interests can satisfy the tribunal that the situation has changed substantially and that important new factors could result in a different conclusion. If this is true, then the tribunal could give the national bodies a green light to undertake another investigation.

In all, Canada needs to ensure that national investigating bodies are bound by the decisions of the North American tribunal and that this tribunal is the sole judge of whether another similar investigation is justified. The basic idea is to avoid all unilateralism in such a difficult area and to ensure joint decision-making in questions of injury.

If the United States seems to feel that the idea of a permanent tribunal is too far-reaching, other options based on what has already been achieved in NAFTA could be considered. For instance, NAFTA panels could be called upon to provide declaratory opinions on the existence of or threat of injury. This could take place at the same time as the investigation conducted by national bodies and in co-operation with them. If differences of opinion emerge, they could be settled by a trade panel under Article 1904.

The United States is not the only country that makes determinations of injury that prove to be unfounded. In February 1992, a GATT Grants Committee panel, established at the request of the United States, found that a judgment of the Canadian International Trade Tribunal that subsidized kernels of corn from the United States were causing material injury to Canadian producers failed to comply with Article 6 of the Subsidies Code for lack of conclusive evidence. In this case, the United States did not appreciate at all the fact its exports, and by extension its agricultural policies, attracted a countervailing duty for the very first time. In other words, the Americans did not like a taste of their own medicine. However, the Canadian Department of Finance calculated that, in 1986 alone, American countervailing duty actions affected about $4.2 billion of Canadian exports, while Canada's sole similar action against kernel corn affected only C$9 million worth of American exports.[54] In addition, the association of American corn producers demanded and obtained from Washington reimbursement of half the expenses it had incurred in order to bring its case before the Canadian authorities.

It would therefore be not only in Canada's and Mexico's interest but also in the interest of the United States to replace unilateral determinations of injury. This is all the truer if one considers antidumping investigations, which require a procedure and

[54] Canada, Department of Finance, *The North American Free Trade Agreement: The Economic Assessment from a Canadian Perspective*, pp. 24-25.