

*Customs Act*

vendor abroad to the purchaser in Canada; or, except as otherwise provided in this act, the price at which the goods were sold by the vendor abroad to the purchaser in Canada, exclusive of all charges thereon after their shipment from the place whence exported direct to Canada, whichever may be greater.

I do not intend to review all the provisions of this act. The key note of section 35 is in subsection 1, which I have just read. But there are further provisions that deal with other cases, and I think the house might well bear in mind the provisions of subsection 3:

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 will occur to hon. members at once that as long as you have the provisions of subsection 3, which means in effect that in the cases in which they place a value it shall not be less than the cost of production plus a reasonable addition for administration and selling cost and profit, that should provide adequate protection for the Canadian manufacturer against this unfair practice of dumping. But unfortunately the law has not been so interpreted.

In his statement to the house on March 12, 1952, the Minister of National Revenue (Mr. McCann) referred to a ruling of the Department of Justice which I think will strike many hon. members, without a more detailed examination of the law, as an interpretation which greatly weakens the effect of section 35. This is what the minister said, as reported on page 359 of *Hansard* of March 12, 1952:

The question as to the meaning of the word "fair" in the phrase "fair market value" which appears in section 35 (1) of the Customs Act, and section 6 (1) of the Customs Tariff Act, has been considered. There is an understandable feeling that to be "fair" a "fair market value" should represent at least the cost of production of the goods with a reasonable addition for administrative expense, selling cost and profit. In the opinion of the Department of Justice, to whom this question was referred, a "fair market value" may bear no necessary relationship to production cost. A market value which is consistent, and not the result of temporary panic selling under extraordinary circumstances, may be a "fair market value" within the meaning of sections 35(1) and 6(1), although such value may be less than production cost.

That was the opinion given by the Department of Justice. The law as thus interpreted amounted to this: It was perfectly lawful for United States manufacturers to ship goods into Canada at invoice prices which could be very substantially below the cost of production, plus a reasonable addition for administration and selling cost and profit. When was this ruling by the Department of Justice

[Mr. Fleming.]

made? The minister did not indicate when it was made but we know it must have been at least prior to March 12, 1952. That was twenty-one months ago. Why has nothing been done in all this period? It was not that the government lacked a majority. It was not that there was a lack of eloquent voices raised in this house to point out the need for taking measures to curb the dumping of United States textiles in Canada, because many protests were made. But even in the face of that ruling by the Department of Justice, which left the law of this country in the Customs Act and the Customs Tariff Act in a very weak condition, the government took no step whatever to meet the situation.

The government knew about it because in the very next paragraph of that speech made by the minister on March 12, 1952, he went on to describe the situation which the government now says it is introducing this bill to meet. Therefore there is no question that the situation was known, but it simply has been allowed by the government to deteriorate. The minister went on again, as reported at page 359 of *Hansard* of March 12, 1952, to say:

It is a regular trade practice, both in the United States and in Canada, in respect to some seasonal goods, such as ladies' dresses, to reduce prices in the domestic market as the season advances, and they may be less than production cost. In the opinion of the Department of Justice, these low prices, when an ordinary trade practice and granted generally in the domestic market of the exporter, represent a "fair market value". A difficulty arises from the earlier season in the United States than in Canada due to the difference in climatic conditions. The reduced prices in the latter part of the season in the United States become generally effective in that market at a time and during the period in which the early season prices of Canadian produced goods would still obtain if not affected by competitive imports from United States sources.

There is no change in the relative climate of Canada and the United States. The practice which the minister recognized as a well-established practice, flowing in part from the fact that the United States climate is in advance of ours and their selling seasons accordingly, existed on March 12, 1952. There is the minister's recognition of the fact.

The situation which the minister described in introducing this bill when he made a statement on December 7 is precisely the same situation. On that date the minister said, as reported on page 674 of *Hansard*:

The flow of imports resulting from these conditions—

Those are the same conditions he described in the words I quoted from his speech of 1952.

—does not reflect the true competitive position of the Canadian industry concerned.