Minister responsible for competition policy, like other Cabinet Ministers, is free to state his point of view in Cabinet Committee and in full Cabinet.

It should be noted that the Canadian system follows, broadly speaking, the same organizational format as the U.S. system in that the formal inquiry by the administrative tribunal (in the U.S., the International Trade Commission, in Canada, the new Canadian Import Tribunal) is restricted to determining whether or not the imports cause or threaten injury to domestic producers. The consideration of other factors, such as the potential increase in consumer costs and the impact on competition, are reserved to the political level, where the consideration of factors, particularly in the Canadian case, is not subject to public scrutiny.

The reason why we have paid particular attention to the legal "escape clause" provisions in Canada and the United States is that, in these two countries it is clear that the negotiation of industry-to-industry arrangements to limit exports, or the negotiation of government (of the importing country) to industry (in the exporting country) raises questions of possible breaches of competition law. In the U.S. this issue has, as we have noted, been examined in fairly precise terms, by the courts and by the senior law officers of the Administation. In Canada, this issue does not appear to have been addressed publicly but it can be assumed that officials involved in negotiating Article XIX measures, or "surrogates" are aware of the limitations imposed on them by the Combines Act. However, it is important, for our purposes, to note that, although in the U.S. the President is required, in an escape clause action, to positively consider the impact on consumers and the effect on competition of any proposed measure, it appears to be only in a negative sense that competition policy bears on the use of "surrogate" measures. That is to say that, once outside the formal "escape clause"/Article XIX nexus, the concern has been not to create an offence under the anti-trust provisions.

The European Situation

The extent to which competition policy considerations are taken into account in the EEC in Article XIX actions is not entirely clear, largely because there have not been many formal EEC Article XIX actions. The 1981 U.K. White Paper on Trade Policy gave some guidance to U.K. producers on what would be serious injury under Article XIX, but there was no reference to the impact on consumers or on the structure of competition. This is not surprising, given that Article XIX speaks only of the impact on producers. The U.K. authorities commented: "It must be emphasized that there has been relatively little recourse to this provision of the GATT and there is accordingly no substantial body of case history upon which to base definitive or comprehensive criteria."[26] Taking an example of an EEC "safeguard" action, that concerning pottery imported from South Korea or Taiwan in 1982, there is no reference to conditions of competition within the EC in the text of the Regulation authorizing a restriction on imports.[27]

The reason the EEC and the member states, make less use of Article XIX, and possibly more use of "surrogates", is that a number of import competition problems are dealt with by negotiation and agreement between the industry in the EEC member state and the industry in the exporting country