

CONFIDENTIAL

CONTINUING COMMITTEE OF MINISTERS ON THE CONSTITUTION

Ottawa, August 28, 1980

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

NATURAL RESOURCES

The Committee on Natural Resources, Interprovincial Trade and Powers over the Economy met on August 26 and 27, 1980, and prepared the attached "best efforts" draft.

Issues for Ministerial Resolution

- (1) Should the proposed concurrent power with respect to export of resources from the province extend to interprovincial trade only or should it extend to international trade as well?
- (2) Are the provisions on federal paramountcy found in subsection (4) appropriate or should federal jurisdiction be more limited in the area of interprovincial trade and commerce?
- (3) Are the non-discrimination provisions necessary if section 121 is revised?
- (4) Should the non-discrimination provisions in subsection (3.1) extend to transactions within the province?
- (5) Should uranium and thorium be specifically identified in the schedule?
- (6) Should the underlined portion in subsection (2) be retained?

Comment

While no draft has been prepared on the declaratory power, it should be remembered that modifications to that part of the Constitution should be considered simultaneously with the section on resources and Senate reform.

RESOURCE OWNERSHIP AND INTERPROVINCIAL TRADE

(1) (present Section 92)

(1) Carries forward existing Section 92.

Resources

(2) In each province the legislature may exclusively make laws in relation to

- a) exploration for non-renewable natural resources in the province;
- b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and
- c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

(2) The draft outlines exclusive provincial legislative jurisdiction over certain natural resources and electric energy within the province. These resources have been defined as non-renewable (e.g.: crude oil, copper, iron and nickel), forests and electric energy. This section pertains to legislative jurisdiction and in no way impairs established proprietary rights of provinces over resources whether these resources are renewable or non-renewable.

British Columbia has concerns over the definition of resources and would prefer to see the term "natural resources".

and such legislation shall not be invalid merely because part or all of the product may enter interprovincial or international trade.

This inclusion is designed to safeguard otherwise valid provincial laws from being declared ultra vires for affecting trade and commerce and would prevent compulsion of export of resources from provinces.

The Government of Canada (i) does not find such a provision acceptable and (ii) does not think a section to prevent federal legislation compelling exports from the province to be necessary.

Export from the Province of Resource

(3) In each province the legislature may make laws

- (a) in relation to the export from the province to another part of Canada of the primary production from non-renewable resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy; and
- (b) in relation to the export of such production from the province to other countries but not including [to be determined].

(3) All governments agree with paragraph (a).

Subject to appropriate drafting, all provinces agree that they should have some jurisdiction in the area of international trade beyond the authority to enter into contracts but short of full concurrency. The Government of Canada reserves its position.

(3.1) No law authorized under subsection (3) may provide for discrimination in prices or in supplies exported to another part of Canada.

(3.1) This clause prohibits discrimination on exports from the province.

Ontario believes that this prohibition should extend to discrimination between the province of production and other provinces.

Relationship to Certain Laws of Parliament

(4) Nothing in subsection (3) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection, and where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

(4) The effect of this new provincial legislative responsibility over trade and commerce does not eliminate the federal government's authority. In effect a concurrent power similar to that for agriculture is established. Thus, a federal law will prevail over a provincial law in the case of conflict between the two.

Taxation of Resources

(5) In each province the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(5) Provincial powers of taxation are increased to include indirect taxes over the resources outlined in this section - whether these resources are destined in part for export outside the province. These taxes are to apply with equal force both in the province and across the rest of the country.

a) non-renewable natural resources and forestry resources in the province and the primary production therefrom; and

b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

Ontario and Prince Edward Island have reservations concerning the section on taxation, believing it to be too broad.

whether or not such production is exported in whole or in part from the province but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

Production from Resources

(6) The expression "primary production" has the meaning assigned by the Sixth Schedule.

Existing Powers

(7) Nothing in subsections (2) to (6) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of those subsections.

THE SIXTH SCHEDULE

For the purposes of section 92,

- a) production from a non-renewable resource is primary production therefrom if
- (i) it is in the form in which it exists upon its recovery or severance from its natural state, or
 - (ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil; and
- b) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood.
- c) "non-renewable natural resources" includes uranium and thorium.

In determining the scope of provincial legislative powers over resources exported from the province, it became necessary to define the degree to which the resource was processed. It is not intended to extend provincial authority to manufacturing but it is intended to extend it to something beyond its extraction from its natural state. Given the varying resources covered by this section, this definition is thought to achieve the appropriate delineation of powers.

This change includes upgraded heavy crude oil and coal liquids and gases in primary production.

This ensures uranium and thorium are included in non-renewable resources.

The Government of Canada considers this neither necessary nor acceptable.