Canada's Nationalistic Book Publishing Policy: A Review of Stakeholders' Criticisms, 1985-1990

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Program on Information Resources Policy

Harvard University

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Executive Summary

- In July 1985, Canada proclaimed the "Baie Comeau" policy, believing it "essential that there be a strong book publishing and distribution industry that is owned and controlled by Canadians." The policy was born after a spate of takeovers of Canadian publishing companies, principally by U.S. interests.

- Under this policy the government "would review all projects relevant to the mandate of Investment Canada which involve the initiation of new book publishing or distribution companies, or the acquisition, directly or indirectly, of existing firms operating in this field," according to Marcel Masse, Canada's Minister of Communications.

- Canada has a long history of protectionist cultural policies. According to External Affairs Minister Clark: "The U.S. casts the net of 'national security' over more areas than does Canada; Canadians cast the importance of cultural identity more widely than do Americans."

- Relative foreign-owned market shares of the Canadian and U.S. book publishing industries are 69 percent and 6 percent.

- "Baie Comeau's" anti-foreign investment bias shocked the U.S., coming as it did from a newly-elected "pro-foreign investment" Progressive Conservative government.

- The policy was embraced by Canadian nationalists, and served to provide limited reassurance about the government's cultural bona fides as Canada proceeded to negotiate a Free Trade Agreement with the U.S.

- The U.S. book publishing industry and key congressmen regard "Baie Comeau" as confiscatory, "forcing divestiture at fire sale prices." No U.S. constituency approves of the policy; detractors characterize it as "extortion disguised as cultural nationalism."

- The Free Trade negotiations became a crucible for all cultural nationalism issues. The agreement established Canada's right to maintain existing cultural support polices and to introduce new measures as required. U.S. opponents of "Baie Comeau" secured in Article 2005 the right to take "measures of equivalent commercial effect," notwithstanding any of the other provisions (of the FTA)." Furthermore, U.S. FTA implementing legislation keeps the debate alive by specifically mandating the president to negotiate cultural issues with Canada in the FTA context.

- The U.S. itself has some history of protectionism in the book publishing market, and other U.S. policies have "taught the world something of the relevance of the nationality of ownership."

• Increasing internationalization of the market suggest the likelihood of more takeovers, further testing the "Baie Comeau" policy. Already, the Canadian government has found itself having to purchase a company whose divestiture was forced by "Baie Comeau." Ability to recoup that investment may affect attitudes of key Canadian Ministers toward the policy's viability. Some Canadian owners complain that the policy has artificially depressed the market value of their companies.

• Serious budgetary difficulties have led to the substitution of less costly alternatives for existing Canadian governmental support programs to the book publishing industry. Subsidization appears more palatable to the U.S. than regulation of the "Baie Comeau" type. If further "nationalistic" intervention were to be deemed necessary and appropriate, Canada's fiscal situation might dictate a strengthening of "Baie Comeau" rather than additional subsidization.

• Calls from within the U.S. for reciprocal policies have not significantly abated. Ironically, largely in response to high-profile Japanese acquisitions, an apparently growing U.S. body of opinion is demanding restrictions against all types of foreign investment.

• While its efforts are generally unappreciated politically, the Mulroney government is unlikely to abandon or even substantially dilute "Baie Comeau." Any successor government is likely to be more nationalistic still. Because the policy appears more important to Canada than to the U.S., tradeoffs would most likely be made by Canada in other sectors in order to preserve the policy's integrity.

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CHAPTER ONE

THE BIRTH OF "BAIE COMEAU"

It was July 1985, in Baie Comeau, the northern Quebec birthplace of Prime Minister Brian Mulroney. The powerful Priorities and Planning (P&P) Committee of the Canadian Cabinet was meeting, both to plan for the months ahead and to deal with some ticklish problems.

One of the difficult items on the P&P agenda concerned what the government's policy should be about foreign takeovers of Canadian publishing houses. The issue was forced when, in 1984, the American giant communications conglomerate Gulf & Western Industries bought the New York-based parent of Prentice-Hall Canada, one of Canada's largest publishing companies.

On its face, little had changed. Prentice-Hall Canada was still foreign-owned, simply by a different parent. The vocal community of Canadian cultural nationalists had, however, been agitating for a new policy designed to *increase* the proportion of Canada's book publishing industry *owned by Canadians*. In their view, the change in ownership of Prentice-Hall Canada's parent was, for the government, a golden opportunity to require the "Canadianization" of the company.

The trend in policy making had, however, been in the opposite direction. In the 1984 general election which brought it to office, the Mulroney Progressive Conservatives had campaigned against "the anti-foreign investment policies" of the Liberal government, which Pierre Trudeau had led for almost sixteen years.

One *month* earlier, on June 6, 1985, the House of Commons passed the "Investment Canada Act," replacing the old Foreign Investment Review Agency (FIRA) with Investment Canada, which was created among other purposes to "encourage business investment."

Prior to June 6, 1985, the government had introduced legislation to repeal many of the anti-foreign investment provisions of the National Energy Program (NEP).

In recommending at Baie Comeau an "anti-foreign investment book publishing policy," Marcel Masse, the highly-nationalistic Minister of Communications, would seem to have been swimming against the tide. He could count on the opposition of Sinclair Stevens, the Industry Minister who oversaw the new Investment Canada Agency.

Nonetheless, Masse emerged from the P&P meeting on July 6, 1985, to announce what instantly came to be known as the "Baie Comeau Book Publishing Policy."

Masse declared that he, as Minister of Communications, as well as the Minister responsible for Investment Canada (Sinclair Stevens)

> would review all projects relevant to the mandate of Investment Canada which involve the initiation of new book publishing or distribution companies, or the acquisition, directly or indirectly, of existing firms operating in this field.

He added:

> [T]he government will look with favour on proposals to establish new businesses or to acquire directly existing businesses, whether Canadian or foreign controlled, in the field of book publishing or distribution, provided the investment is through a joint venture with Canadian control. For direct acquisitions of foreign controlled businesses, allowances will be possible if divestiture of control to Canadians occurs within a reasonable period of time (two years), at a fair market price.
>
> Indirect acquisitions will be reviewed on a case by case basis and will generally be allowed provided that:

1) The acquisition would not significantly lessen effective competition by Canadians in any segment of the Canadian market for books; and

2) The applicant undertakes to divest control to Canadians within a reasonable period of time (two years) at a fair market price.[1]

The policy was, in effect, an administrative declaration, ostensibly offering an interpretation of how the new Investment Canada rules would be implemented insofar as acquisitions of publishing houses in Canada were concerned. Such action is consistent with the regulatory authority given the government in the Investment Canada Act. Accordingly, there has been no need for any legislation to be introduced or amended to reflect the Baie Comeau announcement.

The passage of the Investment Canada Act had sent a signal that "Canada was open for business." Baie Comeau dashed the expectations of those who might have been contemplating "hassle-free" investment in Canada's book publishing sector. Effectively, it told the U.S. Administration, Congress, and would-be investors that there was at least one major caveat to Canada's new less-restrictive investment policy.

This evident policy inconsistency has deep historical roots. Canadian governments of whatever ideological stripe have, traditionally, supported and protected Canada's cultural industries. A nationalistic lobby has demanded such action; over the years the government has itself been convinced that viable cultural industries are essential to promote a stronger national identity *and* that without state interference the industries would be highly vulnerable, principally to U.S. competition.

The Mulroney government, elected in 1984, advocated cuts in public expenditures, a less-intrusive governmental role in the economy and, above all, free trade with the United States. Canada's cultural "community" and most of the media to which they have access identified with *none* of those objectives. The government chose at Baie Comeau to reach out to this community, and to bear the inevitable costs of a restrictive book publishing investment policy.

Predictably, "Baie Comeau" antagonized rich and powerful U.S. cultural industries. High-profile members of Congress embraced a rhetoric, during the Free Trade debate and since, both hostile to Canada and very suspicious of its motives. They tended to dismiss Canada's "cultural rationale" as being either unnecessary or a sly cover for commercial objectives. Canada's Ambassador to Washington, Alan Gotlieb, reportedly protested "Baie Comeau," saying it "introduced the Canadianization of a new sector of our economy."[2]

In Canada, "Baie Comeau" helped position the government as being committed to the country's cultural identity while it pursued free trade. Arguably, without it (or some equivalent), the forces arraigned against free trade might have been victorious.

In the U.S., "Baie Comeau" jeopardized the attainment of free trade. American opponents of "Baie Comeau" secured some changes to the proposed Free Trade Agreement (such as the "notwithstanding clause," by which Canada acknowledged the U.S. right to take retaliatory measures of equivalent commercial effect, and the measure by which the Canadian government is obliged to offer to purchase, at fair market value, any U.S. subsidiary "forcibly divested" due to an indirect acquisition). Opponents also assured, by way of the implementing legislation, that the issue will remain alive for the foreseeable future.

Using the language of the "protagonists" where possible, this report

- Describes the "shape" of the Canadian industry;
- Enumerates some reasons why, historically, the industry has been protected;
- Presents the Canadian and American reactions to "Baie Comeau";
- Pays particular attention to "Baie Comeau" in the context of the free trade debate; and

- Examines the most critical of the existing and potential issues and trends in the industry which (could) give rise to bilateral tensions.

NOTES

1. Hon. Marcel Masse, news release, Department of Communications, July 6, 1985.

2. Reported in *Macleans*, Nov. 11, 1985, as having been part of a letter from Gotlieb to the Hon. Sinclair Stevens, the Minister responsible at the time for Investment Canada.

CHAPTER TWO

THE "SHAPE" OF THE INDUSTRY

Cultural industries in Canada account for approximately 450,000 jobs and $10 billion (Cdn.) in revenues.[1] The Canadian market for cultural products and services is characterized by a strong foreign presence to a far greater degree than is the case in comparable industrialized countries. For books, foreign market share is 69 percent (primarily U.S.), which compares to 17 percent in France and 7 percent in the U.K. By contrast, the U.S. domestic book market is 94 percent met by nationally produced titles.[2]

In 1987-88, publishing houses (*not* printers) operating in Canada employed 5889 persons on a full-time basis, and the total wholesale value of the book market in Canada reached $1.53 billion (Cdn.). Titles published in Canada (more than 80 percent of which were written by Canadians), accounted for just over $475 million, or 31 percent. Imported titles, sold directly from abroad to Canadian purchasers, accounted for 34 percent. Foreign-owned subsidiaries published only 25 percent of Canadian-authored titles in 1984 but earned 54 percent of total industry revenues that year (63 percent of the industry's English-language revenues).[3]

The Canadian-owned industry has tended to suffer high debt-to-equity ratios and faces difficulty in attracting financial backing.[4] Price expectations are established by the foreign-owned publishers who dominate the market. This point is important because, largely due to small production runs, Canadian-owned firms in 1979 spent twice as large a percentage of net sales as did foreign-owned firms on design and production, general editorial costs and royalties (as reported by Statistics Canada). What's more, 87 percent of the "higher risk" categories of books (literature, poetry, drama, social sciences and economics) are published by the Canadian-owned sector. These factors combine to assure narrower margins to Canadian-owned companies.[5]

Scope for profitability in the Canadian-owned sector is somewhat hampered because the U.S. publishing industry does *not* distinguish Canada as a separate national market for publishing rights. In other words, rights to publish "international" (non-U.S. or Canadian) titles are *not* available to the Canadian-owned sector because they are generally sold as part of U.S. publishing rights. If it were otherwise, Canadian publishers could bid more frequently for the chance to produce popular foreign authors in Canada.[6]

Vital Links, a 1987 Canadian Government report on the status of cultural industries in Canada, describes the critical educational (or textbook) market as the "most stable and lucrative area of publishing," and claims that foreign-owned subsidiaries account for 67 percent of sales in Canada (73 percent in English).[7]

Ron Besse, who heads the Canada Publishing Group (parent of Macmillan of Canada and Gage), is not worried by foreign ownership of the textbook industry, and insists that it's not necessary to protect that portion of the market: "A foreign onslaught is impossible because Canadian-elected school boards, teachers, or provincial curriculum specialists dictate what books will be bought and what books will be approved for use."[8]

Diane Francis, a Canadian economist, journalist, and pro-free trader, observes: "[F]or every $10 worth of book sales, the author makes $1, the store $4, the publisher's printer and typesetter $2, the publisher's editorial and promotional staff $2, and the publisher's profit, if there is any, is $1.... [T]he money accrues to Canadians no matter who owns what."[9] "Nationalists" would not dispute Francis' contention — they simply address different questions (more later).

