robbed the GATT system of its legitimacy as a set of binding rules. To argue this proposition in detail would require a careful examination of the agricultural import regimes of other major trading countries, for example, the U.K. and France; however, it is clear that the U.S. waiver had an important "demonstration effect".

In none of these early developments were competition policy considerations or consumer interests significantly evident; what was almost invariably involved was a negotiation between a domestic interest group, usually localized and therefore politically effective, and a government. This is not to say that competition policy and consumer interests were never considered, rather, that such considerations were not overtly evident.

It is also tempting to argue that it was, in part, the "demonstration effect" of agricultural regimes which led to the regime of discriminatory import quotas and discriminatory export restraints in regard to trade in textiles and textile products. Prior to the articulation of the "textile system" in the "Short-Term Arrangement" regarding cotton textiles[14] there were in place a number of discriminatory restrictions on cotton textiles (notably, those maintained by GATT signatories which had invoked Article XXXV of the GATT vis-à-vis Japan, and those maintained "inconsistent with the provision of the GATT")[15] and there were "export restraints" applied by Japan (for example, in regard to cotton textile exports to the U.S.[16] and Canada. There were also the difficulties created by the U.S. export subsidies on cotton textiles related to the maintenance by the U.S. of a price for domestic raw cotton higher than the world price; this had caused considerable difficulties for Canada, where domestic producers of cotton textiles were encountering competition from United States exports). The "Short-Term Arrangement" inaugurated the system of "organized non-compliance" with the obligations of Article XIX.[17] As we have noted, the development of an international agreement providing a legal cover, of a sort, for the negotiation of export restraints and for import restrictions was part of the price for the launching of the Kennedy Round trade negotiations of 1963-67; as we have also noted, the producer groups in the United States had sufficient political clout to force the "freer-trade" group in the Kennedy administration to put the Arrangement in place before agreeing not to oppose the passage of the Trade Expansion Act.

We will search in vain, in the history of these developments, for any invocation of the interests of consumers or of the concerns of competition policy; the debate was essentially in terms of how much had to be conceded to producer groups. This has been a feature not only of "surrogate" actions but of actions in which government have chosen to exercise their rights under Article XIX.

At a later stage (with regard to restraints on exports of steel products), the anti-trust aspects of "surrogate" measures became a matter of debate and of legal action in the U.S. As the various court cases proceeded, the claim by the plantiffs (the Consumers' Union et al) that there had been a violation of the Sherman Act was dismissed; however, in obiter dicta the district court observed that "very serious questions can and should be raised as to the legality of the arrangements under the (Sherman) Act".[18] Subsequently, the anti-trust aspects of the complaint having been set aside, the cases were decided in regard to the issue of whether there was Presidential authority to conclude such agreements