This language has not been held to be inconsistent with the Codes; given the scope for precedents and practices under the two GATT Codes to be internationalized (that is, given the possibility of producers seeking definitions, precedents and standards in the practices of other countries), this U.S. definition is a definition which could bring about acceptance of a merely "more than de minimis" standard. In our view, it should be agreed that there is injury which is more than negligible but which does not warrant action; there should be an agreed gap between that point where "negligible", "immaterial", "insignificant", "unimportant" terminates and "material" begins.

Further along in the progression of adverse impact, there is that degree of impact which is "serious" and which under GATT Article XIX can justifiy the withdrawal of a tariff concession. We have examined the rationale of that Article above; all we wish to state here is that it is implicit in the GATT that the withdrawal of a negotiated concession, on which investors and governments elsewhere have based decisions, can be justified only by a degree of impact considerably greater than that which has to be determined to exist to warrant action against "unfair" imports. This implicit logic of the GATT injury provisions should be made explicit; it should be a subject for consideration in the review of XIX actions which will no doubt take place in the next multilateral negotiation under the GATT. We shall be considering procedural proposals below.

Further along the progression, and moving outside the formal GATT structure, is that degree of impact which, it appears, countries are agreed justifies restrictive action without the disciplinary features of Article XIX: the obligation on the importing country to act in a non-discriminatory fashion and the right of the exporting country to make compensatory withdrawals. That is the logic of the Multi-Fibre Agreement. As a practical matter, it is not at all clear that many past and present MFA actions could not have been handled under Article XIX; the issue is that countries wishing to take restrictive action prefer to do so on a discriminatory basis and without having to pay compensation. In accepting the MFA approach, it was accepted that commercial policy decisions should be made essentially on the basis of power, by the ability to coerce. This is just what the GATT was intended to limit.

This is, in fact, the political logic of the present state of contingency protection; it is to be doubted that the protests of the competition policy community will, in the short term at least, bring about a different political perception. To revert to the example of steel; is certainly arguable that, although the problems in world steel trade are of a scope beyond what the GATT draftsmen thought would arise, the issues in the trade in steel could nonetheless have been addressed under Article XIX;[6] countries and companies have preferred to rely in the main on Article VI measures, and on the threat of Article VI measures, because they are discriminatory and because such measures do not create any obligation to pay compensation.

In summary, the first proposal is to raise the threshold of "injury" in each provision of the GATT contingency system.