Court decision of 1967 (the Utah Pie case) to the effect that in primary line cases "predatory behaviour was not a prerequisite for a finding of primary line injury. . .the test applied was of injury to competitors rather than competition. . .".[3] Subsequent to this case the White House Task Force on Antitrust Policy and the Department of Justice studied the question of what should be considered to be primary line injury. The Task Force (Neal Report) proposed two criteria: 1) whether the price at issue is less than long-run average cost and 2) this discrimination threatened to destroy a competitor "whose survival is significant to the maintainance of competition. . .".[4] The U.S. Department of Justice, which has favoured abolition of the Robinson-Patman Act, proposed a more rigorous test, one which is close to the concept that predatory pricing is pricing at less than average variable cost.[5] If this test were taken into law and practice, domestic price discrimination law would be even more differentiated from anti-dumping law, which, in constructed cost cases, looks to full average cost.

With regard to the EEC system it is difficult to make a comparison with Canada or the U.S.; the EEC administers the anti-dumping system (Member States no longer have national systems) but in the competition policy area the Commission deals only with matters which could affect the trade between member states. In the EEC, competition policy under Articles 85 and 86 of the Rome Treaty is essentially an instrument to create a free market within the community. For issues arising and affecting only commerce within a member state, member state provisions apply. Thus EEC competition policy has dealt with some important situations in which there was an unacceptable difference in the price of a product in one state and another. Some of these have been situations in which the producers in one member state have maintained a higher price in their domestic market, not sold more cheaply abroad — i.e. in other member states. In these cases the Commission approach is to try to ensure that there is no impediment to parallel re-imports into the producing country. A case in point is the order by the European Court, at the request of the Commission, that Italy should ensure that Italian cars sold at lower prices outside Italy, if re-imported into Italy by non-recognized dealers, should not be subject to more severe registration requirements.[6] This is, in a sense, an intra-community anti-dumping law, but applied to ensure lower prices in Italy rather than to protect producers elsewhere. Another type of situation is where a multinational firm tries to prevent one of its subsidiaries in one member state from selling goods in that state which are destined for export to another member state. A case in point is the decision by the European Court of Justice that Ford of Germany must be prepared to sell right hand drive vehicles (obviously, for export to the U.K.) in the German market, although Ford of Germany made such vehicles for export to Ford of U.K. Again, this is relying on parallel imports to deal with a problem of price discrimination as between two national markets in the EEC.[7]

Another type of case is that involving abuse of a dominant position by a producer in one member state directed against a producer in another member state. A case in point is the decision by the Commission to impose a substantial fine on the Dutch firm Akzo Chemic against a small British firm. Akzo is said to have given the British firm one week to get out of the plastics market or Akzo would drive the U.K. firm out of its established position in the market for flour additives. The technique involved would be price discrimination, including sales below costs. Here the Commission used competition policy to prevent injury to competition; in this case the Commission has, as it were, taken an intra-