Summary

We have reviewed in this chapter the recent literature on the interface between anti-dumping policy and competition policy. Summing up the discussion, the following points emerge.

1) A number of commentators have noted that the standards for measuring price discrimination, for assessing adverse impact, and indeed, the entities on whom the adverse impact falls, are different as between anti-dumping policy and competition policy. The conflict is most evident in Canada and the U.S., which both have detailed anti-dumping provisions (that is, more detailed than that of the EEC) and detailed provisions regarding price discrimination in domestic commerce. Most observers feel that, at the minimum, the anti-dumping system should be refined to make it more consistent with competition policy; at the maximum position are those commentators who suggest that the competition policy provisions could be adapted to deal with dumping. Virtually all commentators are of the view that "predatory" dumping is a rare, virtually non-existant phenomenon, and that therefore this original rationale for having an anti-dumping system has disappeared, if it ever really existed. They would argue that a case of predation by an exporter properly belongs to anti-trust law.[41]

2) Another approach is that dumping exists because markets are effectively separated; that dumping, even though it may not be predatory, is an undesirable result of the protection of certain producers in their national markets, or of their dominant position in the market, national or international, and of their ability to extract a monopolistic or oligopolistic price in the national market. Put more sharply, the case is made that in a number of countries producers are allowed to act in a manner inconsistent with the objectives of, say, U.S. and Canadian competition policy; that these actions cannot be effectively reached by U.S. and Canadian competition law, and that therefore the anti-dumping law should be seen as an attempt (perhaps a not very effective or well thought out attempt) to shield domestic producers from the impact of anti-competitive behavior which would be addressed directly if it occured within the domestic jurisdiction. Perhaps the most incisive statement of that view is the article by Epstein, cited above.[42] The most comprehensive statement of the majority view is that by Dale, cited above.

In the following chapters we shall be looking more closely at the key concepts in the trade policy system and looking in greater detail at the "injury" standard of the contingency protection system, and comparing it with injury concepts in competition policy; we shall look also at the safeguards or "escape clause" system, and in our final chapter we will attempt to assess the importance of the divergence between competition policy and trade policy, and set out some proposals for reform.