outside the trade policy area. Their attitude was consistent with the GATT, which provides, in Article XX, that "nothing in this agreement shall be construed to prevent the adoption or enforcement . . . of measures . . . (d) necessary to secure compliance with . . . the protection of patents." In the competition policy community, there was some reluctance to take issue with the U.S. position; the Canadian competition policy authorities had not found it possible or perhaps desirable to proceed against the radio patents pool (if they were aware of its existence) but they generally held to the view that U.S. anti-trust actions which were directed at anti-competitive actions in Canada (such as the Alcoa case and the Dupont-ICI case)[13] had had desirable results, in terms of reducing industrial concentration in Canada.[14]

The foreign policy community (more precisely, the officials of the Department of External Affairs) took the view that this was an unacceptable extension of U.S. jurisdiction extraterritorially. This view was adopted by Ministers, and in due course the issue was discussed in a meeting in Ottawa of the Canada-U.S. Joint Cabinet Committee on Economic Affairs, in early 1959. Following this discussion, an understanding was reached on the modalities of consultation between the U.S. and Canadian authorities on anti-trust actions with potential extraterritorial implications.[15] As was virtually inevitable, given that the issue was being addressed in terms of foreign policy and the Canadian concern with U.S. assertion of extraterritorial jurisdiction, both competition policy considerations and trade policy considerations were virtually ignored.[16] Trade policy officials were, it may be assumed, not disposed to upset the operations of the patent pool because it made unnecessary any "voluntary export restraint" by Japan on television sets. (When the relevant patents expired, the Canadian producers asked the Canadian government to negotiate such an "export restraint" arrangement; the subsequent history of trade with Japan in this product belongs to a discussion of Article XIX "surrogates".)

Another, and current, issue for Canada is the question of compulsory licensing of patents for drugs in Canada. The decision to provide for the compulsory licensing of patents for drugs (and, of course the payment of a prescribed royalty) in Canada arose out of a series of enquiries into the operation of the drug manufacturing firms in Canada, many of which were and are the subsidiaries of foreign firms. It was believed that drug prices in Canada were high and that the pharmaceutical industry was an oligopoly which extracted oligopoly profits from sales in Canada.[17] This was a case in which trade policy devices were brought into play to support competition policy.

Primarily on the initiative of the then Minister of Finance (Mr. Walter Gordon) a series of measures were introduced to reduce, or to attempt to reduce, the extent to which devices of governmental intervention in the market buttressed the pharmaceutical oligopoly. Tariff rates on a number of pharmaceutical products were reduced in order to facilitate importation; the federal manufacturers' sales tax on pharmaceutical products was removed, to encourage reductions in prices in the knowledge that the tax was usually incorporated in the wholesale price and therefore became part of the base to which retail "mark-ups" were applied; the protection of the anti-dumping provisions was removed, by regulation, in order to facilitate dumping by the Canadian firms of imports from parent companies and by independent importers, and to reduce the scope for harassment by the Canadian producers of their competitors who relied on imports; and finally, a regime of compulsory licensing