

environmental protection appropriate to their respective jurisdictions. Consequently, Canada could not, on the one hand, seek to force its policies and standards on another country while, on the other hand, expect to prohibit other countries from imposing their environmental policies and standards within Canadian jurisdictions.

Second, among the three NAFTA countries, there would be a major disparity in economic size and international influence. In these circumstances it would be easier, should unilateral extraterritoriality be allowed, for the larger and more influential of the three economies to have an undue impact on the environmental policies and standards of the smaller economies. In practice, the result would be a tendency toward the harmonization of environmental standards on the basis of those of the larger economy, regardless of whether those standards would best reflect Canadian values, Canadian conditions and Canadian priorities. Under this scenario, the ability of Canadians to determine their own environmental policies and standards could be circumscribed.

Third, it was recognized that the protectionist trade lobbies of Canada's NAFTA trade partners could seek to exploit environmental concerns in order to advance their own commercial interests. Protectionist actions cloaked in an environmental shroud would, over time, reduce support for legitimate environmental regulations and would not, therefore, be to the long-term advantage of either Canadian economic or environmental interests.

In light of the considerations outlined in this section, the concept of unilateral extraterritoriality to deal with an environmental problem beyond a country's own jurisdiction was not recommended by the NAFTA Environmental Review Committee. The Committee and the NAFTA negotiators concurred that the preferred method for addressing environmental issues of a transboundary or global commons nature would be through measures taken in the context of international environmental and conservation agreements that are open to signature by all interested parties. Conversely, it was agreed that countries should retain their current right under the GATT to use import trade measures to the extent that these would be necessary to ensure the effectiveness of domestic environmental measures.

Paragraph 103.1 of the NAFTA states that the parties affirm the provisions of the GATT. A recent GATT panel concluded that unilateral extraterritoriality is inconsistent with international trade law.

### **C. SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL PROTECTION**

When it announced the Green Plan in December 1990, the Government of Canada formally committed itself to integrating the concept of sustainable development into its decision-making process.<sup>11</sup> Sustainable development is defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."<sup>12</sup>

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11. Government of Canada, Canada's Green Plan, p. 19.

12. World Commission on Environment and Development, Our Common Future, p. 43.