

Customs Act

"fair market value" in the statute which they say may bear no necessary relationship to production costs. That is their opinion. In fact, that is the only thing we have. I have not any wording of GATT yet that suggests that the wording of GATT entered into this opinion. If that was the only obstacle which the department faced, and if in fact the situation before 1948 was satisfactory, if their only difficulty was this opinion from Justice, then what was to prevent a change being made in the legislation which could have restored the previous sense given to the words "fair market value"? What I want to be clear about is this: Is it perfectly clear that our obligations under GATT were responsible for this change in the law as outlined by the Department of Justice? If that is so, I want to know exactly why it is so, because it seems to me it is very important.

Mr. McCann: Mr. Chairman, the opinion of Justice was given in 1952 and the GATT arrangements were made in 1948. Therefore the opinion of Justice had nothing to do with the changes made in 1948.

Mr. Macdonnell: The opinion of Justice was in 1952. Did we then carry on from 1948 to 1952 as we were carrying on before?

Mr. McCann: No. A change was made in the law, in Bill 229, an act to amend the Customs Act, section 4, subsection 39:

The fair market value of goods shall be taken to include the amount of any subsidy or drawback of customs duty—

You can see the change was made by an amendment to the Customs Act in 1948.

Mr. Fleming: I take it that the minister is now referring to the present section 37 of the Customs Act as it appears in the Revised Statutes of Canada, 1952, chapter 58. The words that he began to read a moment ago were taken from section 37 which was enacted in 1948. It was chapter 41 of the statutes of 1948, section 4.

Mr. McCann: The statement I want to make is that, by the change in the statute of 1948, section 36 was dropped from the bill.

Mr. Fleming: What was done in 1948 was this. The present section 35 was amended and section 37 was enacted. The minister started out a moment ago to read section 37 and then apparently stopped with a view to correction of his statement. We are talking about changes made in 1948. The minister, I take it, has asserted now that the change in 1948 that he is referring to was the amendment of section 35, the enactment of the present section 37 and the dropping of the old section 36. Is that what the minister is referring to as the change in 1948?

[Mr. Macdonnell.]

Mr. McCann: Yes.

Mr. Fleming: I should like to point out to the minister that section 35 as it stood after the 1948 amendments and indeed after the 1949 amendment and as it stands today in chapter 58 of the Revised Statutes of Canada, 1952, contains as subsection 3 of section 35 this provision:

When neither the fair market value nor the equivalent of such value can be ascertained, the value for duty shall be the actual cost of production of similar goods at date of shipment to Canada, plus a reasonable addition for administration, selling cost and profit.

It is a fair question to ask, Mr. Chairman—and the question has not been answered—what difficulty, if any, did the department encounter in applying those provisions and in determining, in the light of that subsection, what was in any case the actual cost of production of similar goods at date of shipment to Canada, plus a reasonable addition for administration, selling cost and profit.

Mr. McCann: Subsection 3 of section 35 is not an overriding provision. It is a residual section to be used only when the value cannot be determined under subsections 1 and 2.

Mr. Fleming: Quite so. That is quite clear from the opening words which I read. The subsection states:

When neither the fair market value nor the equivalent of such value can be ascertained . . .

But the minister has not answered my question and he has not dealt with it. Let us make it perfectly clear. In the cases within the scope of subsection 3 which I have read, was any difficulty experienced by the department in the administration and interpretation of that provision and in the consequent ascertaining of the actual cost of production of similar goods at date of shipment to Canada, plus a reasonable addition for administration, selling cost and profit? Was there any difficulty in those words or in interpreting them and applying them?

Mr. McCann: No. There was no difficulty, once you get into subsection 3, having dealt with 1 and 2 first, whether or not that met the conditions.

Mr. Fleming: Then it is quite clear that there is no difficulty in any case in ascertaining what is the actual cost of production of similar goods at date of shipment to Canada, plus a reasonable addition for administration, selling cost and profit?

The Chairman: Order. Once more I must rise to question this type of debate on this clause. The hon. member whom I have been following as closely as possible has been discussing subsection 3 of section 35. I am