

APPENDIX "A"

STATEMENT ON CO-OPERATION BETWEEN UNITED STATES AND CANADA ON ANTI-COMBINES AND ANTI-TRUST MATTERS

Monday, November 3, 1969

Canadian Consumer and Corporate Affairs Minister Ron Basford met today with United States Attorney General John M. Mitchell for a discussion on co-operation between Canada and the United States in anti-trust matters affecting the two countries. They referred to the 1967 Recommendation of the Organization for Economic Co-operation and Development on co-operation between member countries on restrictive business practices affecting international trade and they discussed placing in this context the informal "Antitrust Notification and Consultation Procedure" between Canada and the United States. This arrangement had its origin in discussions in 1959 between then Canadian Minister of Justice E. D. Fulton and then Attorney General (now Secretary of State) William P. Rogers.

Under this understanding the United States in enforcing its anti-trust laws and Canada in enforcing its anti-combines laws consult with each other when it appears that the interests of the other country will be affected by such enforcement. The primary object of this procedure is to avoid situations arising out of the enforcement of the restrictive business practices laws of one country that might give rise to misunderstanding in the other country, particularly in cases where it might appear that such enforcement had extra-territorial effect or constituted an infringement of the sovereignty of the other country.

The normal course under the procedure is that each country notifies the other prior to the institution of an anti-trust suit which involves the interests or the nationals of the other country and, except for particular time schedules or unusual circumstances, permits time for consultation concerning the contemplated suit. While not required by the understanding, notification is given during the investigative phase whenever possible. In all cases, each government keeps the other informed of significant developments in the litigation.

Consumer Affairs Minister Basford and Attorney General Mitchell noted that the notification procedure had been useful to both countries. The two cabinet members noted that the United States-Canadian Understanding had been the forerunner of the restrictive

business practices co-operation recommendation of the O.E.C.D. Council. This recommendation provides for intergovernmental co-operation on a purely voluntary basis without impairment of sovereignty and in accord with each country's laws and policy, in three areas:

1. Notification of and consultation on anti-trust actions,
2. exchange of information on anti-trust matters where feasible, and
3. co-ordination of anti-trust enforcement where possible.

The O.E.C.D., which includes 19 European countries, Canada, the United States and Japan, together with the European Communities, has a Restrictive Business Practices Committee which drafted the recommendation. Mr. D. H. W. Henry, Director of Investigation and Research under the Combines Investigation Act in Canada, is Chairman of that Committee and Assistant Attorney General Richard W. McLaren is a Vice-Chairman.

Mr. Mitchell and Mr. Basford stated that in their views, the procedure adopted by the O.E.C.D. strengthens the United States-Canadian understanding which has served to eliminate conflicts in anti-trust enforcement and has provided a common approach to problems affecting both countries. Of course, each country has the responsibility to enforce its own laws and the discussions under these procedures do not in any way bind a country as to what action it decides to take. The two cabinet members expressed the view that, in this time of expanding international trade, with special problems being posed by the multi-national corporation, and when most industrial countries have enacted anti-monopoly laws, international co-operation in the anti-trust area is essential for carrying out anti-trust policy and to avoid conflicts in enforcement.

In addition, therefore, to continuing the notification and consultation procedure in accordance with the 1959 understanding, the two cabinet members agreed that the O.E.C.D. recommendation of 1967 should be actively implemented as between Canada and the