In sum, befitting an industry producing for a domestic market of 18 million (Canadian anglophones) next door to publishers catering to the same language market more than ten times the size, it is almost always more difficult to assure profitability. That said, advances are being made: "A significant breakthrough has been made in the sales of

Canadian books in Italy, West Germany and Scandinavia."[10] According to three Canadian publishers: "Canadian publishing has never been more exciting than it is right now" (Malcolm Lester); "Canadian authors are in the cat-bird seat" (Stan Colbert); "It really is an author's market right now" (Jack Stoddart).[11]

2.1 "Protectionism": Some Arguments Pro and Con

"Culture is an elusive concept," said Canada's foreign minister, Joe Clark, at the outset of the free trade negotiations:

> It is the embodiment of a nation's nature and spirit. It is the heritage that is handed down to succeeding generations. It is how we define ourselves to ourselves, and to others. This implies domestic encouragement and international exposure. Cultural industries are the commercial enterprises that transmit cultural expression, at home and abroad.

He continued:

> No country is more open than Canada to foreign cultural products.... The United States casts the net of "national security" over more areas than does Canada; Canadians cast the importance of cultural identity more widely than do Americans.[12]

Two American perspectives are worth recalling because of their sensitivity. Harvard University's Oswald Ganley captures the nub of the problem:

> The Canadian's lack of a clear-cut, unified culture means that English-speaking Canadian school children know more about American history and American folklore than about the conquering of the Canadian west. The lack of a unified Canadian identity (and the proximity to the U.S.) means that the majority of Canadians read American books.[13]

John Reinhardt, former U.S. Ambassador to UNESCO, was not addressing himself to Canada. Neither was he issuing a "clarion call" to cultural nationalists. Nonetheless, his remarks apply:

> Certainly there must be respect and understanding for cultural diversity. But again, this can best be done by building up the information and communications capacities of all societies, so they can tell us about themselves in their own way. We cannot learn to respect a cultural expression that we cannot hear, and we need for our own enrichment to become able to hear it.[14]

The Association of Canadian Publishers harbors no doubts about how to effect Reinhardt's "prescription" for "building up ... capacities":

> Canadian-authored books enable us to learn about our country, to debate, to tell our stories – to communicate with each other. It is essential that the long-term health of book publishing in this country is ensured through policies which promote Canadian ownership and control in what is a vital cultural and communications industry.[15]

If there's merit to the argument that no one better than a Canadian can convey to Canadians what it means to be a Canadian, then Canadian publisher Malcolm Lester's contention that "Canadians are more likely to publish Canadian authors"[16] acquires significance. Canadian governments historically have tried to foster the capacity for Canada to publish its own authors.

Canadian economist Carl Beigie notes that

> Canadian governments have ... played an integral role in creating and sustaining the national economy and political community since Confederation, in part through "defensive expansionism" to stem the American economic and cultural pull.[17]

In 1951, the Royal Commission on National Development in the Arts, Letters, and Sciences described the "danger" this way:

> [T]he disproportionate volume of every kind of foreign, principally American, product flowing into Canada made it difficult for our own products to be seen and heard.[18]

Ganley, in describing the reality, zeroed-in on the real difficulty:

> Because of Canada's proximity to the U.S., Canadian information and communications are thoroughly intertwined with or affected by those of the U.S. *Yet most Americans are unaware of this fact or the importance which is attached to it by Canadians.*[19] [Emphasis added]

While critical of the protectionist policies to which the Canadian government has resorted, the United States has in some respects itself implemented similar policies. From 1891 to 1954, the U.S. restricted to fifteen hundred the number of copies of any foreign-produced book in English which could be imported without loss of copyright protection.[20] Presumably, by 1954 the U.S. industry had achieved such a critical mass that the restriction could be lifted without "risk."

In a sweeping article on "Issues in Canada-U.S. Trade Relations," Canadian trade expert Rodney Grey probed for American antecedents to Canadian policies. Grey identified three areas: 1) directives given by the U.S. government to U.S. firms' foreign subsidiaries that are trading with countries or in products or technologies contrary to U.S. policy; 2) so-called "balance of payments" guidelines invoked in the sixties and early seventies, under which U.S. parent firms were directed to require their subsidiaries in Canada and elsewhere to remit earnings to their U.S. parent firms; and 3) the attempt to exert extra-territorial jurisdiction — which usually means jurisdiction over subsidiaries — in anti-trust cases. Grey then remarked:

> One could go so far as to say that over the years, Washington has, by its policies in the three areas above, taught Canadians, and more recently Europeans, the *relevance of the nationality of ownership.*[21] [Emphasis added]

One discerns from the foregoing arguments that something more than mere protectionism may be at issue here. In Beigie and Grey, among others, Canadian cultural nationalists can find antecedents, including U.S. policy itself, for an interventionist, protectionist policy. Let us move, then, to an examination of the policy itself, after first reviewing the controversial comments of two Canadian journalists, seldom known to agree with one another.

First, "anti-nationalist" Barbara Amiel states:

> [T]he British do have an indigenous culture, quite different from America. The truth about Canada – painful to some, a matter of indifference or pride to others – is that we do not.... The warning cries about selling our culture to the Americans reflect only the interests of a small but vociferous lobby of Canadian businessmen and intellectuals who want to protect themselves from American competition.[22]

With more specific relation to book publishing, Robert Fulford states:

> A textbook company owned by Canadians, and managed by Canadians, is likely to make about the same publication decisions as a textbook company owned by Americans and managed by Canadians.[23]

NOTES

1. Government of Canada statistics.

2. Canada, Department of Communications, 1987-88 Preliminary Statistics.

3. Ibid.

4. Government of Canada, *Vital Links: Canadian Cultural Industries*, 1987, 21-23.

5. Paul Audley, *Canada's Cultural Industries: Broadcasting, Publishing, Records & Film* (James Lorimer & Co., 1983), 100-02.

6. Ibid., 30 (confirmed by Barbara Meredith, director, International Division, Association of American Publishers Inc., through personal communication, November 1989).

7. *Vital Links*, 23.

8. *Macleans* (June 12, 1989), 13.

9. Ibid.

10. A.F. Cooper and David Leyton-Brown, "The Future of Canadian Cultural Diplomacy" in A.F. Cooper, ed., *Canadian Culture: International Dimensions* (University of Waterloo, 1985), 154.

11. *Publisher's Weekly* (May 19, 1989), 27.

12. External Affairs, Canada, *Canadian Trade Negotiations*, December 15, 1985, 85.

13. Oswald H. Ganley, *The Role of Communications & Information Resources in Canada* (Cambridge, Mass.: Program on Information Resources Policy, Harvard University, 1979), 6.

14. Ambassador John E. Reinhardt, *Towards an Acceptable Concept of New World Information Order*, Boston, Mass., U.S.-Japan Symposium, Tufts University (October 11, 1979), 8.

15. News release, March 14, 1988.

16. Toronto *Star*, Feb. 7, 1989, B-4.

17. Carl E. Beigie and James K. Stewart, "New Pressures, Old Constraints: Canada-United States Relations in the 1980s," *Behind the Headlines*, 1983, 9.

18. *Vital Links*, 11.

19. Ganley, i.

20. Audley, 127.

21. Rodney de C. Grey, "Some Issues in Canada-U.S. Trade Relations," *Canadian Public Policy*, 1982, 456.

22. *Macleans* (April 20, 1987), 9.

23. Robert Fulford, "Blaming the Yanks," *Saturday Night* (March 1986), 9.

CHAPTER THREE

"BAIE COMEAU" AND THE CANADIAN REACTION

In announcing the policy, Communications Minister Marcel Masse said:

> The Government believes that it is essential that there be a strong book publishing and distribution industry that is owned and controlled by Canadians, one able to perform effectively its important role in defining Canada's social and cultural identity.[1]

Masse, in his press release, went on to claim the support of the Canadian business community, notably of the Chamber of Commerce. The Association of Canadian Publishers, predictably, was enthusiastic:

> When the policy was announced in 1985, Canadian publishers applauded the government's initiative. It marked the first time that a pro-Canadian publishing policy was to be applied equitably and *consistently*. Moreover, it was the first time that such a policy had been introduced as one component of a more comprehensive program intended to strengthen the industrial and cultural base of Canadian publishing.[2]

This "comprehensive program" concerns the Book Publishing Industry Development Program [$8.2 million (Cdn.) per year] announced by Masse; its purpose is to "enhance the viability of the Canadian-owned sector." This program came on top of others: the Publisher's Book Rate (1968), a $60 million (Cdn.) per year postal subsidy to benefit bookstores, wholesalers, direct-mail companies, and book clubs; and the Book Publishing Development Program (1979), designed to apply industrial development monies to strengthen the industry's capacity.

By the government's own admission, at the time at which "Baie Comeau" was announced

> nearly 15 years of ... assistance [had] not substantially increased Canadian control of the domestic market or brought about enduring improvements in the financial viability of the Canadian-owned sector.[3]

The key point here is that "Baie Comeau" undeniably seemed an unorthodox initiative for a Conservative government. The 1985 policy emerged, however, after fifteen years of more "positive" approaches – like direct subsidies – with the Canadian-owned sector remaining as financially precarious as ever. Little additional money was likely to be appropriated by a "deficit-preoccupied" government. Accordingly, a protectionist policy, even given the near certainty that the U.S. would take offence, appeared the only viable route to strengthen the Canadian-owned publishing industry.

Four-and-one-half years after "Baie Comeau," Canadian opinion has far from jelled on whether the policy has been a success or a failure, appropriate or inappropriate. A representative sample of that divided opinion follows:

For "Baie Comeau"

- "It's been a success. It has established a climate in which the importance of healthy publishers to fostering a national identity is recognized by foreign interests."[4]

  – Jeremy Kinsman, then-Assistant Deputy Minister, Department of Communications
  Financial Post, February 6, 1989

- "The 'Baie Comeau' policy is more pertinent now than ever before.... Mr. Masse recognizes that the policy may have to be strengthened with regard to its application; to guarantee consistency and ensure that the governments' objectives for book publishing and distribution are realized."[5]

  – Communications Canada
  March 10, 1989

- "There is one factor that some Americans seem to find difficult to understand. There is no one, even speaking off the record, who disagrees with the spirit or intent of the 'Baie Comeau' policy."[6]

  – Beverley Slopen
  Publishers Weekly, May 19, 1989

- "The whole point of the policy is to strengthen Canadian publishers and give them a little more to play with."

  — Anna Porter, head of an investment group that purchased Doubleday Canada after its U.S. parent was taken over by the German firm Bertelsmann and "divestiture" was forced under the "Baie Comeau" policy

(Note that since the sale, Doubleday Canada publishes three times as many titles as previously, and that its book clubs, including the Literary Guild, now offer 25 percent Canadian titles, up from 5 percent before the sale.)[7]

Against "Baie Comeau"

- "We're not satisfied with the policy.... Certainly, there is no record of consistent enforcement of the policy."[8]

  — Hamish Cameron, executive director, Association of Canadian Publishers

- "The 'Baie Comeau' policy as a strategy has been killed ... and it is very, very hard to see anything has improved significantly in book publishing as a result."[9]

  — Steven Langdon, M.P., New Democratic Party

- "Only two publishers of any significance have ostensibly moved from foreign to Canadian hands: Holt, Rinehart & Winston Ltd. and Doubleday Canada."[10]

  — Toronto *Star*

- "I am against forced divestiture of foreign-owned subsidiaries."[11]

  — David Galloway of TorStar, parent company to Harlequin, which owns the Toronto *Star* and various publishing operations in the U.S.

