

MEETING OF THE CONTINUING COMMITTEE
OF MINISTERS ON THE CONSTITUTION

Report of the
Committee on Natural Resources,
Interprovincial Trade and
Powers over the Economy

Vancouver, British Columbia
July 21-25, 1980

The Committee on Natural Resources, Interprovincial Trade and Powers over the Economy met on Tuesday, July 22. All governments were represented. The Chairman began by outlining the Committee's mandate, as determined by the Ministers at the meeting in Toronto on July 17. The Ministers had directed the Committee to examine the paper entitled "POWERS OVER THE ECONOMY: OPTIONS SUBMITTED FOR CONSIDERATION BY THE GOVERNMENT OF CANADA TO SAFEGUARD THE CANADIAN ECONOMIC UNION IN THE CONSTITUTION" (Document No. 830-82/007) which included drafts on revised Section 121, revisions to Section 91(2) and part 8 of the proposed Charter of Rights pertaining to mobility of citizens. In addition the Ministers directed the Committee to examine other drafts which might be forthcoming from other governments.

The Chairman indicated that, based on the officials' discussion on July 17, there did not appear to be a consensus on: (i) the nature and magnitude of the problem with respect to powers over the economy; (ii) the solutions (techniques) which might be adopted to solve the perceived problem; and (iii) the linkage between the discussion on the topic of "Powers Over the Economy" to other aspects of the constitutional discussions, in particular natural resources.

The Committee began its deliberations by a detailed study and analysis of the federal government's proposed revisions to Section 121. (These are annexed to this report as Appendix 1.) The federal government outlined the purpose and intent of the revisions stating that it wished to eliminate economic discrimination within Canada — but did not wish to establish an absolute prohibition. The Committee then addressed itself to the prohibitions found in Section 121(1) and the derogations therefrom found in Sections 121(2) and (3). After some discussion it was generally agreed that provincial governments should be permitted to pursue regional development policies within the province. The federal government concurred provided that these policies did not discriminate against other provinces. It was recommended by the provinces that any revisions to Section 121 must recognize the principle of provincial economic development policy.

In addition to the discussion on derogations considerable time was spent on the scope and meaning of specific words within the text, in particular the words "practice" and "unduly impedes". Some provinces expressed concern over the potential role of the courts in interpreting this section.

In addition to the material presented by the Government of Canada three other documents were submitted to the Committee for its consideration. These were:-

- (a) A.E. Safarian, "Ten Markets or One?" (Ontario Economic Council)
- (b) "ONTARIO DISCUSSION PROPOSAL FOR SECTION 121"
- (c) "POWERS OVER THE ECONOMY: SECURING THE CANADIAN ECONOMIC UNION IN THE CONSTITUTION" (Discussion Paper submitted by the Government of Saskatchewan)

The Ontario proposal for a revised Section 121 was discussed. It was recommended that Section 121(4) from the federal draft should be incorporated to ensure no tariff barriers amongst the provinces. Several provinces thought that the Ontario proposal went further than the Government of Canada proposal.

The Government of Saskatchewan paper was then discussed. It proposed an alternative technique with respect to constitutional revision of the subject "Powers Over the Economy". The Saskatchewan representatives proposed the following alternative:

"We would see as preferable an option that places in the constitution a statement of commitment by the federal government and the provincial governments to the effective operation of the economic union. Such an approach could be similar to the one being considered for equalization."

Saskatchewan was requested to draft a more specific proposal for examination by the Committee. There was no discussion of the paper by Safarian.

Following the discussion of the two provincial papers the Committee focussed its attention once more on the concept of derogation from the principle outlined in Section 121(1). Several provinces expressed concern and disagreement with Section 121(3). Specifically they were concerned that Section 121(3) enhanced federal legislative powers while provincial governments were being required to curtail their legislative powers. Committee members noted that Section 121(3) had three separate provisions for continued federal legislative activity: (i) equalization and regional development; (ii) laws declared by Parliament to be in an overriding national interest; and (iii) laws enacted pursuant to an international obligation undertaken by Canada. Federal representatives assured the provinces that this wording was not intended to add to federal legislative powers and that rewording of the clause might be favourably considered. Some provinces thought that this part should be clarified and extended to include provincial legislatures which should also be authorized to establish an "overriding provincial interest". Federal representatives disagreed believing that this defeated the very purpose of a revised Section 121.

Other matters that were raised during the discussion but which were neither resolved or discussed in depth included: the effect of this entire section on agricultural policies; the possibility of interprovincial agreements; and the role of courts interpreting this section.

In summary, the discussion on Section 121 appeared to polarize around which technique was more effective to maintain and further the objectives of the economic union, the expansion of Section 121 or a statement of principles coupled with a commitment for consultation amongst governments.

DRAFT

ANNEX B

FOR DISCUSSION PURPOSES ONLY

July 16, 1980

Canadian
economic
union

121. (1) Neither Canada nor a province shall by law or practice discriminate in a manner that unduly impedes the operation of the Canadian economic union, directly or indirectly, on the basis of the province or territory of residence or former residence of a person, on the basis of the province or territory of origin or destination of goods, services or capital or on the basis of the province or territory into which or from which goods, services or capital are imported or exported.

Derogation

(2) Nothing in subsection (1) renders invalid a law of Parliament or of a legislature enacted in the interests of public safety, order, health or morals.

Idem

(3) Nothing in subsection (1) renders invalid a law of Parliament enacted pursuant to the principles of equalization and regional development to which Parliament and the legislatures are committed or declared by Parliament to be in an overriding national interest or enacted pursuant to an international obligation undertaken by Canada.

Customs
union

(4) Nothing in subsection (2) or (3) renders valid a law of Parliament or a legislature that impedes the admission free into any province of goods, services or capital originating in or imported into any other province or territory.