

## CHAPTER V

### THE "SAFEGUARDS" ISSUE AND "CARTELIZATION"

One of the most contested, most debated issues in trade policy before, during and after the Tokyo Round has been possible reform of the "safeguards" system, of the provisions of Article XIX of the GATT. The title of that Article is "Emergency Action on Imports of Particular Products" and it was intended to correspond, broadly, with the "escape clause" of U.S. trade legislation.

#### Background to the Safeguards System

In the "system of treaties" linked by unconditioned most-favoured-nation clauses, prior to the multilateralization of these trade agreements by the GATT, prior to the multilateralization in the GATT of tariff-level undertakings, there was no practical necessity for an "escape clause". In the "system of treaties", obligations with regard to particular tariff rates were essentially bilateral; one country might undertake to another to reduce its tariff rates on imports of specified products from the other country; the obligation to extend those rates to imports of the same products from a third country was embodied in clauses conveying the right to unconditional most-favoured-nation treatment in regard to tariffs. But if it was proposed to raise the rate specified, it was necessary only to negotiate with the country to whom the original concession had been made. Third countries had no rights to the specified rate, other than their unconditional most-favoured-nation rights. But the GATT involved the multilateralization of tariff obligations, as the provisions in Article XXVIII for the re-negotiation of tariff rates makes clear. Hence it was necessary in developing the GATT as a multilateral, standardized treaty to provide for some right to raise rates of duty in the short term, when imports provided intolerable competition for local producers. As a practical matter, too, the GATT was drafted to take into account the existing fabric of trade treaties; the U.S. had an "escape clause" in its existing trade agreement with Mexico, and this served as a basis for a generalized escape clause in the Havana Charter (Article 40) and then in the General Agreement (based on Chapter IV of the Havana Charter).<sup>1</sup>

The rationale of the "escape clause", as understood in the early years of the GATT, was that it was a provision which would enable a signatory to raise a rate of duty temporarily, a rate which had been reduced in a negotiation, if new circumstances developed, or if the negotiators had not foreseen what might happen, and that such a provision would enable governments to more easily agree to reduce tariffs. An "escape clause", it was thought, would provide a necessary element of assurance and flexibility. Harry Hawkins, a U.S. trade negotiator, described the logic of Article XIX: "... the clause must allow the country to take remedial action unilaterally, without having to secure the consent of any other country. The article gives this right. On the other hand, there is need for