- "I would personally prefer that all Canadian publishing be carried on by Canadian corporations — but not at the cost of arbitrary retroactive regulations that no one could call just.[12]

  — Robert Fulford

3.1 "Baie Comeau": The U.S. Reaction

"Baie Comeau's" effect, according to the *Financial Post* was

> to anger Gulf and Western Industries Inc. of New York, the powerful entertainment conglomerate that precipitated the guidelines when it acquired Prentice-Hall Inc. in Dec., 1984.

While "Baie Comeau" was not "targeted" against the United States, it is nevertheless a fact that Canadian publishing houses far more frequently had been sold to U.S. companies than to those of any other national origin. There's no reason to expect a change in that reality. Other countries, however, have been affected: West Germany's *Bertelsmann* (now the world's largest publisher) bought Doubleday, and had to divest Doubleday Canada; the French giant *Hachette* bought Grolier. It would appear, though, that unlike the U.S. Administration, neither the FRG nor the French governments have protested "Baie Comeau."

The American protest was instant. *Macleans* reported that Alan Gotlieb (then-Canada's Ambassador to the U.S.) sent a letter to Investment Canada Minister Sinclair Stevens stating that former USTR Robert Strauss, lobbying for Gulf and Western, had called him July 30, 1985 (twenty-four days after the policy was announced) to say: "Gulf and Western will adopt a scorched-earth response if we enforce the policy on them."[13]

Nicholas Veliotes, president of the American Association of Publishers, complained in a letter to the chairman of the Senate Finance Committee about

> Canada's punitive foreign investment policy as it applies to American book publishing companies.... This forced divestiture at "fire sale" prices places American publishers at a substantial disadvantage and causes serious economic dislocation and investment flow distortions.[14]

Publisher's Weekly claimed U.S. publishers complained that

> under the Canadian policy, potential buyers would wait until the end of the two-year period when the U.S. owner would be forced to sell the Canadian house at fire-sale prices.[15]

And U.S. Senator Pete Wilson (R-Calif.), during the debate prior to the vote on Free Trade, commented:

> While I am told that Canada's policy on publishing divestiture will be administered fairly, such a concept constitutes an oxymoron – a policy that includes forced divestiture is inherently unfair.[16]

By far, however, the person most relentlessly critical of "Baie Comeau" was and is Rep. John Dingell (D-Mich.), chairman of the House Energy and Commerce Committee. At a March 2, 1989, meeting of the Committee's Subcommittee on Oversight and Investigations, Dingell attacked

> this kind of behavior by our Canadian neighbors who profess [to be] great free traders while they're skinning us alive under this kind of unfair trade policy.... In plain and simple language it appears to be nothing more or less than extortion disguised as Canadian cultural nationalism.[17]

Dingell introduced into the record of that meeting a document entitled "Canada's 'Indirect Acquisition' Policy: A Formidable Market Access Barrier to American Publishing Firms." Parts of four paragraphs encapsule the breadth of U.S. hostility to the policy:

> Let us trace the evolution of the policies by which the Canadian government has erected an unyielding trade barrier against U.S. companies in the book publishing sector.
>
> The mechanism for so doing was unprecedented in the modern world of commerce and among major trading partners. The policy's first thrust was to force American companies to divest their controlling interest in every "indirect acquisition"[18] of a Canadian-based publishing subsidiary.

> What was so striking about this component of the policy was its reach into transactions occurring in the U.S.
>
> The second prong of the cultural nationalism policy attacks a "direct acquisition" by flatly prohibiting an American firm from acquiring in Canada an independently-owned Canadian book publishing company. No new direct American investments are thus allowed. Not even if there is a willing Canadian seller.[19]

Later in the document, Dingell dismissed the Free Trade Agreement as having "added a new expropriatory gloss to the 'indirect acquisition' policy."

"Baie Comeau" was not the only cultural policy issue raging between Washington and Ottawa at that time. A Canadian proposal to introduce a nationalistic film distribution policy had enraged President Reagan's friend, Jack Valenti, president of the Motion Picture Association of America. *Macleans* reported on June 22, 1987, that in late April and in mid-May of that year, letters had been sent to Prime Minister Mulroney by congressmen and senators protesting the proposed changes. The magazine also reported that President Reagan raised the issue with Mulroney at the April 5-6, 1987, Ottawa Summit.[20]

The Film Distribution policy is both analogous and relevant in that it too demonstrates: the capacity of U.S. stakeholders to command the involvement of elected officials in cultural policy issues; that those officials are prepared to protest to the highest level of the Canadian government; and that the Canadian government was receiving protests on more than one cultural policy issue as it was trying to negotiate a free trade arrangement with the U.S. and sustain sufficient domestic support for that project.

NOTES

1. News release, July 6, 1985.

2. News release, December 15, 1988.

3. Government of Canada, *Vital Links: Canadian Cultural Industries*, 1987, 31.

4. *Financial Post* (February 6, 1989), 19.

5. Communications Canada, news release dated March 10, 1989 (released after a meeting between Communications Minister Masse and representatives of the Canadian book publishing industry).

6. *Publishers Weekly* (May 19, 1989), 23.

7. Toronto *Star* (February 8, 1989), F-1.

8. *Financial Post* (February 6, 1989), 19.

9. Ibid.

10. Toronto *Star* (February 8, 1989).

11. *Publisher's Weekly* (May 9, 1989), 23.

12. Robert Fulford, "Blaming the Yanks," *Saturday Night* (March 1986), 9.

13. *Macleans* (November 11, 1985), 70.

14. *Publisher's Weekly* (September 4, 1987), 10.

15. *Publisher's Weekly* (October 23, 1987), 12.

16. *Publisher's Weekly* (September 1988), 33.

17. Terrance Wills, "Publishing Policy Could Lead to U.S. Retaliation," Montreal *Gazette* (April 26, 1989).

18. *Indirect acquisition* refers to subsidiary companies acquired in the course of purchasing their "parent" companies. "Baie Comeau's" application to indirect acquisitions infuriated Dingell. He saw no reason why a Canadian subsidiary of a U.S. parent, having operated perhaps for many years fully in accordance with Canadian policy, should suddenly find itself subject to review simply because its U.S. parent was sold, case in point, to another U.S. company.

19. John Dingell, *Canada's "Indirect Acquisition" Policy: A Formidable Market Access Barrier to American Publishing* (March 2, 1989), 1–3, 6.

20. *Macleans* (June 22, 1987), 53.

CHAPTER FOUR

FREE TRADE: THE DEBATE AND THE AGREEMENT

The Free Trade debate proved a crucible for all of the economic opportunity and cultural nationalism issues that surround Canada's book publishing policy.

Secretary of State for External Affairs Joe Clark initiated the round by asserting that

> exempting cultural industries from the negotiation at the outset will mean that the general benefits that will result from the negotiation in terms of more secure access, better rules and more predictable channels for resolving differences of view will not be available to that industry. I can see little benefit to Canada from such an approach.[1]

In fact, Clark took a culturally assertive approach. He told the Canadian House of Commons that the talks could be used to remove a "barrier to Canadian creativity" that prevents authors from penetrating the American market.[2] This never became more than, at best, a secondary objective of the trade talks insofar as Canada was concerned. On cultural matters, the Canadian government seemed to pursue a rather consistently defensive approach.

Clark's correspondence with one of Canada's foremost cultural lobbyists demonstrates the government's "kid gloves" approach to cultural industries in the Free Trade context. In a letter to Brian Anthony, national director of the Canadian Conference of the Arts, Clark wrote: "We will not agree to measures which would weaken the cultural sector or undermine its capacity to serve our national needs."[3]

Robert Fulford, one of the few supporters of free trade in the cultural community, joined with authors Barry Callaghan, Morley Callaghan, W.P. Kinsella, Irving Layton, and Mordecai Richler to run a newspaper advertisement, declaring: "What we make is to be seen and read by the whole world. The spirit of protectionism is the enemy of art and of thought."

Fulford's pro-free trade stance did not deter him, however, from articulating one of the major fears of the cultural community insofar as a possible outcome of negotiations was concerned:

> A free trade agreement accompanied by strict regulations against non-tariff barriers could be devastating. Today the Department of Communications and the Canada Council make grants to Canadian book publishers but not to American book publishers operating in Canada. If such grants were seen as non-tariff barriers ...[4]

The Writer's Union of Canada and the Association of Canadian Publishers both supported the anti-free trade coalition. The Canadian Book Publisher's Council, representing primarily the Canadian subsidiaries of foreign-owned companies, took no position on free trade. Leading Canadian publisher Ron Besse (president of the Canadian Publishing Group) was among a small number of his kind who supported the negotiations.[5]

On January 5, 1987, *Macleans* published a poll on free trade taken by Canada's leading public opinion research company, Decima. It showed, to the surprise of many, that more than two-thirds of those questioned felt that national identity would *not* be jeopardized by a closer trading relationship.

Malcolm Lester, then-head of the Association of Canadian Publishers, offered a revealing objection to the question that had generated that response:

> Others say that other countries have close trading relationships without losing their cultural identity and there is no reason to assume that we as Canadians would lose ours as a result of having a closer trade agreement with the U.S.

He continued:

> In most cases, you are talking about countries with different languages, and *language is a defacto non-tariff barrier preventing a small country falling under a foreign country's cultural hegemony.*[6] [Emphasis added]

Had the poll been taken two months later the result might have been different. USTR Clayton Yeutter provoked a fire-storm in Canada with his comment:

> I'm prepared to have America's culture on the table and take the risk of having it damaged by Canadian influence after a free trade arrangement. I hope Canada is prepared to run that risk too.[7]

Yeutter's remarks were taken by free trade opponents to mean that there was a genuine risk of losing protection for the Canadian industry as a result of the deal. More broadly, the notion that somehow in a cultural free trade arrangement Canada could threaten the U.S. industry was seen by Canadians as absurd and emanating from an extraordinarily unsympathetic U.S. official.

In the end, Canada fought for and secured clear recognition of its right to maintain existing cultural support policies and to introduce new measures as required. The *Explanatory Notes* to the Free Trade Agreement, produced by the government of Canada, put it this way:

> From the beginning of the negotiations, Canadians expressed concern that an agreement might erode the government's capacity to encourage and help Canada's cultural industries [... publishing ...] and thus to contribute to the development of Canada's unique cultural identity. In order to remove any ambiguity that Canada's unique cultural identity remains untouched by the Agreement, the two governments agreed in Article 2005 [reproduced in appendix A] on a specific provision indicating that, with four very limited exceptions, nothing in this agreement affects the ability of either party to pursue cultural policies.[8]

The "relevant" one of the "four exceptions" is that

> any requirement to sell a foreign-owned enterprise engaged in a cultural activity indirectly through the purchase of its parent will be balanced by an offer to purchase the enterprise at fair market value [para. 4 of Article 1607].

Publisher's Weekly commented in September 1988 that "President Reagan [signed the] f.t.a. [free trade agreement] with Canada, an f.t.a. that was backed by the book publishing industry."[9]

If it seems as if an otherwise aggressive U.S. industry had capitulated, read on! The industry had secured Clause 2 of Article 2005 (see appendix A) in which it was stipulated that "measures of equivalent commercial effect" could be taken "notwithstanding any of the other provisions of [the] Agreement." Additionally, the U.S. Implementing Legislation (Section 304) kept the issue alive:

> The President is authorized to enter into negotiations with the Government of Canada for the purpose of concluding an agreement (including an agreement amending the Agreement) or agreements to:
>
> 1) liberalize trade in services ...;
> 2) liberalize investment rules;
> 3) improve the protection of intellectual property rights.

U.S. Negotiating Objectives include the following:

- The elimination or reduction of measures grandfathered by the Agreement that deny or restrict national treatment in the provision of services;

- The elimination of local presence requirements;

- The extension of the principles of the Agreement to energy and cultural industries, to the extent such industries are not currently covered by the Agreement.

[Note that FTA tariff reductions of 20 percent per year over five years in various categories including "printed matter" have no bearing upon trade in books; the last tariff (10 percent) had been lifted by the Canadian government in 1979.]

