This is clearly, a major difference in the "standards" of the two systems of legislation. To understand its significance, we should ask, would any of the roster of U.S. price discrimination cases, under the Robinson Patman Act, be actionable under a system modelled on the anti-dumping system? The answer is clearly very few, if any. Conversely, what sort of anti-dumping system would we have if it was actionable at the firm rather than at the industry level? In practical terms, it may well be that when importers enter a market it is usually on a sufficient scale to have an impact on a significant number of the domestic producers; however, there are likely to be situations in which the imports are fairly localized — say, the California market or the Canadian west coast market or the UK market. Under an anti-dumping law modelled on the domestic price discrimination provisions, these might be actionable; under the present anti-dumping system they are actionable only if it can be established that there is a segmented, regionally separate market which is not to any significant extent supplied by other domestic producers; this is the effect of the Code provision on regional markets. We should be skeptical of loose talk of "harmonization" of the anti-dumping system and the domestic price discrimination provisions if "harmonization" were harmonized on the competition law model, on this point. Of course, the obvious policy conclusion is that both systems of law should focus on the issue of injury to competition.

Remedies

A final heading under the issue of "standards" is "remedies". In considering two systems of legislation it is relevant to consider what penalties or remedies are involved — because the penalty or remedy affects the whole character of the system. Here there are radical differences. Under the domestic price discrimination provisions, speaking broadly, there can be imprisonment or fines for a criminal offense, damages (treble-damages in the U.S.) under the civil provisions. Under the anti-dumping law, the importer may have to pay the provisional duty, but once a determination is made (i.e. an injury determination) he can adjust to the situation by having the exporter adjust home market prices, or raise his export price, or both — or, if he has decided to settle the case before the injury determination, giving an undertaking as regards the price of the imports at issue. Frequently, what may be required is merely a careful re-consideration of pricing and invoicing patterns and policies so as to minimize the apparent margin of dumping. This facility to adjust to a positive injury determination appears to be somewhat more feasible in the U.S. and Canadian systems, because of the fact that dumping in these two systems is calculated on a transaction basis; the importer/exporter can therefore adjust his pricing (and invoicing) transaction by transaction. In the EEC system, it is more likely that if the exporter has not accepted to give an "undertaking" — the more usual course — then there is likely to be an anti-dumping duty collected which the importer can reclaim (on the basis of showing that for particular transactions the dumping margin has been eliminated) only by following a complicated and time consuming procedure of application through the national (i.e. member state) customs regime. There is thus a penalty in terms of funds tied up in duty paid, and in terms of interest foregone.

But the injured domestic producer has no right, in the anti-dumping system, to sue for damages, nor are dumpers liable for imprisonment or fines.[33]