

NOTES FOR THE USE OF

THE HONOURABLE WILLIAM G. DAVIS

PREMIER OF ONTARIO

AT THE CONFERENCE OF FIRST MINISTERS

ON THE CONSTITUTION

Ottawa, September 8 - 12, 1980

POWERS OVER THE ECONOMY

. Ontario believes this item is of fundamental importance to Canada. On many occasions in recent years, Ontario has stressed the need to strengthen the economic ties within Confederation, and the need to ensure a freer movement of goods, services, capital and people among provinces. While today's agenda item is formally called "Powers Over the Economy", I believe that what we are really talking about is the fundamental principle that people, goods and services should be able to cross provincial boundaries without hindrance -- in other words, the principle of the economic union.

. Ontario believes the principles of economic union must be entrenched in the constitution and that these principles must be safeguarded. I understand this position is generally shared by all governments. I find this is encouraging.

. A number of measures could be considered, but expanding section 121, the section on economic union, to ensure free movement of people, goods, services and capital regardless of place of residence, to prohibit non-tariff barriers that inhibit movement, appears to be the most logical and important area for us to concentrate on.

. Ontario believes there must be a way of enforcing these principles. It should be as simple and direct as possible, and, provide a right of redress for individual

citizens as well as governments. We believe there should be a role for the courts, but we believe a forum representing our governments should also be considered. But we do not believe such a forum is enough by itself to protect the economic union and the rights of citizens to have recourse to the courts when they believe their rights are being infringed.

. Ontario was pleased to agree at the Premiers' Conference that the Finance and Economic Development Ministers meet soon to discuss programs to enhance our Canadian economic union and reduce barriers to trade within Canada. Ontario has recently taken the initiative in areas such as urban transit and hospital supplies to aid Canadian industry in all regions through cooperative public purchasing strategies. These kinds of initiatives, I would submit, are useful and encouraging, but insufficient by themselves in moving to our objective of eliminating barriers to the free flow of goods, services, capital and people among the provinces. We believe it is fundamental for the constitution to make provision for the future preservation and enhancement of the economic union.

. It is no secret that all of us have acted contrary to the requirements of the common market from which we should benefit. Virtually every government has taken actions - and the trend has increased in recent years - that have the combined effect of weakening and balkanizing the Canadian economic system. Example:

- setting non-tariff barriers such as preferential purchasing policies, that discriminate against goods manufactured in other provinces
- actions that restrict the employment within a province of Canadians who are residents of other provinces
- actions that restrict the movement of capital from one province to another.

. These illustrate our concern: actions like these have a harmful impact on the overall economic well-being of the country, and of each individual Canadian. When a barrier is created, whatever its short term and local effects, it ultimately means less economic benefit for all of us.

. Commitment to economic union need not limit provincial economic development initiatives as long as they

do not discriminate against other Canadians from other provinces. Clearly we must recognize the validity of some governmental actions that have an incidental impact on the basic principle we are discussing. The Premier of Saskatchewan and others have eloquently expressed the concern that an absolute prohibition of barriers might rule out affirmative action programs taken for highly desirable purposes. That is why we have proposed that the test should be the basic intent and substance of the law or practice, rather than its incidental impact. I believe that with this kind of test we should be able to avoid writing into the constitution a series of escape clauses which would tend to put in doubt our commitment to the basic principle of the economic union.

If we can agree also on an intergovernmental forum to supplement court review of actions that might tend to infringe the economic union, such a body (which should include representatives of both the federal and provincial governments) should as a first task agree on guidelines which would recognize some of the concerns of those who fear exclusive reliance on the courts.