The U.S. Implementing Legislation has kept the pot (of fundamental issues) simmering, if not boiling. It is correct that, as put by the Toronto *Globe and Mail* in a February 2, 1989, editorial: "The FTA has *limited* the retaliation the U.S. can take against new cultural policies that damage U.S. interests" [emphasis added]. It has, however, not *eliminated* that retaliation.

Malcolm Lester, formerly spokesman for the Association of Canadian Publishers and now of the Toronto publishing house Lester & Orpen Dennys, sees "Baie Comeau" as still being at risk: "The future of the "Baie Comeau" policy is a litmus test for the government's resolve to keep culture exempt from free trade."[10]

NOTES

1. External Affairs, Canada, *Canadian Trade Negotiations*, December 15, 1985, 86.

2. *Macleans* (November 18, 1985), 69.

3. Joe Clark, letter to Brian Anthony, February 14, 1986.

4. Robert Fulford, "Blaming the Yanks," *Saturday Night* (March 1986), 9.

5. *Publisher's Weekly* (December 9, 1988), 10.

6. *Macleans* (January 5, 1987), 42.

7. *Macleans* (February 16, 1987), 16.

8. Government of Canada, *The Canada-U.S. Free Trade Agreement*, 1988, 292.

9. Ibid., 33.

10. Toronto *Star* (February 7, 1989), B-4.

CHAPTER FIVE

CANADIAN CULTURAL NATIONALISTS: THE EVOLVING "BOTTOM LINE"

While Free Trade was being negotiated, the Canadian government continued to apply the "Baie Comeau" policy. With each instance of a takeover, the Canadian-owned publishing industry became more strident in its demands. Especially revealing is the chronology of the evolution of the Canadian industry's "bottom line" – the "minimum" criteria constituting Canadian "control."

- The Association of Canadian Publishers (ACP) applauded the government's offer to purchase from Gulf & Western 51 percent of Ginn & Co. (a major Canadian text book publisher acquired *before* "Baie Comeau"). In its March 14, 1988, news release, the ACP stated:

  > the ACP urges the government not only to offer to acquire equity in foreign-owned firms for resale, but also to assist in providing the financing that is necessary if these shares are to be placed in the hands of people experienced in Canadian publishing."

- Three weeks later the ACP was back, "strongly disagreeing with the government's decision to allow the takeover of New American Library by Penguin Books." In the ACP's view: "The government (had) given a clear message that it will respond weakly when pressured by business interests outside of Canada." The ACP was not guarded in offering its prescription:

  > A joint venture with Canadians would have meant more investment, more jobs, and a strengthened Canadian publishing industry, and the government could have refused Penguin's application. If Penguin then chose to close the company, it would have cost few jobs: under any circumstances, NAL would have to maintain its sales and marketing presence in Canada if it expected to continue to sell books. The cost instead has been the government's integrity. Penguin's bluff should have been called.[1]

- It had never been clear that the "nationalists" were satisfied with enhanced Canadian production.[2] By 1989 the new "bottom line" became evident when the ACP asked:

> Are the majority of voting *and* non-voting shares held by Canadians? Do Canadians control majority appointments to the board of directors? Will investment in new titles be determined by Canadians? Will Canadians control access to working capital? In new book publishing ventures, only affirmative answers to all these questions will satisfy the legitimate aims of federal policy. The government must act to ensure that all cases that fall within the purview of the policy are investigated thoroughly and that all necessary conditions of control are met.[3]

- Two months later, in April, 1989, Hamish Cameron (the ACP's executive director) had become still more punitive:

> [I]f the "Baie Comeau" policy is to work, the government has to come down hard on somebody to show it's serious. We want them to make an example of Gulf and Western.[4]

- In May, 1989, just one month later, the ACP became more explicit about its definition of "control":

> We have asked the government to investigate Harper and Collins[5] to ensure that real control resides in the hands of Canadians. By real control, we mean control of the board of directors, and control over assets, and control over appointment of managers.[6]

Regarding the Harper and Collins transaction, Nancy Colbert, a Canadian and the new publisher of Harper and Collins, stated that "the mandate is to create a dynamic, author-oriented publisher of Canadian books." Madalyne Reuter of *Publisher's Weekly* commented:

> A feature unusual among Canadian publishers is that a representative of Harper and Collins [one of the Colberts] will have full status on the London and New York editorial boards.[7]

- On May 2, 1989, Ministers Masse and John McDermid (Privatization and Regulatory Affairs) announced that the government had signed an agreement with Gulf and Western to purchase 51 percent of Ginn & Co. (Can.) and GLC Publishers. Hamish Cameron's comments to the Canadian Press, Canada's major wire service, fully one year earlier could have been offered for the occasion:

  > [T]he industry [is] pleased the government is prepared to back up its book publishing policy, especially in light of the fact there's pressure on them to withdraw this policy in the U.S.

  He added:

  > There's a lot that is unknown about the company. The government may have overpaid for it.

The government's cultural nationalism does not seem to have been diminished either by the general lack of appreciation for its efforts shown by the Canadian-owned book publishing industry or by the "lumps" it has taken from Americans for its persistence in protecting Canadian cultural industries. An autumn 1989 example helps make the point.

Marcel Masse (once again Communications Minister) introduced a new Broadcasting Bill into the House of Commons on October 12, 1989. Among other things, the bill offered a new definition of "Canadian content" which, according to the *Globe and Mail* "goes far beyond the original justification for Canadian content quotas."[8]

Perhaps Masse and his colleagues have gauged U.S. opinion and concluded that with the Free Trade Agreement already negotiated and a solution having been found to the Gulf & Western case, there is likely to be at most a limited American reaction to these "new" emanations of Canadian cultural nationalism.

NOTES

1. News release, April 4, 1988.

2. Richard Handler, "Canadian Content and the Nationalism of Appelbaum/Hebert," *Canadian Public Policy*, December, 1985, 678.

3. ACP news release, February 17, 1989.

4. Terrance Wills, "Publishing Policy Could Lead to U.S. Retaliation," Montreal *Gazette* (April 26, 1989).

5. William Collins Sons & Co. Canada was undergoing profound structural changes to take into account Rupert Murdoch's purchase of its British parent, William Collins. Murdoch already controlled Harper & Row. The Canadian subsidiary's name was being changed to Harper & Collins Books, and it was to begin distributing both the Collins & Harper & Row lines.

6. *Publisher's Weekly* (May 19, 1989), 22.

7. Ibid.

8. *Globe and Mail* (October 13, 1989), A-8.

CHAPTER SIX

TRENDS AND ISSUES

6.1 Internationalization and Growth of the English-Language Market

According to Gayle Feldman, writing in *Publisher's Weekly*:

> In the past few years, the internationalization of the English-language book business has burgeoned at a pace and in proportions that have left many gasping for breath.[1]

In the view of Alan Kaufman, senior V.P. of Penguin, U.S.A.:

> We are now becoming one world for the purpose of publishing, and that will have to be reflected in our customs, in our contracts.[2]

Clive Bradley, Chief Executive of the British Publisher's Association observes:

> You have two trends: the trend towards the world edition and the trend towards the local edition. Clearly there is going to be growth of Australian, Indian and Canadian Publishing.[3]

What does English-language publishing growth combined with internationalization mean for the future of "Baie Comeau"? Certainly, that giants like Bertelsmann and Hachette will become still more interested in the English-language business. That could mean more takeovers of Canadian companies (directly or indirectly) and could, hypothetically, raise "Baie Comeau" to the level of a bilateral irritant with others than just the U.S. It's not foreseeable that Canadian cultural nationalists would bend, but the government of Canada, if under fire from additional jurisdictions, might have to contemplate a change in policy.

[Note that at the moment there is only one case involving the U.S. under review. Harcourt Brace Jovanovich acquired the interests of Holt, Rinehart & Winston, Les Editions HRW and W.B. Sanders in 1987. After two years, Investment Canada was advised that control of these three businesses had been divested to Canadian control. In September 1989, Investment Canada reopened the case; as it appears the company may not have complied fully with its original undertaking.]

Internationalization is synonymous in many ways with corporate concentration, itself a form of risk reduction. That means that Canadian firms, who for lack of a "critical mass" have traditionally found themselves less profitable than their multinational competitors, are simply finding themselves up against ever-bigger competition who can apply their size-enhanced profits to fighting the Canadian-owned firms for market share.

Clive Bradley, the British Association's CEO, offers a further refinement:

> [T]he prices of the mergers that have taken place have been very high indeed, making a sensible return that much more difficult to achieve.... I think the effect of the trans-atlantic mergers will be to make publishers look more carefully at the number of titles they produce, and I do see publishing becoming more bestseller oriented.[4]

Bradley's prognosis means further havoc to the Canadian market. High prices will make it harder for Canadian-owned firms to engage in concentration themselves. High prices will make it attractive for them to sell out to multinationals, in a sense requiring of the government a further-strengthened policy. This might particularly apply in the case of Quebec publishers whose vulnerability is always greater due to the limited size of the Canadian French-language market (approximately six million, whereas UNESCO estimates that a minimum population of ten million is required to support a viable indigenous publishing industry).[5]

On the other hand, in those instances (like Ginn) where the government must exercise its responsibility to purchase after two years a company whose divestment was required under "Baie Comeau," it may find itself paying higher prices and taking a loss upon resale.

6.2 Distortions in the Marketplace

"Baie Comeau" has angered Ron Besse, president of Canada Publishing Corp: "An American-owned subsidiary is worth more than a Canadian company. No foreigner can come and buy my company and no one will pay me as much." Regarding the Ginn purchase, *Publisher's Weekly* cited Besse "as saying that Ottawa had paid twice the going rate. [He] expressed his annoyance that his government is using his tax money to compete against Canadian publishers like him."[6]

Dissatisfaction with "Baie Comeau" and its implementation could easily spread beyond Ron Besse. There are many barely economically viable *subsidiary* publishing houses in Canada. Part of their current value unquestionably derives from access to their parent's staff, capital, and authors. Those who manage them, and those who work for them, are justifiably concerned about the potential effects *on them* of a policy which prohibits transfers of ownership of their firm in the event the firm's parent is sold. As they see them, two options stem from forced divestiture in such a scenario: 1) a Canadian, without necessarily the same access to staff, capital, and authors buys them, at least relatively imperilling their profitability, or 2) the government is forced by its own policy to buy them, and then managers/employees are made to endure a protracted period of uncertainty, during the course of which the government tries to "unload" the company onto a Canadian buyer.

6.3 Canadian Budgetary Constraints

One could also conceive of "dissident Canadian publishers" being joined in debate by the Canadian Minister of Finance, the president of the Treasury Board, and the Minister of International Trade, none of whose departments is known for its support of "Baie Comeau." As the Canadian budgetary situation becomes more difficult, the political balance within the Canadian Cabinet, which has heretofore come down on the side of cultural nationalism, could shift. Worries pervade about the government's FTA-related "contingent liability." Should Ginn (the first "test" of the policy) result in the government having to take a significant loss upon resale of the company to Canadian hands (or "worse" still, being unable to sell it at all and thereby having to continue to operate it in contradiction to its own policy of privatization of companies currently held by the state), opposition to "Baie Comeau" within the government could be strengthened.

Indeed, we witnessed in 1989 two outcomes of the precarious budgetary situation which could massively impact the viability of the Canadian publishing industry.

The first is the Goods and Services Tax (GST), a "value added"-type tax which the government proposes to introduce at a 7 percent rate, thereby eliminating the inequitably applied federal sales tax.

The GST is likely to raise the price of books in Canada by between 15-20 percent, given that previously *none* of the input costs to publishing have been taxed. Now *all* will be taxed. The American Association of Publishers (AAP) found itself in uncommon company when it endorsed the Canadian "Don't Tax Reading" Coalition, essentially a grouping of all of the cultural nationalists in Canada with whom the AAP so consistently disagrees. According to the AAP: "There will almost certainly be a diminution in the volume of imported books sold in Canada."[7] The AAP did not speculate whether that "diminution" would redound to the benefit of Canadian publishers or arise as a result of diminishing reading appetites in Canada.

