

environmentally sensitive tools, circumscribed only by reasonable requirements to act in a non-discriminatory manner, on the basis of standards that do not clearly fly in the face of sound science (in practice, the benefit of the doubt is that they do not), and in the least trade restrictive manner possible while still achieving the goal of protecting the population and/or the domestic environment.

### **Pollution Havens**

The "pollution haven" argument is over-cooked. There is little empirical evidence that lower environmental standards in another jurisdiction are an important factor in a company's decision to relocate. Environmental regulations can be a more central factor for industries producing very toxic or carcinogenic products (copper, lead, zinc). But generally, pollution control costs, even in heavily polluting industries, are rarely much more than 1% to 2.5% of total costs.<sup>65</sup>

Moreover, the "problem" (as discovered in the recent NAFTA negotiations with Mexico) often is not a question of formal standards, but their enforcement. For greater reassurance, Canada sought an obligation whereby a country would not, in order to attract a specific investment into its territory, waive its own generally applicable standards related to air, water quality and the handling of hazardous substances. If a Party did so, it would be subject to formal dispute settlement proceedings and, if the infringement were not corrected, to the compensation/retaliation discipline of the NAFTA.

Although not adopted, this proposal demonstrated the possibility for innovative collaboration between the trade and environmental communities. The proposal would have addressed the most flagrant kind of abuse distorting trade, investment and the environment. There would be no unilateral extraterritorial application of standards - each government would be held accountable for the management of its own freely and democratically implemented laws and regulations. And violations would be met firmly, helping to counter fears about "pollution havens". We may well not have heard the last of this proposal, in light of President-elect Clinton's call for a supplementary agreement on the environment to reinforce the current provisions of the NAFTA.

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<sup>65</sup> See the literature summarized in pp.11-15 of Globerman's draft chapter, "Trade Liberalization and the Environment", in Steven Globerman, ed., *Assessing The North American Free Trade Agreement*, Vancouver, The Fraser Institute, forthcoming; *North American Free Trade Agreement: Canadian Environmental Review*, (Ottawa: October 1992), pp. 55-64.