

need for such arrangements is likely to be increased by the conclusion of a bilateral trade agreement which would establish a whole new set of rules governing cross-border trade and enlarge the body of rights and obligations between the two countries in trade and related areas.

Traditionally, the most common method of resolving trade disputes between Canada and the United States has been through negotiation and direct consultation between the two federal governments although, as noted earlier, the two countries have also made use of the GATT procedures to resolve several disputes. The two countries have generally been reluctant to make use of third party arbitration or refer their differences for settlement by independent judicial tribunals, and it appears that no disputes over trade matters have been settled by such means. It is relevant, in this connection, that Article X of the Boundary Waters Treaty provides a procedure for the arbitration by the IJC of "any question" in dispute between the two countries, which presumably could include disputes in trade and related areas. On the U.S. side, however, agreement to enter into binding arbitration by the IJC in each case would require the "advice and consent" of a two-thirds majority of the U.S. Senate. To date not one case has been presented to the IJC under Article X.<sup>21</sup>

It is suggested that it would not be necessary for the two governments to attempt to establish under the prospective trade agreement a process of arbitration which would raise difficult constitutional and legal issues in both countries, including difficulties on the Canadian side pertaining to federal-provincial jurisdiction. Rather, the trade agreement might establish within the framework of the Commission procedures analogous to those in GATT Article XXIII, involving the establishment from time to time, as the need may arise, of Joint Dispute Panels composed of specialists, say three or five in number, appointed by the Commission in consultation with the two governments, to investigate and make recommendations regarding the resolution of particular disputes. As has been the experience in GATT, the successful operation of such procedures would of course involve the willingness of the two sides to make use of such procedures, to cooperate in the selection of panels, and to respect the findings and recommendations of the Joint Dispute Panels.

### Joint Injury Determinations

Some of the most difficult bilateral trade issues, especially for Canada, arise from the application of anti-dumping, countervailing duty and "safeguard" import systems to cross-border trade. These have led to trade restrictive measures, or the threat of them, with serious consequences for production and trade. These systems probably now represent the most important barriers to cross-border trade; they increase the risk of exporting, discourage exporters and potential exporters from seeking new international markets, and can distort decisions on the location of investment. While their use may be quite compatible with the obligations of each country to the other under existing GATT rules, the threat of the imposition of import relief measures of this kind can lead to severe strains in bilateral relations and to costly efforts by governments, as well as on the part of the exporters concerned, to head off their application.