Likely to have almost as great an impact on the Canadian industry are the significant cuts in government expenditures announced by Treasury Board President de Cotret in the House of Commons on December 15, 1989. de Cotret indicated that the government will eliminate the $119.5 million (Cdn.) infrastructure subsidy *and* the $55.1 million (Cdn.) publishers' subsidy paid to Canada Post. Publications that qualify for the latter program are books mailed by publishers, wholesalers, retailers, and public libraries. In its place the government will institute a $110 million (Cdn.) per year transfer to *directly* support Canadian publishing and distribution needs. Critics have already condemned the move as being related to "hidden obligations" under the FTA.

While it appears no such "hidden" obligations exist under the FTA, the charge reflects the suspicion which continues to exist within the cultural community of the government's motives and of its commitment to preserving Canadian culture. The spending cuts announced by de Cotret (effectively a $64.6 million (Cdn.) "saving" to the government) come as a result of fiscal pressures. The direct subsidy may, in the end, be better targeted to the industry's needs, although it is quite likely that the industry will, in fact, suffer a net loss of government assistance. Important for purposes of this paper is the notion that if the government is even *less* able to rely upon transfers to achieve its cultural support objectives, it may have to rely *more* on regulations, restrictions and other non-fiscal policies which will be seen elsewhere as being protectionist.

6.4 Europe 1992

The effects of Europe 1992, on the other hand, are likely to intensify the cries of the Canadian industry for more protection. Richard Curtis, a New York agent, sounded a "crie de coeur" that applies across national borders:

> The authors are very concerned that the results [of 1992] will be growing pressure on authors and agents to accept world English-language rights deals, with either an American publisher or an English publisher. This is not always in the author's best interests, financially or artistically.
>
> There are many occasions where the author/agent would like to choose his or her own English publisher, because that publisher will pay more than what the American author might earn by throwing British rights into his U.S. deal. We also feel that there are many occasions when an English publisher of our own choosing will do a

> better job than one selected by an American publisher, and certainly a better job than simply having our American publisher export copies of our books into the U.K.[8]

Three Canadians refine the Canadian outlook on the potential impact of Europe 1992:

> What we're hearing is that the English publishers will insist on Europe English-language rights, and Americans will insist on Canada as a quid pro quo.
>
> — Avie Bennett, of Canadian publisher McClelland & Stewart

> It does affect Canada's battle to acquire separate Canadian rights to titles and not have them thrown in as part of the Commonwealth Market for the British, or the North American Market for the Americans.
>
> — Anna Porter, of Doubleday, Canada

> I think that it is going to be increasingly difficult to separate Canadian rights.
>
> — Stan Colbert, of Harper & Collins[9]

Still greater difficulty in securing Canadian rights means profits from the "blockbusters" will continue to elude Canadian-owned publishers. Without those to look forward to, the all-too-familiar image of thin profits at the margins after limited production runs will define Canadian publishing for the foreseeable future.

6.5 U.S.-Related Issues

All the evidence suggests that "Baie Comeau" will continue to "stick in the craw" of the U.S. With Ginn/GLC "solved," it is probable that influential U.S. congressmen will today be receiving fewer representations than they were one year ago. While no doubt finding the philosophy behind "Baie Comeau" *continuously offensive*, the pattern to date seems to have been one in which *public offense was taken with the* *general principle as a result of [the existence of] specific cases.* For as long as a policy remains on Canada's "books" whereby as a result of a transaction *in the U.S.* one American company acquires from another American company control of a Canadian subsidiary *and is required to divest itself of that subsidiary,* Canada can expect occasional bursts of outrage to emanate from the U.S.

This, therefore, is an ongoing bilateral irritant with the capacity to acquire high visibility at any moment. The Time-Warner merger, with Canadian subsidiary Little Brown at issue, could have provoked a serious bilateral dispute. Time is obviously well-connected. It considers itself a victim of other Canadian culturally nationalistic policies. According to Thomas Graham, head of International Trade for a major N.Y. law firm:

> [T]his and similar future actions have the potential to forge what has not existed before — a U.S. coalition of cultural industries in reaction to perceived Canadian protectionism .... It is possible that such a coalition could gain the enactment of U.S. "mirror legislation," prohibiting the acquisition of U.S. newspapers and publishing companies, direct or indirect, by Canadians.[10]

Graham's message was delivered to the annual meeting of the Canadian Daily Newspaper Publisher's Association — a receptive audience for this message. Of the eight Canadian companies identified by the GAO as having investments in the U.S. publishing sector, International Thomson (with 40 U.S. companies to its name), Maclean Hunter (5), Quebecor (7), TorStar (2), and Hollinger (28 U.S. newspapers) are all publishers of daily newspapers in Canada.[11]

Rep. Dingell embraced that theme: "Canadian investors are enjoying a field day when it comes to snapping up U.S. publishing firms."[12] Dingell articulated what for him is a major grievance, and then posed a number of menacing questions:

> [I]f a Canadian buyer wishes to acquire a U.S. publishing firm which also owns a Canadian subsidiary, it has a built-in advantage over a competing U.S. firm, an advantage conferred by

> the "indirect acquisitions" policy.... Thus, the Canadian "indirect acquisition" policy has a radiating anti-competitive effect *within the U.S.*
>
> A number of issues are raised:
>
> 1) [D]oes the U.S. have any plans to urge the Canadian government to do away with the policy altogether?
>
> 2) Is there any reasonable basis why the U.S. should not impose a similar screening and review policy, as a matter of sheer reciprocity, in cases of massive Canadian acquisitions of U.S. publishing concerns?
>
> 3) By tolerating the Canadian example, do we not encourage similar actions by other governments in creating this form of market access barrier in the so-called cultural industries...?[13]

It is precisely this specter of retaliation that is provoking a degree of debate in Canada. According to Canadian economic journalist Diane Francis

> [T]he real danger inherent in Baie Comeau is that it may spark protectionism south of the border against Canadian media conglomerates, which have been buying up U.S. print, broadcast and publishing assets for decades.[14]

Two types of retaliation, one specific to "Baie Comeau," the other less so, have already been tried. The former is to be found in *H.R. 2639*, introduced by Rep. Ed Jenkins (D-Ga.) on June 14, 1989. It "seeks to amend the U.S.-Canada FTA Implementation Act of 1988 in regard to cultural industries 'to provide for reciprocal treatment until the President concludes negotiations with Canada or Canada removes its barriers to U.S. investment in cultural industries.' " It would provide that "no Canadian person may acquire a direct controlling interest in a U.S. book publishing enterprise after the date of the enactment of this subsection" and that "any indirect acquisition after the date of the enactment of this subsection must be sold at fair open market value to a U.S. person within two years of acquisition."

Jenkins employed Canadian language in order to mirror Canada's legislation. John Bryant (D-Tex.) introduced a much more sweeping bill, requiring vigorous declaration by all foreign investors of their interests in the U.S. (Note that the U.S. General Accounting Office document referred to earlier proclaimed that "there is no comprehensive tracking system which can identify all foreign direct investment in the U.S.")

Bryant's bill was strongly opposed by the Administration. USTR Carla Hills commented:

> If we put restrictions on other countries investing in this area, we are very fearful that, in a reciprocal manner, they will restrict our investment overseas to our net grave disadvantage.[15]

Commerce Secretary Mosbacher was even more dismissive: "What we're looking for is opening markets and investments, not closing them."[16]

For now, Bryant's bill is dead and Jenkins' isn't moving anywhere. But as Derek Burney, Canada's ambassador to the U.S., put it in late 1989: "There is no question that the protectionist sentiments in the U.S. are as strong today as they have ever been."[17]

In maintaining its policy, and particularly should new specific instances arise of "forced divestiture," Canada will find itself in the "hot seat." There are *no* U.S. interests that *benefit* from "Baie Comeau." Therefore, there are no obvious allies for Canada to seek out. That makes this policy vastly different from, for example, a countervail case where there would be U.S. consumer interests that could be appealed to (some of them are often large businesses in their own right.)[18]

A fascinating current development is the reaction within America to the purchase by Japanese companies of U.S. cultural institutions and icons. A Canadian optimist could anticipate a growing sensitivity within the U.S. to the *cultural* (as distinct from the attributed *economic*) reasons for Canadian cultural protectionism. As David

Galloway of TorStar, ultimate parent of the "nationalistic" Toronto *Star* put it:

> When the Germans, the French or the Japanese try to buy the *New York Times* or the *Washington Post*, the Americans will begin to understand the Canadian reaction.[19]

The Canadian pessimist, for whose position there is greater historical evidence, imagines the likelihood of U.S. protectionist legislation being generally or reciprocally applied against foreign investment in certain sectors, such as cultural ones. In that event, the chances of securing tolerance of or some sort of exemption for Canada's "Baie Comeau" policy, would be next to nil.

6.6 Free Trade

Another potentially contentious issue area will be the application of Article 1607 (4) of the Free Trade Agreement requiring Canada to "offer to purchase the business enterprise from the (U.S.) investor at fair open market value, as determined by an independent, impartial assessment" (see appendix A). Inclusion of this clause in the Agreement means that failure to reach an accord on "fair market value" in any given case causes the issue to be elevated to the "Dispute Settlement Panel," which would be created pursuant to the Agreement. Failure by Canada to abide by a Panel arbitration would empower the U.S., under Article 2005 (2), to take "measures of equivalent commercial effect."

While not immediately foreseeable, such actions would, in the event, assume an exceedingly high profile in Canada and would be of the utmost importance to the particular U.S. interests involved. Failure to resolve a dispute could, therefore, endanger the entire "Baie Comeau" policy.

It is difficult to conceive of exactly what will happen to Canada's nationalistic book publishing policies in the years ahead except to say that unless they assume highest priority on the U.S. agenda, no Canadian government is likely to contemplate gutting them. Any non-Progressive Conservative successor government to the current one is likely to be more nationalistic, indeed anti-American, in its outlook; it would, accordingly, want to preserve and perhaps even strengthen "Baie Comeau"-like policies. In instances of high-profile cases, the Canadian government will inevitably do what it can to mollify those Americans interested in the issue without sacrificing the policy. Any weakening of the policy that follows from evident U.S. pressure will, in my view, provoke a loud and hostile reaction from those quarters in Canada whose comments are cited throughout this paper. Any Canadian government will be most reluctant to find itself at absolute odds with that constituency. As a general principle, any Canadian government will continue to assert, as trade expert Rodney Grey put it in describing his perception of the position ultimately taken by all Canadian governments on foreign investment questions: "[T]he legitimacy of Canada reserving the right to say 'no' to a U.S. firm that wants to enter Canada."[20]

Regarding Grey's hypothesis, it must be said both that many countries have asserted a comparable right *and* that the U.S. itself would wish to reserve such a right.[21] Already having near "control" of "middle brow" English-language culture world-wide, it is unimaginable, however, that the U.S. will do anything *but* use all of the tools in its arsenal to preserve that control. For that highly understandable reason alone, Americans will continue to phrase the question in relation to Canada in terms of the "discriminatory and protectionist economic measures" that Canada takes regarding its publishing industry, denying that there are any legitimate cultural nationalism reasons for such a policy to exist.

On balance, the policy is more important to Canada than to the U.S. Accordingly, Canada will be more willing to make tradeoffs in other sectors in order to protect its cultural industries. For that reason, I believe "Baie Comeau" or similar successor policies will, therefore, likely survive — not, however, without great "political" energies being expended on both sides.

NOTES

1. Gayle Feldman, "The International Face of British Publishing," *Publisher's Weekly* (August 1988), 19.

2. *Publisher's Weekly* (February 3, 1989), 22.

3. Ibid., 22.

4. Ibid., 21.

5. Government of Canada, *Vital Links: Canadian Cultural Industries*, 1987, 28.

6. *Publisher's Weekly* (December 9, 1988), 10.

