

*Combines Investigation Act*

That clause 13 be amended by adding the following subsections as subsections 4 and 5 of section 32:

(4) Subject to subsection 5, in a prosecution under subsection 1 the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to the export of articles from Canada.

(5) Subsection 4 does not apply if the conspiracy, combination, agreement or arrangement

(a) has resulted or is likely to result in a reduction or limitation of the volume of exports of an article;

(b) has restrained or injured or is likely to restrain or injure the export business of any domestic competitor who is not a party to the conspiracy, combination, agreement or arrangement;

(c) has restricted or is likely to restrict any person from entering into the business of exporting articles from Canada; or

(d) has lessened or is likely to lessen competition unduly in relation to an article in the domestic market.

I think that the amendment which has been previously circulated to several hon. members of the committee will speak for itself without too much amplification from me. However, I should like to refer briefly to the content of subsection 5. Having, as I said, by subsection 4 of the proposed amendment made it clear that in general a charge under this act may be defended if it relates to activity or arrangements concerned with the export of articles from Canada, we have then thought it necessary to ensure that the possible ways in which this might spill over and have an effect domestically be outlined so that it could be made clear that if it did have those effects then the defence that this arrangement related to exports is no longer open or is not successful.

So we have said that the defence does not apply if the arrangement results in any reduction or limitation in the volume of exports of an article.

The reason for this is that since industry says—and we accept this basis of their case—that they are concerned in increasing their success and increasing the volume of Canada's export trade, we think it would be most unsound for us to leave them an umbrella under which they might in fact make merely a comfortable arrangement by which they establish their position based upon present demand for sales in the export market but do not bother to compete for an increased share in it. That is the reason for (a). The arrangement must not be allowed to freeze or decrease the volume of exports from Canada.

Under (b) the defence will not be open if the arrangement injures or is likely to injure or restrain the export business of any competitor of those who are parties to the arrangement. If we do not provide that, it might be the case that unscrupulous persons

would be able to make their own arrangements in the export field, under the protection of subclause 4, and then having worked out a comfortable arrangement say this: We are not going to have competition; we do not like you so you must stay outside. Then ultimately they would be able to drive that person out of competition at least in the export field if not indeed in the domestic field.

In the third place, the arrangement must not be allowed to operate if it restricts or is likely to restrict any person from entering into the business of exporting articles from Canada. Again, the object of this protection is to encourage industry in export and to enable them to improve their position. Therefore it must not be allowed to be used by them to prevent somebody else from getting into this field because that would have the opposite effect to the purpose for which the protection was designed.

Finally, it must not be allowed to operate or they must not be able to get protection under it if in fact the result of their arrangement is to lessen or is likely to lessen competition unduly in relation to an article in the domestic market. I think that last paragraph speaks for itself. I do not think there is really much necessity for me to elaborate further on the need for such an amendment or the justification for it.

If I have seemed reluctant so far to commit myself to an amendment in this field, it is for the reason I gave earlier in the committee and elsewhere, namely that it is a complicated field and the reconciliation of the conflicting interests in export and domestic fields is difficult. We have a commission working on the matter now. It could be argued that we might be wiser to wait until we have the assistance of their report. But in view of the urgency with which the problem has been presented to us—and I think I would be right in saying the degree of unanimity of hon. members on all sides in recognizing the problem and urging a solution—for these reasons I felt I could take the risk or was justified in taking the risk of recommending to the committee this amendment under which we believe the position of our industries in the export trade can be greatly improved and their competitive position put on a basis of greater equality with the forces present in the world today with which they must compete.

I should like to express appreciation to all hon. members who have spoken on the subject and have made a contribution in suggesting solutions. I am happy now to have an opportunity of asking the hon. member