

CHAPTER III

THE KEY CONCEPTS OF CONTINGENCY PROTECTION: INJURY AND CAUSATION

The purpose of this chapter is to set out briefly the two key concepts of the system of contingency protection injury and causation. Such an examination is necessary in order to have a basis for a more detailed discussion of the proposition that the contingency system fails to take into account competition policy considerations and positively sanctions actions (such as quantitative export restraints) which are anti-competitive. In chapter I we outlined in broad terms the proposition that the trade policy system as it now exists is centered on contingency protection rather than on tariff protection, and we reviewed briefly some important statements and opinions as to the evolution of the system. In chapter II we outlined the state of the debate about the difference between the anti-dumping system and domestic legislation on price discrimination: it is generally recognized that, when the concept of dumping was first being examined by legislatures early in the century, the proposed remedy was thought to be addressed to the problem of predatory pricing; that element disappeared with the adoption of the U.S. anti-dumping legislation in 1921 — the legislation on which the GATT provision was based. We now have, in the contingency system, a somewhat different set of concepts than those on which competition policy is based.

The key concepts to be examined in this chapter are "injury" and "causality"; the contingency protection system turns on the various interpretations of these two concepts.

Injury, and Related Concepts

The concept of injury, defined in various fashions, is the most important concept of the present-day contingency protection system. Many of the key provisions of the General Agreement (Articles VI and XIX, for example) turn on the concept of injury; the MFA (Multi-Fibre Arrangement) turns on the existence or threat of serious disturbances in the markets for textiles and textile products — so-called "market disruption" — this is, of course, an "injury" concept. It is the existence of material injury to an industry, or the likelihood that such injury will occur, that allows a GATT signatory to apply discriminatory duties (i.e. not to imports of a given product from all sources but only to the imports from specific sources) to dumped or subsidized imports; it is the determination of the existence of "serious injury" which allows a GATT signatory to restrict or to impose an additional tariff on imports causing or threatening such injury.¹

The GATT formulations are "serious injury"; as used in Article XIX, the safeguard provision or, to use U.S. language, the "escape clause"; "material