7. Association of American Publishers Inc., *Submission to the Standing Committee on Finance Concerning the Proposed Goods and Services Tax on Reading Materials*, New York, Summer 1989.

8. Richard Curtis, *Publisher's Weekly* (February 3, 1989), 22.

9. *Publisher's Weekly* (May 19, 1989), 26.

10. Terrance Wills, "Publishing Policy Could Lead to U.S. Retaliation," Montreal *Gazette* (April 26, 1989).

11. General Accounting Office, *Foreign Investment: Canadian Investment in U.S. Publishing and Cable Television Industries*, April 1988, 1.

12. John Dingell, *Canada's "Indirect Acquisition" Policy: A Formidable Market Access Barrier to American Publishing* (March 2, 1989), 7.

13. Ibid., 9.

14. *Macleans* (June 12, 1989), 13.

15. Montreal *Gazette*.

16. Ibid.

17. *Financial Times* (October 11, 1989), 41.

18. When countervail cases have been brought by Americans before the U.S. Commerce Department, complaining of subsidization of a particular product by a Canadian government (such subsidy, if determined, constituting an unfair trade practice resulting in injury to U.S. industry), *beneficiaries* of the alleged subsidy (that is, consumers or industries that use the item as a component in remanufacturing processes and others) have supported the Canadian position, simply because *it is to their perceived economic benefit* to do so. The point is made simply because in the case of "Baie Comeau," there are *no* evident U.S. beneficiaries of the policy.

19. *Publisher's Weekly* (May 19, 1989), 23.

20. Rodney de C. Grey, "Some Issues in Canada-U.S. Trade Relations," *Canadian Public Policy*, 1982, 456.

21. Ibid.

APPENDIX A

U.S.-CANADA FREE TRADE AGREEMENT

U.S.-CANADA FREE TRADE AGREEMENT

Article 1607: Existing Legislation

4) In the event that Canada requires the divestiture of a business enterprise located in Canada in a cultural industry pursuant to its review of an indirect acquisition of such business enterprise by an investor of the United States of America, Canada shall offer to purchase the business enterprise from the investor of the United States of America at fair open market value, as determined by an independent, impartial assessment.

Article 2005: Cultural Industries

1) Cultural industries are exempt from the provisions of this Agreement, except as specifically provided in Article 401 (Tariff Elimination), paragraph 4 of Article 1607 (divestiture of an indirect acquisition) and Articles 2006 and 2007 of this Chapter.

2) Notwithstanding any other provision of this Agreement, a Party may take measures of equivalent commercial effect in response to actions that would have been inconsistent with this Agreement but for paragraph 1.

Article 2012: Definitions

For purposes of this Chapter:

cultural industry means an enterprise engaged in any of the following activities:

a) The publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing.

APPENDIX B

"BAIE COMEAU" DOCUMENTS

COMMUNICATIONS

JULY 6, 1985 FOR IMMEDIATE RELEASE

Masse announces government's policy
on foreign investment in the Canadian book publishing industry

BAIE COMEAU, QUEBEC -- Communications Minister Marcel Masse today announced the government's policy on foreign investment in the Canadian book publishing and distribution industry.

"The government believes that it is essential that there be a strong book publishing and distribution industry that is owned and controlled by Canadians, one able to perform effectively its important role in defining Canada's social and cultural identity," Mr. Masse stated. "Just as there are policies to protect our cultural sovereignty in the newspaper, magazine, and radio and television broadcasting industries, there is a need for comparable policies in the book publishing and distribution industry."

Mr. Masse said that the government will, in accordance with the provisions of the Investment Canada Act, review all proposed foreign investment, both direct and indirect, in book publishing.

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Concerning direct investment, the Minister stated: "The Government will look with favour on proposals to establish new businesses or to acquire directly existing businesses, whether Canadian or foreign controlled, provided the investment is through a joint venture with Canadian control. For direct acquisitions of foreign-controlled businesses, allowances will be possible if the divestiture of control to Canadians occurs within a reasonable period of (two years) at a fair market price."

The Minister stated that the government will review indirect acquisitions case by case. It will generally allow such acquisitions, provided, first, that the acquisition would not significantly lessen effective competition by Canadians in any segment of the book market and, second, that the applicant undertakes to divest control of the business to Canadians at a fair market price within two years.

"This policy confirms the government's commitment, as enunciated in the Investment Canada Act, to maintaining Canada's cultural sovereignty and supporting the economic viability of the nation's crucially important cultural industries," Mr. Masse said. "In particular, the government recognizes that the Canadian publishing industry must have opportunities to grow within its own domestic market and that foreign investment should not be allowed to jeopardize such development."

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COMMUNICATIONS

NEW BOOK PUBLISHING MEASURES FOR CANADA

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Canada

NEW BOOK PUBLISHING MEASURES FOR CANADA

CURRENT STATUS OF THE PUBLISHING INDUSTRY

The publishing sector in Canada is quite fragmented, not only by geographical and linguistic differences, but also by the existence of highly specialized markets: education (elementary-secondary, college, university), trade (hardcover, quality paperback, mass market paperback), reference and scholarly. The predominant characteristic of the publishing sector is, however, the proximity to an enormous foreign market which is able to achieve substantial economies of scale and thereby reduce the unit cost of its product. In 1983, three quarters of the $1.2 billion domestic market was accounted for by sales of imported books, 85% of which originate in the United States. Our trade balance in books, moreover, shows a deficit of almost $500 million.

Although the domestic market is worth $1.2 billion, the revenues of the publishing industry in Canada total only $541 million or 45% of the domestic market. Over half of this revenue (53%) comes from the sale of titles published in Canada. Publishers' distribution activities account for the rest.

Publishers and exclusive agents distribute only 37% of total imports; the balance is accounted for by direct imports which bypass the publishing industry.

Although Canadian-owned publishers account for 86% of the total number of companies and publish 77% of new titles and reprints in Canada, they account for only 40% of publishers' sales. The foreign sector, in contrast, predominates: e.g., in the educational market (68%), in the reference and scholarly market (80%) and in book distribution (64%). The situation in French Canada is different: while the foreign presence is less in evidence (40% of publishers' sales), imported books occupy a major share (68%) of the market nonetheless.

The Canadian-controlled sector of the publishing industry is concentrated in the riskiest publishing genres. The preponderance of small and medium-sized firms in the Canadian sector is testimony to the low barriers to entry into trade publishing: 77% of Canadian firms have revenues of less than $1 million. In addition to small market size, the majority of Canadian publishers also face the problems associated with small and medium-sized businesses, such as access to financing, but they are exacerbated by the risk inherent in book publishing.

Almost half of publishers' revenue comes from the publication of titles - the balance is divided among distribution activities (37%), integrated activities (19%) and subsidies (1.3%). Although subsidies are not an important source of revenue for the industry as a whole, they are vital to certain small and medium-sized businesses, supplementing their earnings and cushioning their losses. Overall, almost 30% of publishers, small and medium-sized Canadian-owned firms, lose money on their publishing and distribution activities.

The publishing industry employs approximately 6,000 people on a full-time basis; an additional 2,300 work in the book manufacturing sector and approximately 2,000 are employed on a sub-contract basis.

HISTORICAL OVERVIEW

The emergence of a Canadian-owned sector of the book publishing industry, which has been reflected in the development of Canadian writing, is a relatively recent phenomenon. There are of course a number of distinguished houses which date back - McClelland and Stewart, for example, was founded in 1905 - but it wasn't until the 1960s that a variety of Canadian-owned houses emerged. Thus, the problems besetting Canada's book publishers are partially due to the fact that the industry is still a developing one.

It is also true, however, that the development of the industry in English Canada has largely been dictated by the circumstances under which it was founded. Subsidiary firms had already established themselves, their raison d'être being to act as agent for the parent (and other foreign firms) and to publish for the lucrative school market in Ontario which demanded Canadian-authored and Canadian-manufactured materials. Thus, right from the beginning, the Canadian-owned sector found itself in the most risky and least financially rewarding end of the business - publishing indigenous trade books - and limited in its opportunities to diversify and balance its operations.

In Quebec, the market for books was dominated by foreign-owned firms, but it was also heavily influenced by the role the Church assumed in culture and education. Religious orders were themselves educational publishers. During the 1960s, educational publishing became secularized and indigenous trade publishing was allowed to take root. In educational publishing, it was the Canadian-owned sector that was the beneficiary of this evolution. Educational reform also stimulated trade publishing, but its viability was, and continues to be, limited by the size of the Quebec market.

In the early 1970s, a number of events came together which brought the publishing industry to the attention of governments, both federal and provincial. In 1970, the Department of Industry, Trade and Commerce published the results of a major study of the book industry which estimated the total value of the Canadian market in 1969 at $222 million. That study also described the somewhat precarious situation in which publishers found themselves and the minute share of the market held by Canadian books. In Quebec, Hachette, the giant French publishing group that already dominated the distribution system, acquired 45% of Centre Educatif et Culturel and control of la librairie Garneau. In Ontario, two major Canadian-owned firms were sold to American interests: Ryerson Press was sold to McGraw-Hill and W.J. Gage Ltd. was acquired by Scott

Foresman (Gage has since been repatriated). At the same time, McClelland and Stewart announced that its financial position left the company no alternative but to sell out.

In 1972, the Quebec government reacted to these events by announcing a book policy which included a requirement that publicly funded institutions acquire their books from accredited bookstores; i.e., stores at least 50% Quebec-owned. The accredited bookstore system not only assured a minimum level of service and support for Quebec books, it also reduced the market position enjoyed by the foreign giants such as Hachette. [In 1979 the Quebec government, following numerous consultations, adopted Bill 51 (Loi sur le développement des entreprises québécoises dans le domaine du livre) which affected all players in the book industry, in addition to the institutional buyers. The ownership requirements for bookstore accreditation were increased from 50% to 100% Quebec ownership.] In Ontario, a Royal Commission on Book Publishing was established. The outcome of that inquiry was a loan guarantee program for Canadian-owned publishers and a financing package for McClelland and Stewart.

The federal government also responded in 1972 by announcing a series of initiatives. They included: increased financial assistance to publishers in the form of block grants and translation grants through the Canada Council; a Book Purchase Program; export marketing assistance; and a co-publishing policy. This framework of support was expanded upon in 1975 with the announcement of the Promotion and Distribution Program of the Canada Council to support book displays, author tours and the Children's Book Centre. In 1977, Council programs were further enriched by the so-called "national unity" money which provided new resources for the Book Purchase Program, translation assistance, a National Book Week and a special fund for children's literature. While other departments were supporting Canadian publishing - e.g., the Department of Supply and Services through the co-publishing policy and External Affairs through a book purchase and donation program - the Canada Council was by far the largest source of support.

To this point, the federal government had directed its attention exclusively to the cultural imperative - publishing Canadian books, promoting Canadian books and distributing Canadian books - and paid little attention to Canadian publishers as business enterprises. It was not until 1977 that the government began to focus on the economic base of the Canadian-owned sector of the book publishing industry. This perspective was subsequently reflected in the Canadian Book Publishing Development Program (CBPDP) which was announced in 1979. Its primary purpose was to assist the Canadian-controlled sector of the industry to become dominant in both the English and French language markets in Canada. With the announcement of the CBPDP then, the federal government broadened its role from that of patron to supporter of a viable Canadian-owned industry. At the same time, a link between an industrial support program and pursuit of cultural goals was established. The "bottom line" continued to be cultural but a new vehicle for achieving those objectives was introduced.

The long-term goal of publishing policy; i.e., creation of a healthy industry, was tempered in 1978 by the fact that the industry was facing a financial crisis. The design of the CBPDP reflected this in that over 75% of the funds were disbursed according to a formula which rewarded publishers on the basis of sales performance. These funds were not targeted to specific projects; rather, they were intended to supply badly needed working capital. The Program was also expected to have the effect of improving the economic health of the industry and stimulating the production, marketing and sales of Canadian-authored titles.

