preventative, but could only be triggered after the product had been loss-leadered at which point the supplier could refuse to deal.

The service defence found in paragraph 61(10)(d) has rarely succeeded. In *R. v. H.D. Lee of Canada,*[43] the Court disallowed the defence of inadequate customer service in the sale of jeans. The decision turned on two factors. First, the Court considered an interpretation of the French language version of the Act which limits the application of the defence to post-sales service rather than pre-sales service. Second, there were no complaints by customers of the well-known discount store regarding inadequate service.

4.1.2 RPM in the U.S.

Antitrust jurisprudence in the U.S. forms a unique body of law, the development of which roughly mirrors that of micro-economic theory. With few exceptions, the statutory definition of what constitutes an anti-competitive practice can only be described as minimalist. For example, section 1 of the Sherman Act (SA), one of the fundamental antitrust proscriptions, reads as follows:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restaint of trade or commerce among the several States, or with foreign nations, is declared illegal....

Similarly restrained is s. 5 of the Federal Trade Commission Act (FTCA) which reads:

> Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

Although RPM (as well as virtually the entire range of other antitrust activities) is captured by both provisions, this rather skeletal legislative treatment has allowed the courts the flexibility to elaborate substantive antitrust standards in the context of specific cases. Not surprisingly, the case law reflects the fluctuations of an on-going, exceptionally vigorous debate, one aspect of which is the question of whether a particular practice merits *per se* or rule of reason treatment. In *Northern Pac.R. Co. v. United States,*[44] the U.S. Supreme Court articulated the antitrust standard for *per se* illegality as follows:

[43] (57 C.P.R. 186), *(1980).*

[44] 356 U.S. 1, 78 S. Ct. 514 (1958).