

## B. EXTRATERRITORIALITY

Extraterritoriality occurs when one country unilaterally attempts to extend, directly or indirectly, the reach of its policies into the jurisdiction of another country. A Canadian consensus on the advantages and disadvantages of extraterritoriality is a prerequisite to engaging in a meaningful discussion of certain of the recommendations that have been made in the context of the public debate on NAFTA and the environment.

With the exception of certain measures based on a broad international consensus to which it adheres, Canada has traditionally been a strong opponent of extraterritoriality. Two primary reasons underlie this position. The first is a fundamental belief in the sovereign right of nations to administer their internal affairs according to their own particular circumstances, priorities and beliefs. Canadians would not welcome the governments of other countries attempting to impose their policies or regulatory practices in this country and, in return, Canada respects the right of other nations to be treated in a similar manner.

The second reason for Canada's longstanding opposition to unilateral extraterritoriality is a recognition of the fact that the acceptance of such a policy could, in practice, tend to permit larger and less trade-dependent nations to have an undue influence on the values and regulations of smaller and more trade-dependent countries. As the smallest and most trade-dependent of the world's seven most industrialized economies, Canada's interests fall primarily among those of the latter group.

Some 88 per cent of Canada's exports are destined for the U.S., the European Community (EC) and Japan. Approximately 24 per cent of Canada's gross domestic product (GDP) is derived from exports compared to only 7 per cent for the U.S., 8 per cent for the EC and 9 per cent for Japan. Acceptance of unilateral extraterritoriality could place Canadians at a relative disadvantage and limit Canada's ability to regulate on the basis of Canadian values, Canadian circumstances and Canadian priorities.

The NAFTA Environmental Review Committee also examined the advantages and disadvantages of unilateral extraterritoriality in the more specific context of environmental policy. This topic was the subject of considerable discussion among the members of the Committee; between the members of the Committee and Canada's NAFTA negotiators, the provinces, and business and environmental representatives; and during the April 14, 1992 workshop on NAFTA and the Environment.

Some of the participants in the workshop felt that, provided prior bilateral and multilateral diplomatic efforts had failed to resolve a problem, the unilateral and extraterritorial application of environmental regulations should be permitted in cases of "transboundary" or "global commons" pollution. Otherwise, there would not be a definitive means of dealing with a recalcitrant transboundary or global commons polluter.

Others believed that, in spite of the attractiveness of extraterritoriality in certain circumstances, its risks would exceed its potential advantages. Three considerations were cited in support of this position.

First, Canada could jeopardize its sovereignty. There was a broad consensus that the highest environmental priority of Canada's NAFTA negotiators should be the retention of the ability of Canada's federal, provincial and local governments to determine the level of