An evaluation of the CBPDP was undertaken in 1984. On the one hand, the evaluation: i) confirmed the underlying logic of the Program; i.e., that the most appropriate vehicle for ensuring cultural development is a viable Canadian-owned publishing industry; ii) credited the Program with the short-term effect of sustaining a number of firms through a difficult economic period and therefore maintaining the level of production of Canadian-authored titles; and iii) acknowledged that the Program has assisted the industry in making important improvements to the distribution system. On the other hand, the evaluation warned that the undirected nature of much of the funding has meant that the CBPDP has had little long-term effect and it recommended that the CBPDP be revised to make it more targeted and publishers more accountable.

In order to appreciate why the CBPDP had little long-term effect, it is important to understand the link between the DOC program and the Canada Council's Block Grant Program. The premise underlying the Block Grant Program is that culturally significant titles cannot be completely supported in the market place; however, because of their special quality, they should be published. The role of the Council therefore is to contribute to the deficit or "net cost" of producing such titles, thus ensuring their publication. In other words, the Block Grant Program is designed to serve cultural objectives. The Council has never funded 100% of the deficit, but in the early years, it was covering 80%. In the late 1970s, the level of funding available to the Council began to decline. Thus, Council's decisions began to have serious economic consequences for Canadian trade publishers who had few, if any, alternative sources of financing. The general economic climate was also deteriorating and the industry found itself in a cash crisis. As has already been noted above, the design of the CBPDP reflected this with its formula payments to publishers based on sales performance.

The CBPDP never had the freedom to pursue its industrial development mandate. Most of its trade publisher clients were also Block Grant recipients. The funds in the CBPDP's trade component were used to cover the shortfall in Council support. One of the major conclusions of the evaluation of the CBPDP was that it had had the short-term effect of sustaining a number of firms through a difficult economic period and therefore maintaining the level of production of Canadian-authored titles. Both the DOC and the Council have, in effect, been running cultural support programs for the most part. If a publishing strategy is going to pursue both cultural and industrial development, then its principal programs should better reflect these aims and better differentiate between them. It should also be underlined that adequate cultural support is an essential precondition for the success of an industrial strategy.

Ownership and the structure of the industry in Canada has long been a preoccupation of federal publishing policy. The federal government's initiatives in 1972 were prompted by concern over foreign acquisitions of Canadian-owned firms and by the fragility of the Canadian-owned sector. The rationale for financial support was that a Canadian publishing industry, inspired, financed and controlled by Canadians is essential for cultural development.

The range of instruments available to the federal government in implementing its objectives broadened considerably with the passage of the Foreign Investment Review Act in 1974, as a result of which a number of important decisions that affected Canadian publishing were made which affected Canadian publishing. The acquisition of Simon & Schuster of Canada Ltd. by Gulf & Western Industries was disallowed in 1976. General Publishing, a Canadian-owned firm, entered into a distribution agreement with Simon & Schuster. For General Publishing, this arrangement has been extremely successful. The acquisition by Marlis S.A. of Hachette International Canada Inc. was allowed but Hachette Canada emerged as a much smaller concern, since it divested itself of a number of important activities during the course of the review. The acquisition of Bantam Books Canada by Bertelsmann was allowed, but as a condition, a joint venture between McClelland and Stewart and Bantam Books was created for the publication of Canadian titles in mass market format. That joint venture, Seal Books, is now 75% Canadian-owned.

In December 1984, the Government brought forward the Investment Canada legislation with the specific intention of encouraging foreign investment in Canada as a vehicle for stimulating employment and economic growth. At the same time, it was recognized that the cultural sector is a sensitive one and that foreign investment in this sector of the economy cannot be permitted to run counter to the overriding considerations of cultural, as well as economic, development in Canada's cultural industries.

Subsequent to the passage of the Investment Canada bill in June 1985, a foreign investment policy in book publishing and book distribution was approved in July 1985. Its purpose is to encourage joint ventures in publishing that assist the Canadian-owned sector in acquiring a sufficiently large enough share of its market to become self-financing. The principal vehicle to be used is the Investment Canada Act. Applications to establish new businesses or acquire existing businesses are reviewed against a set of guidelines which require the creation of joint ventures with majority Canadian control or divestiture of control to Canadian interests.

CURRENT ISSUES IN THE PUBLISHING INDUSTRY

Major international trends

For a better understanding of the trends which are transforming the Canadian publishing industry, the industry must be situated in the context of the economies of the industrialized countries (North America and Europe). This economic bloc is currently in the throes of a structural transformation, as evidenced by the following three trends:

- The manufacturing sector is losing ground to the services sector, especially to services based on the processing and production of information. Within this information and services-oriented economy, large multinationals have singled out the "leisure and entertainment" sector as an area of growth and anticipated profit. The large multinationals are reorganizing their portfolios by divesting themselves of their manufacturing assets and investing heavily in this sector.

- There has been a wave of mergers among the large publishers and conglomerates working in the field of broadcasting and cinema. Underlying these mergers is a commercial strategy based on the view that literary creations are marketable ideas that lend themselves to all kinds of interchangeable forms of expression: books, films, television programs, video clips and so on. This commercial strategy is revolutionizing, among other things, the traditional concept of books, which increasingly must be justified in terms of their contribution to the profitability of the electronic and visual media.

- There is strong pressure toward the concentration of capital within the publishing sector. American and British publishing circles are experiencing a wave of mergers and consolidations, a wave which many in the industry say has not yet run its course. Some observers feel that in the medium term, the textbook market, for example, will become a private preserve controlled by a handful of publishing giants, the only ones able to manage the risks and the considerable capital which are characteristic of this market.

The above-mentioned trends, particularly the concentration of capital and the formation of multimedia conglomerates, are not new to the world of English-language publishing, which has experienced such pressures at regular intervals since 1830. Any tendencies to form commercial giants have always been offset by opposing trends favouring the creation of new publishing firms that have acted as a counterpoint because their orientation is more personal, creative and literary. While acknowledging that there is such a countervailing force, the fact remains that, where Canadian publishing is concerned, the international concentration of capital has two implications: first, it represents a threat to the cultural dimension of book production; and second, it runs the risk of further aggravating the profound structural handicaps faced by Canadian publishers.

From the cultural standpoint, the new publishing conglomerates are concentrating their production on works geared to the mass market. Owing to this concentration on bestsellers or blockbusters, publishers' lists become more limited; works that have made a commercial impact tend to be imitated; and there is a reluctance to meet the richer and more diverse (but less financially rewarding) needs of more specialized audiences.

From the structural standpoint, the trends toward concentration and vertical and horizontal integration threaten to marginalize Canadian publishing. The major publishers controlled by multinationals have global marketing strategies which impose the same cultural standards and values on all their markets, wherever they are situated. This threat is all the more acute, given the marginal size of the great majority of publishers under Canadian control. Lastly, the growing domination of the large multimedia conglomerates could deprive Canadian publishers of access to subsidiary rights revenues (e.g., television rights and film rights).

Issues confronting the Canadian-owned sector

Structure of the industry

In English Canada, the foreign-controlled sector accounts for 70% of sales by publishers and agents; in French Canada, the Canadian sector accounts for 60% of sales by publishers and agents. Looking at the total market; i.e., industry revenues plus direct imports, only 20% of the domestic market is accounted for by Canadian-owned firms.

Structural problems can be looked at from several perspectives:

- Market size: Canada's English book market is less than 1/10 the size of the U.S. market. Sharing a common language and a common border has enabled U.S. firms to establish a dominant position with relative ease, particularly in view of the fact that Canada's industry is young. Dominance by foreign firms leaves inadequate room for Canadian firms to grow and diversify in a market which is already considered small. Canada's French-language book market experiences a similar domination effect although it is less acute because of geographical distance from the dominant competing market.

- Market structure: Foreign firms dominate the most lucrative market segments - the educational market and the import or agency business - thus relegating Canadian firms to the riskier, and less financially rewarding, business of Canadian trade publishing. Canadian firms are not sufficiently diversified to assure long-term growth and financial viability.

- Size of firms: Foreign firms are typically large, well-financed and diversified. Canadian firms are typically small, under-financed and more specialized. Canadian firms run the gamut from small literary houses to large, diversified firms, but the latter are the exception.

- Territorial divisibility of market publishing rights: The fact that foreign publishers have always been represented in Canada either through subsidiaries or distribution agreements has meant that Canada is not considered a separate market when publishing rights are negotiated. This is an impediment to growth since it inhibits Canadian firms from diversifying their publishing programs by acquiring Canadian publishing rights to books originating in other countries.

Size of the market

Canada's book market is small compared to its major competitors - the U.S., U.K. and France. Production runs are short and costs are high. Insufficient resources are available for marketing and promotion. Few firms are profitable. The problem is particularly acute in French Canada which has a population of only six million, somewhat below the threshold of ten million estimated by UNESCO as being required to support a viable publishing industry. Because of this limited market size, books directed at narrow audiences (poetry, serious fiction) may always need some form of cultural subsidy.

Unique characteristics of the publishing industry

Publishing companies vary greatly in size and mandate, ranging from small, mission-oriented firms to large diversified corporations motivated entirely by profit considerations. For all publishers, the book business is a highly speculative and risky venture, and the market a fickle one. Its assets are intellectual property with a somewhat uncertain economic value. The returns policy, by which booksellers can return unsold copies to publishers for credit, is common in all countries. It adds to the risk, making it difficult to forecast cash flow, particularly for small firms.

Access to financing

The size of Canada's market, in concert with the structural problems identified above, has meant that many Canadian publishers are plagued by poor financial performance. Given this, and the risk inherent in book publishing, access to financing is a major issue for Canadian publishers.

Access to the domestic market

Canadian publishers have limited access to their own domestic market. The most vivid illustration of this fact can be seen in the breakdown of the market estimates: approximately half the market is accounted for by imports which do not flow through the industry, but are imported by retailers, wholesalers or institutional purchasers. Of the imports which do flow through the industry, approximately 60% of the business is accounted for by foreign firms. Direct imports are of two kinds: i) the phenomenon of "buying around", whereby books are imported from a foreign supplier, rather than from the designated Canadian distributor or agent; and ii) imports of titles which are not available in Canada. In some cases, the volume of business may not be sufficient to justify Canadian distribution; e.g., titles published by university presses. It is also true, however, that some American publishers, with a significant volume of business in Canada, choose to serve the Canadian market from the United States, rather than contract with a publisher/agent in Canada.

The Canadian market does not have the status of a separate market in the sense that separate publishing rights for foreign titles are routinely sold to Canadian publishers. This is largely due to the fact that foreign publishers had a presence in Canada before a Canadian industry emerged and have always viewed the Canadian book market essentially as an extension of their own. A small number of Canadian firms have benefited from distribution arrangements with publishers abroad, but the size of most Canadian firms does not make this a realistic option in their efforts to diversify. Publishing Canadian editions of foreign titles, on a selective basis, would be more appropriate for medium-sized firms; however, the rights are typically not for sale.

While the agency system has been criticized, it should also be noted that it has subsidized Canadian publishing. However, the fact that the Canadian market is dominated by foreign titles means that the development of the Canadian industry is dependent upon Canadian-owned publishers having better access to these titles, either as publisher or agent.

Subsidiary rights

Trade publishing, in any country, is not a lucrative business. The profit on a hardcover title is typically less than 5% and often there is no profit whatever; what makes the project worthwhile in financial terms is the market for subsidiary rights: paperback rights, mass market rights, serial (magazine) rights, book club rights, film rights, TV rights and translation rights. In Canada, subsidiary rights for Canadian titles are poorly developed. For example, Canadian titles seldom appear as a selection of the book clubs operating in Canada, all of which are foreign-owned. Mass-market publishing of Canadian books is limited and yet the pocketbook is the most widely distributed and most easily accessible of all formats.

A further constraint is the size of the market which inhibits the Canadian film and television industry from paying substantial sums for the rights to Canadian books. In this respect, the market for subsidiary rights is limited by the difficulties prevailing in other cultural industries. To the extent that film and broadcasting policy encourages the development of Canadian films for the feature film market and for television, the publishing industry will benefit as well.

