

practices. It is also intended to take into account the fact that sudden and unforeseen surges of imports which may give rise to demands for Article XIX action or for a "VER" may sometimes be related, in part at least, to the deployment of some protective or restrictive measure in the exporting country concerned. For example, it is most likely that part of the alleged disturbances in textile and textile products markets may be due to such restrictive devices as "exchange link" mechanisms.²⁵ This particular aspect of the textile problem does not seem to have been adequately studied; academic investigation has concentrated on the import barriers maintained by importing industrialized countries and little attention has been given to the trade policy practices of the exporting countries.

It is critical that, in deciding to confer "contingent protection" on particular producers, to know whether or not the import competition issue is the result of the working of comparative advantage or of some restrictive practice which gives the exporter an opportunity to make excess profits in the domestic market and therefore the ability to compete more strongly abroad.

Recognizing The Burden of Costs

In making such a proposal it is not intended to overlook the important consideration that imposing a measure of contingent protection imposes costs. In a sense, the smaller economies, if they choose to take action to protect their producers from the impact of export practices made possible by restrictive business practices tolerated in other jurisdictions, are imposing on themselves a burden of additional costs of protection. We take the point made by Professor Stegemann as being obvious: protection imposes costs. Moreover, the smaller trading countries have had imposed on them the cost represented of damage to competition in the importing country due to "unfair" methods of competition — the sort of cost which competition policy measures seek to avoid — as well as the costs due to the denial of export opportunities for their producers by the restrictive practices in the other country concerned. That there are other types of cost involved in the sort of situation that was addressed in Turbines, Generators and Ansaldo seems to have been inadequately assessed.

The sort of remedy to be considered, in the light of the proposal outlined here, must, it seems to us, depend on the circumstances of each individual case. Let us take a hypothetical and extreme case. Let us suppose that the domestic industry is "efficiently and economically operated" — to use the language of Section 337, and that inquiry into that aspect has been rigorous, that the level of tariff protection is moderate, that the industry does not benefit from restrictive product standards or domestic product procurement preferences, and that the export industry is, in contrast, a monopoly or oligopoly, or that it benefits from infinite protection against imports (as with an absolute procurement preference), or that the industry is being heavily subsidized, by such devices as subsidized export financing.

Suppose that the imports at issue are then dumped, in an economic sense, by a substantial margin, or that the export price is substantially subsidized, to the extent that the domestic producer can compete only by selling below variable costs, and thus that there is, in a competition policy sense, damage to competition. In such a situation the most equitable remedy might be