

Combines Investigation Act

not wish to change this clause we shall have no alternative but to vote in favour of the amendment.

Mr. Fulton: This question has, of course, been very carefully considered. It was considered in every stage of the drafting of the bill, when we had the debate on second reading, and again in the banking and commerce committee.

In my view, the hon. member who has just spoken and all others who have expressed the same opinions are in error when they say this section does not take account of the interest of the consumer. I maintain that it does take account of the interest of the consumer and it does so by preventing the commission of practices in restraint of trade by combination to exactly the same extent as is the case under the present law.

All this section does is to make clear what is now the situation, namely that if without entering into a conspiracy to restrict competition with respect to the prices or quantity or quality of products or channels or methods of distribution, industry engages in certain practices which are set out in subsection 2 which will be beneficial to the economy, these things may be done without fear of prosecution and conviction.

It is surely an incorrect and misconceived position to say that if this section will make it possible for industry, without conspiring with regard to restriction of prices, and so on, to get together to pool resources with regard to research, the defining of product standards and other matters which will benefit the economy and produce benefits which will be passed on to consumers, the section operates against the interest of consumers.

It seems to me that the only criticism which can really be made of it is that it is a section which accomplishes nothing, because it only states what the law is today. That criticism was made by those who referred to the evidence of Professor Cohen. The hon. member for Hull just read a portion from page 556, and I think it is important to repeat it:

The best case that can be made for this, therefore—I will come to the other side of the point—but the best point that can be made for this very important policy change, is that it is already sufficiently imbedded in legal ideas about these matters to hold them licit, to hold them legal. Therefore, all we are doing is declaring what in fact is something which the courts would regard as legal.

I quite accept that criticism. We have said from the outset that this was our intention. It was made clear to us that without this clarification in the law, practices which would produce positive benefits to the economy in general and to consumers in particular would not be followed by industry because they

felt the law was unclear; so if by clarifying the law, not by changing it, you can produce benefits which will be of direct help to consumers and to the state of the Canadian economy generally, I think it would be a weak, unwise and unjustifiable course on the part of a government to refuse to make that change simply for fear of criticism, misunderstanding and misinterpretation.

Our approach is a valid and sound one. It first preserves the existing jurisprudence by retaining the existing definitions, and thus preserving all the force and effect of the law as it now stands. Second, it makes clear what may be done, provided it is done without bringing about a combination. Third, for the purposes of greater clarity we go on to say, "Here are the things which you must not accomplish".

That it is a sound approach is shown by the fact that it makes possible the introduction of the amendment to deal with the position of the export industry, which amendment will be moved a little later in this committee. That amendment is based on the same approach; that there are things that may be done which are not harmful to the domestic economy, which improve the situation of the export trade and which improve therefore the strength of the Canadian economy generally, and which it is agreed are beneficial, and which it is also agreed it is desirable to make clear that the law permits. The approach to be followed in the export amendment is exactly the approach that is being followed in the amendment referring to the effect of certain domestic activities. In both cases it is made as clear as it can be made that whether it be in the export field or in the field of co-operation in Canada, nothing may be done under the guise of that clarification which would in fact have a harmful effect domestically. That this approach has made possible an amendment to deal with the export field, is as I say, additional proof of its validity and of its benefit to the country rather than its detriment.

Mr. Howard: Mr. Chairman—

Mr. Pickersgill: Mr. Chairman, if I could just say a word—

The Chairman: I recognize the hon. member for Skeena.

Mr. Pickersgill: Oh, I see; he is making another speech.

Mr. Fulton: Are you suggesting that you would not have made another one?

Mr. Howard: I caught that snide remark—

Mr. Winkler: It was not very snide by your standards.