community anti-dumping action, designed to protect the injured firm.[8] Another type of case involves restrictive practices of foreign exporters to the community and their distributors in the community; a case in point is the commission action against a Japanese electronic company and its distributors in Britain and Germany who agreed not to re-export to France, thus raising French prices.[9] Another type of case involves a foreign exporter and a European competitor agreeing on an exclusive dealing arrangement which raises prices; a case in point is the Commission action against the Japanese machine tool company, Fanuc, and the German firm Siemens, who had agreed to give each other exclusive dealing rights. This raised prices of numerical controlled and computerized machine tools by limiting competition in Europe between the two firms. This was a case of what could be called "reverse dumping", that is extracting a higher price in export markets than in the home market (Japan).[10] In 1980 Dale, surveying the EEC record in regard to intra-community trade, observed that ". . . the apparent tendency to associate non-cost justified discrimination with unfairness suggests that, in relation to dominant firms, Article 86 may provide the basis for an intra-community anti-dumping law . . .".[11]

If we look at European national legislation, there are considerable differences in approach. The U.K., for example, has no legislation analogous to the Robinson-Patman Act nor to the price discrimination provisions of the Canadian Combines Investigation Act. What is at issue in the U.K. system is whether a particular restrictive practice found to exist is considered to be against the public interest. Just as in the United States, where small retailers, particularly in the grocery trade, were one of the main groups pressing for legislation on price discrimination, resulting in the Robinson-Patman Act, in the U.K. it is the small independent retailers who have been most concerned with price discrimination. They have complained of the discriminatory pricing practices said to be forced on manufacturers by the large chain stores. This issue was examined in detail by the U.K. Monopolies and Mergers Commission in 1981. The Commission concluded that ". . . neither the reference practice nor any particular form it may take, generally or invariably operates against the public interest, we do not think that an overall measure of prohibition or regulation is necessary or desirable."[12] The report went on to point out that under the various components of the legislative scheme (the Fair Trading Act of 1973, the Restrictive Trade Practice Act of 1976, the Competition Act of 1980) there was scope for the laying of complaints about specific pricing practices and that the Office of Fair Trading was staffed to inquire into such complaints. This is clearly a radically different system of inquiry than the EEC anti-dumping system (which has replaced the U.K. national system). If the anti-dumping system were adapted to this model, with its emphasis on the public interest, which provides scope for the exercise of considerable discretion, the present internationally sanctioned system would have to be completely revised.

The French legislation addressed to discriminatory pricing in domestic commerce (which is now being revised) starts from the implicit assumption that such discrimination is harmful to competition, particularly harmful to small businesses, and therefore treats such discrimination as is not cost-justified as prohibited. A recent case involved subsidiaries of two major steel companies, who competed with independent steel producers by selling below cost.[13] The French legislation does not appear to require a formal inquiry into injury, but as a practical matter La Commission de la concurrence, which reports to the Minister of Finance, is not likely to recommend action unless the price discrimination has had a substantive impact on competitors.