undertaken will occur within a collective bargaining framework. For an industrial relations system to be effective it must continually meet the goals and aspirations of both parties. It remains to be seen whether Canadian social and employment legislation will survive the extensive adjustments which will be required once the FTA is in place. The task of expanding the North American industrial base while maintaining a high standard of living will

place great pressures on the industrial relations system. Some studies have hypothesized that the effects of the upcoming changes will be felt disproportionately by women as they are concentrated in the most trade-sensitive areas. Women also face greater barriers to relocation and to retraining.

There can be no dispute, however, that this new economic accord is certain to have a large impact on collective bargaining and indeed on Canada itself. The FTA will contribute to current trends such as enhanced employee involvement, reduced job classifications and will have similar adjustment repercussions for workers as those seen under deregulation in the United States.