

CONFIDENTIAL

August 28, 1980

REPORT OF THE  
COMMITTEE ON NATURAL RESOURCES,  
INTERPROVINCIAL TRADE AND  
POWERS OVER THE ECONOMY

TRADE AND COMMERCE

The Committee on Natural Resources, Interprovincial Trade and Powers over the Economy reviewed the new federal draft presented on August 26. The most significant changes in the draft are:

- (1) the preservation of subsection 91(2) in its present form to maintain existing jurisprudence;
- (2) the addition of a new subsection to section 91 to ensure that the trade and commerce power ~~extends to~~ includes services and capital;
- (3) the establishment of a new concurrent power with federal paramountcy over: a) competition and b) product standards.

Issues for Ministerial Consideration

- (1) Should a new head of power over competition be added to section 91?
- (2) Should a new head of power over product standards be added to section 91 and, if so, what are the best means of preserving provincial legislation not in conflict with federal legislation under this new head?
- (3) Should the ambit of the federal trade and commerce power be clarified to ensure that services and capital are included?

1. Add to section 91 the following heads of jurisdiction immediately following head 91.2:

2.1 Competition

While some provinces recognized the usefulness of a civil head of power to regulate competition, most still expressed concern over the possible effect of this change on existing provincial jurisdiction.

2.2. The establishment of product standards throughout Canada

While it was recognized that recent court decisions have placed federal jurisdiction in jeopardy, some provinces expressed concern that the proposed modification, in spite of subsection 2(3) below, might restrict provincial ability to establish standards for products circulating essentially within a province, or standards at a level different from national ones.

2. Add to section 91 the following new subsections:

(2) (For greater certainty), the authority of Parliament to make laws in relation to the regulation of trade and commerce includes (extends to) the making of laws in relation to the regulation of trade and commerce in goods, services and capital.

There is no agreement on this proposal. Provinces either take the view that it is not necessary, or that its effects on existing provincial jurisdiction must be more carefully assessed before they can form a view on the matter. To meet this concern, some suggested that the words "For greater certainty" be added at the beginning.

(3) The authority conferred on Parliament by heads 91 (2.1) and 91 (2.2) does not render invalid a law enacted by a legislature that is not in conflict with a law of Parliament enacted under either of those heads.