CHAPTER IV

THE ISSUE OF "STANDARDS"

One of the recurrent themes in the literature which addresses the issue of the differences between, or conflict between competition legislation and trade policy legislation is that different "standards" are applied in regard to price discrimination in domestic commerce and to price discrimination in international transactions.

The purpose of this chapter is to examine this issue; our comment should be read in the light of what we have said, in Chapter III, about "injury" and "causality" in the contingency protection system.

Two Systems

A review of competition legislation related to price discrimination and a parallel review of trade policy legislation on price discrimination (that is, the Antidumping Code and various national legislative schemes) suggests that to talk of a difference in "standards" is perhaps misleading. What is at issue is the difference between two systems which have evolved separately. Some of the differences arise from the fact that one system deals with economic agents within the domestic jurisdiction, and with evidence existing within that jurisdiction, while the other deals with the impact of actions by a group of economic agents some of whom (the exporters) are outside the territorial jurisdiction, and with regard to the actions of which the evidence is wholly or partly outside the jurisdiction.

It is largely for this reason, it appears, that the anti-dumping system has developed as an administrative remedy, not as a criminal law matter. With the relative desuetude of the 1916 Anti-dumping Act in the U.S. (which provided for fines, imprisonment, and suits for treble damages) anti-dumping systems have developed as administrative remedies.[1] One reason for this development was the difficulty of establishing intent: it become obvious that, as a practical matter, intent would have to be inferred from objective tests, and that those tests would become, *in effect*, *per se* offences. But, being a criminal statute, the strictest construction was required. Thus anti-dumping systems developed, not on the U.S. 1916 model, but on the Canadian 1904 model of an administrative remedy, a special duty which could be imposed within a system of regulations which left a good deal of scope to administering officials.

The difference between a criminal law approach (the Robinson-Patman Act and the Canadian Combines Investigation Act) and an administrative remedy approach involves two quite different philosophies of intervention. In the criminal law approach, the purpose of the law is largely prevention or