In conclusion then, the issues confronting the Canadian-owned sector of the publishing industry cannot be viewed as a set of isolated problems; rather, they converge to create a vicious cycle of interdependent problems that have relegated Canadian-owned publishers to a financial dependence on government.

Industry-wide issues

While publishing policy will be directed primarily toward achieving a viable situation for the Canadian-owned sector, foreign firms will have a continuing presence in Canada, and a role to play in expanding the market for Canadian titles and in improving book ordering and distribution systems in Canada.

Domestic market for Canadian-authored trade titles

Among adult book readers, it is estimated that Canadian-authored trade titles occupy an 18% share of the market in English Canada and a 41% share of the market in French Canada. As was demonstrated in the evaluation of DOC's publishing support program, placing a priority on developing viable Canadian-owned firms is an essential first step in enhancing the market for Canadian-authored titles. French-language publishers have been successful in developing their own market, but are limited by its size. The additional challenge for them may be to expand export markets and the market for French language titles in translation. A recent study prepared for DOC recommended that government devote more attention and resources to the marketing of Canadian books both at the level of individual Canadian firms and at the industry level.

Distribution

Order fulfilment involves choosing from several hundred thousand titles. Service and price are very important to a successful distribution operation. In Canada, import business is lost to U.S. wholesalers with sophisticated ordering systems and rapid turnaround. This pattern of buying around not only undermines the agency business, it also has implications for the distribution of Canadian-published titles, since imported titles and indigenous titles move together in the distribution system. Through the Canadian Book Publishing Development Program, DOC has involved itself in distribution-related issues by supporting the Freight Consolidation Plan and the Canadian Telebook Agency. Progress has been made in improving ordering and distribution, but a great deal of work remains to be done.

The situation in the French-language market is different, at least in Quebec. Bill 51 regulates the book trade and strengthens the position of the bookstore, guaranteeing it most library purchases. In spite of this legislative protection, Quebec trade publishers perceive that their titles are increasingly being squeezed out of bookstores by competition from heavily discounted imports.

Export Markets

In 1983, Statistics Canada estimated that Canadian book exports were valued at $136 million. International marketing is an important component of publishing policy because it can support the development of a viable domestic industry. First, the size of the Canadian market, in either official language, is limited. Expanding the market abroad for Canadian books, either through exports or sales of rights, will strengthen the financial position of Canadian publishers. Second, by raising the international profile of Canadian publishers, recognition of Canada as a separate market will be encouraged and facilitate the purchase of Canadian publishing rights for foreign titles. This in turn can strengthen a Canadian house that is attempting to balance its indigenous publishing with international titles. Finally, as Canadian publishers achieve international prominence, they will be in a better position to exploit non-book subsidiary markets such as film and television.

EVALUATION OF RESULTS 1978-1983

Statistical portrait of the progress made by Canadian-controlled publishers

General economic trends.

The growth of the domestic book market (domestic production and imports minus exports) tracks general economic growth, but with more marked fluctuations. Thus, from 1978 to 1980, a favorable period for all the cultural industries, the market, in real terms, increased more rapidly than GNP: 9% compared to 6.3%. In 1980-81, however, the publishing industry was hard hit by the fallout from the economic recession. Whereas GNP increased by 1% between 1980 and 1983 (an average annual rate of 0.2%), the book market dropped by 20% over the same period (an average annual decrease of 8%). Imports continued to increase at a higher rate than GNP (3% compared to 1%), whereas revenues from the sales of publishers' own titles decreased by 30%. These figures indicate that imports, an already proven product, are far more resilient during a recession than original titles, which require greater investment and invariably carry a greater degree of risk.

The Canadian and foreign sectors of the industry.

From 1978 to 1980, the Canadian-controlled sector's share of industry revenues did not improve much. Although their revenues (in constant dollars) increased more rapidly (10%) than the GNP, they dropped by 8% as of 1980, in both publishing and distribution activities. The foreign-controlled sector's revenues remained stable throughout the period, although revenues from publishing decreased while revenues from distribution increased. Foreign firms are better positioned to withstand the vagaries of the business cycle precisely because they are more diversified. Canadian firms, on the hand, because of their greater dependence on own titles, are far more exposed.

Breakdown of revenues.

Structural weaknesses account for the industrial and financial problems of Canadian-controlled publishers. Generally speaking, there was no growth in diversification in the Canadian-controlled sector, and it is still the Canadian sector that assumes the majority of risks in publishing Canadian titles.

Dependence on grants.

Grants are important to a firm's revenues, especially in times of recession. The grant portion as a percentage of total revenues nearly doubled between 1981 and 1983 for the Canadian-controlled sector. Although the large publishers were not dependent upon grants (on average 1.7% of revenues), the grant portion of total revenues was fairly large for small and medium-sized houses (one quarter and one sixth for small and medium-sized houses respectively). It was these firms which experienced the sharpest increase in dependence on grants during the economic recession.

Financial performance

Financial performance was affected by the recession. In 1983, pre-tax profits decreased by one half compared with the preceding years. With the exception of a few spectacular individual successes, the profitability of the sector under Canadian control did not improve.

Several conclusions can be drawn from this brief economic and financial overview of the Canadian publishing sector. After considerable growth up to 1980, the Canadian controlled-sector was seriously shaken by an economic recession which exacerbated its structural weaknesses. Direct grants failed to resolve the problems of this sector and it sustained significant losses.

Overall assessment of government policies

The injection of considerable funds into this sector (some $75 million since 1978, including the CBPDP and Canada Council grants) has had few lasting effects on the profitability, market share and financial stability of Canadian-owned publishers for three main reasons:

Structural nature of the problem

The structure of the publishing industry in Canada deprives Canadian publishers of access to their own domestic market. Canadian-controlled publishers have had to settle for the market niches that the established foreign firms had little interest in exploiting: Canadian trade and literary publishing; i.e., the most risky and least lucrative segments of the publishing market.

More attention needs to be given to improving access of Canadian publishers to the most lucrative areas of their own domestic market: distribution of foreign titles, educational publishing and mass market publishing.

Balance between cultural and industrial support

The evaluation of the CBPDP indicated that despite the original intentions of its designers, the program served primarily as a cultural granting program, subsidizing titles that were unprofitable. Industrial support, on the other hand, is directed at investment projects that have a high probability of being profitable in themselves or increasing the overall profitability of publishing firms. The sizeable investments made to date have had no lasting effect because only a small fraction of these grants has been earmarked for industrial support.

Insufficient action regarding market demand

The economic and financial health of an industry depends not only on supply, but also on the vitality of demand, and yet government action in the publishing sector have concentrated mainly on the supply of books. Government measures to stimulate demand for books have been far more limited. Clearly, much remains to be done in this area. Expenditures of Canadian publishers on marketing and promotion are scarcely half that of subsidiary firms. Finally, provincial governments and institutions play an essential role as purchasers of textbooks. Sales by publishers to departments of education, schools, universities and provincial and municipal libraries currently amount to $159 million, nearly 30% of publishers' total sales. The book procurement policies of provincial administrations could therefore play a vital role in expanding the demand for Canadian titles.

In conclusion, the current system of assistance to publishers should do more to encourage them to become financially self-sufficient by taking full advantage of the domestic and foreign markets.

NEED FOR A NEW APPROACH

New guidelines

Using the preceding analysis, a more focussed approach for government action in the publishing sector will be based on the following guidelines:

° Government measures should enhance the way in which the market operates so that Canadian publishers can take their rightful place in the domestic market and thereby become more independent.

- The balance between industrial incentives, aimed at profitability, and cultural grants, focusing on titles which cannot be entirely financed by the market, must be re-established.

- At the same time, there must be a clearer distinction between the industrial support programs that come under DOC and the cultural support programs that come under the Canada Council.

- Support for culturally significant titles must be stabilized; otherwise, publishers' deficits on these titles will stand in the way of economic development and profitability, as they have done in the past.

- It is essential that federal and provincial efforts be co-ordinated to enhance the integrity of the Canadian market and assist publishers in gaining better access to the school market and to financial markets.

New objectives

The guidelines presented above lead to a series of measures which can be grouped together under two main objectives:

1. To improve the ability of Canadian publishers to finance themselves and grow within their own domestic market by implementing a support program which focuses on enhancing the viability of the Canadian-owned sector. The program's budget will amount to $8.2 million per year.

2. To stabilize and rationalize support for culturally significant titles that can never be fully financed by the market because they have a narrow audience. This will be accomplished by an increase to the Canada Council of $4.8 million per year for its publishing programs. This amount will replace the cultural support that was provided by the former DOC publishing program.

Finally, in order that the new approach take on a truly Canadian dimension and be effectively implemented throughout the publishing industry, the federal government and the provincial governments have agreed to work together in three specific areas:

- improved access by publishers to sources of financing;
- measures to control the practice whereby federal and provincial public institutions and libraries "buy around" Canadian distributors; and
- increased participation by Canadian-controlled publishers in the educational market.

The federal government will pursue its consultations with the provincial and territorial governments, through the federal-provincial working group on publishing policy, in order to devise complementary initiatives in these areas.

Book Publishing Industry Development Plan

The new Book Publishing Industry Development Program is designed to ensure industrial development and focuses on the viability of publishers' operations. In practical terms, this means that formula funding to publishers will be phased out and replaced by a program geared exclusively to project funding. Under the old program, only 20-25% of the budget was allocated on this basis. Such a change in the orientation of the program will be made slowly with the implementation of a transitional program before the BPIDP is permanently structured. Under the new program, there will be three components: aid to individual firms, aid to industry and co-operative projects and aid to professional associations. At the level of individual firms, contributions would be awarded to projects geared to enhancing viability. Eligible projects would include business planning, management reviews, operational/efficiency studies, feasibility studies and implementation assistance and special publishing projects. Support for industry and co-operative projects has always been a feature of the program, and one which the evaluation commented upon favourably. Support to trade associations for project funding has also been provided in the past, but it has been limited to professional development and research. This program would broaden the scope of assistance available to the trade associations.

The cultural support role assumed by the old program through its block funding to trade publishers could be taken up by the Canada Council through an appropriation of new funds to the Council.

ANTICIPATED IMPACT OF THE NEW MEASURES

As mentioned previously, the proposed new approach has two major goals: to enhance the profitability of Canadian-owned publishers and to stabilize support for culturally significant titles that cannot return their investment. These will be gradual improvements that can only be measured over a period of at least 5 to 10 years.

The project-oriented incentives would be directed at a broad range of publishers. Most publishers, regardless of their size, share a desire to balance their budget and turn a profit. It is important, therefore, to make sure that the larger firms do not receive a disproportionate share of the funds under the new BPIDP at the expense of small and medium-sized publishers.

The new program will not attempt to impose a blueprint on the structure of the Canadian-owned sector of the publishing industry. The new BPIDP would offer publishers of every genre which have reached a minimum size the opportunity to invest in their growth and profitability. To balance these economic incentives, cultural support would be stabilized and rationalized. This consolidation of cultural support is designed to reduce the deficits associated with the current level of culturally significant titles produced each year. It will therefore stabilize the financial position of houses that publish books for more limited audiences and permit greater industrial development.

GLOSSARY

FOREIGN INVESTMENT REVIEW AGENCY (FIRA). The FIRA was created by Parliament in 1973. Its mandate was to screen potential foreign investments against a range of criteria. Its inherent bias, in the view of the Mulroney government, was anti-foreign investment.

INDIRECT ACQUISITIONS. Indirect acquisitions are those in which, as a result of the purchase of a foreign parent of a Canadian subsidiary, the foreign purchaser acquires ownership or control of the Canadian firm.

INVESTMENT CANADA. The replacement for FIRA, Investment Canada also screens potential foreign investments, but at a much higher dollar threshold. Its bias, consistent with that of the government which introduced it, is to *favor* foreign investment.

NATIONAL ENERGY PROGRAM (NEP). NEP was introduced by the Trudeau government in 1980-81. One of its major objectives was to increase Canadians' share of ownership of Canada's oil and gas industry. Not surprisingly, American legislators, businesses and the Administration regarded the NEP with hostility, and lobbied extensively through the early 1980s to have it repealed.