

WHITHER THE ECONOMIC UNION?

by George Fallis

One of the great challenges Canada faced in 1867 was to create a national economy. This challenge was met and Canadians have benefited greatly, enjoying the second-highest standard of living in the world. Ironically, as most of the world moves toward greater economic integration and barriers to the flow of goods, services and capital are falling, we have made little progress in further integrating our provincial economies. Indeed, the current round of constitutional negotiations seems poised to decentralize power and to create a new system of aboriginal self-government without any strong mechanism to maintain economic integration. There is a grave danger that our economic union will fragment.

WHY AN ECONOMIC UNION?

An economic union is the most complete form of economic integration. Within an economic union, there is free mobility of labour, goods, services and capital. This is referred to as negative integration. But an economic union involves more. It implies positive integration through the harmonization of government policies, including social policies, business framework laws, environmental policies and fiscal policies.

The benefits of an economic union are many. Most importantly, it increases incomes through increasing productivity; production is structured to serve broader markets allowing exploitation of economies of scale, and increased competition holds down prices. As a trading nation, we are better able to compete internationally.

The Canadian economic union is quite complete in terms of negative integration, although some barriers remain. For example, provincial government procurement policies and

agricultural marketing boards are barriers to the mobility of goods; local licensing rules prevent the movement of people, and controls on land purchases restrict the movement of capital. Not all barriers are created by the provinces. The federal government also erects barriers, such as the regionally differentiated benefits under unemployment insurance. However, our union is much less complete in terms of positive integration. Many of our social and economic policies are not harmonized, which greatly reduces labour mobility and raises the costs of doing business in several provinces.

The European Community has a less thorough economic union than Canada, but is moving much more quickly to complete it. The Community is to be "without internal frontiers" by December 31, 1992. In some areas, their union is stronger; for example, all forms of assistance to industry by member nations are prohibited unless approved by the European Commission.

THE ECONOMIC UNION IN THE CONSTITUTION

The constitutional basis for our economic union was originally the "common market clause" (section 121 of the *Constitution Act, 1867*) which prohibits tariffs against imports from other provinces, and the federal government's "trade and commerce power" (section 91.2, of the *Constitution Act, 1867*). The latter has not been used aggressively to preserve the economic union. During the 1970s there was growing concern that the Canadian economic union was fragmenting and needed stronger constitutional protection. This was very much part of the constitutional negotiations during the early 1980s, but all that emerged was the mobility rights section (section 6) of the *Canadian Charter of Rights and Freedoms*, which gives every citizen

the right "to pursue the gaining of a livelihood in any province."

Worries about the Canadian economic union grew over the 1980s. Canada was out of step with the rest of the world. Provincial and federal governments were unable to negotiate the removal of barriers or to harmonize policies. Increasingly, provinces charted separate courses. Especially troubling was the balkanization of the tax system. For example, the federal government implemented the Goods and Services Tax, but could not achieve harmonization with provincial sales taxes.

THE DANGERS OF DECENTRALIZATION

Of course, the greater are provincial responsibilities and autonomy, the greater the danger of fragmenting the economic union. This was recognized at the beginning of this constitutional round. The Allaire Report and the proposals from the Group of 22 were extraordinarily decentralist, but both advocated a strong economic union. (Unfortunately, the Allaire Report did not say how the economic union could be secured.) The 1991 federal proposals, *Shaping Canada's Future Together — Proposals*, contained detailed recommendations to secure the economic union, including a new head of power in section 91 that "the Parliament of Canada may exclusively make laws in relation to any matter that it declares to be for the efficient functioning of the economic union." There were strong monitoring and enforcement mechanisms to be carried out by the proposed Council of the Federation. The federal proposals were not explicitly decentralist, but provided very flexible procedures for future decentralization. The economic union provisions were set out as an offset to future decentralization.

The federal proposals were tremendously controversial. They were seen as a massive federal power grab; the provinces resisted any constraints on their current or future sovereignties. Also, there were many who argued that securing the economic union in the constitution was entrenching a specific, market-oriented approach to economic policy.

THE BEAUDOIN-DOBBIE APPROACH

The Beaudoin-Dobbie Report offered a compromise, but much weakened position on the economic union. The common market clause would be replaced with the statement that Canada is an economic union within which goods, services, persons and capital may move freely. There was no commitment to policy

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harmonization. The economic union would be the joint responsibility of the federal, provincial and territorial governments and they could not by law or practice impose restrictions inconsistent with the economic union, although a long list of exceptions was allowed especially for regional equalization and development. Disputes would be settled by a trade tribunal with power to make binding decisions.

In an important innovation, the Beaudoin-Dobbie Report recommended a separate declaration in the constitution committing governments to the economic union, to be paired with a social covenant committing governments to providing, inter alia, health care, adequate social services and benefits, and primary and secondary education. The Report asked: why have we come together as a nation and what unites us and should be common to us all?

The Report answered that we have come together to form an economic union and that some of the extra wealth generated should provide basic services as outlined in the social covenant. The Report links economic integration and sharing.

THE MULTILATERAL ROUND

The latest multilateral round of constitutional negotiations adopted the Beaudoin-Dobbie approach, but has weakened the economic union still further. The expanded common market clause would not be justiciable, and no dispute mechanism is proposed. New commitments to the social and economic union would be paired, but each is merely a statement of policy objectives and explicitly would not be justiciable. No mechanism for monitoring the social and economic union is proposed; it would be determined by a first ministers' conference. Furthermore, as the economic union provisions are weakened, the explicit commitments to decentralization, regional equalization and aboriginal self-government are strengthened.

But we cannot have it both ways. Decentralization of powers allows more autonomy and diversity, but economic integration means a loss of sovereignty and a degree of economic and social policy harmonization. International experience suggests that coordination of a decentralized system will be difficult and the economic union will fragment. Ironically, if Canada were to follow the current world trends, the parts would seek to bring themselves together again. We would have to recreate national authority. But we will be poorer in the interim.

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QUEBEC REPORT

UNDERSTANDING THE DYNAMICS OF THE CANADA ROUND

by Guy Laforest

Seen from Quebec, the results of the multilateral negotiations on the constitution are meagre at best. It looks as if the sixteen groups have agreed on the formulation of the distinct society clause suggested by the federal proposals back in September 1991, and adopted by the Beaudoin-Dobbie Report. The clause will be in the Charter, defined and, thus, limited to language, culture and civil law; it will be placed in a sub-section of a clause dealing with the ancestral rights of the native peoples; moreover, it will not include any specific reference to the obligations of promotion of the distinct society by the government and National Assembly of Quebec such as those that could be found in the Meech Lake Accord. Those obligations are likely to be mentioned somewhere in the Canada clause if a deal on its legal formulation can be arrived at sometime before the end of this century.

Compared with the centrality of the distinct society provision in the Meech Round, this is very disappointing for Quebec nationalists, for the large coalition of forces that recognize themselves in the Allaire and Bélanger-Campeau reports. This will provide additional ammunition to those who think that Canada is fundamentally unable to recognize, even indirectly, the national dimension of the Quebec question. I am convinced that when, and if, Quebec's own Commission on renewed offers of federal partnership studies the new formulations of the distinct