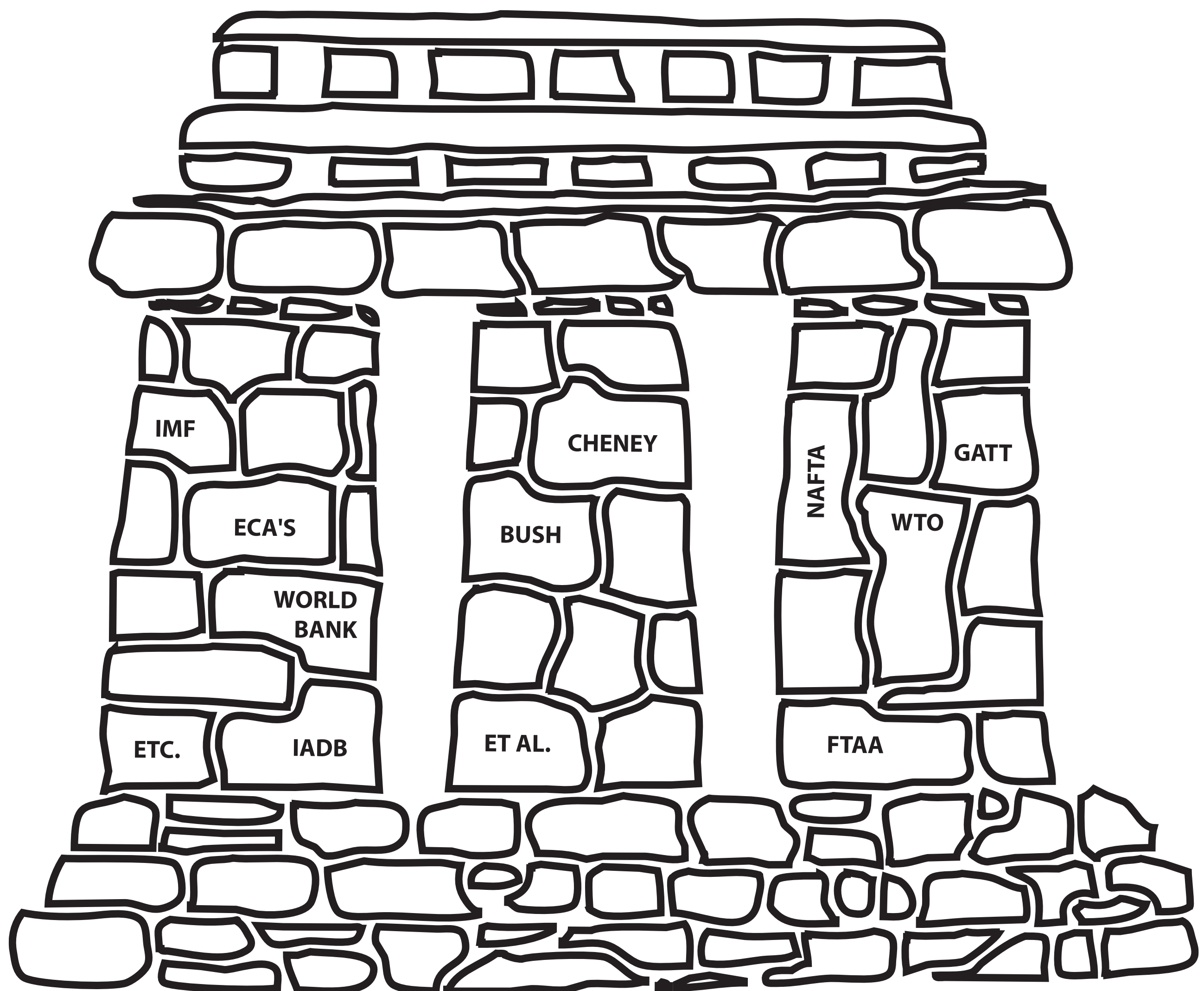
the Pillars of Power:

HOW THE **FREE TRADE** AGENDA PROMOTES **DIRTY ENERGY**



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About SEEN

The Sustainable Energy and Economy Network, a project of the **Institute for Policy Studies** (Washington, DC) and the **Transnational Institute**, works in partnership with citizens groups nationally and globally on environment, human rights and development issues with a particular focus on energy, climate change, environmental justice, gender equity, and economic issues, particularly as these play out in North/South relations.

SEEN views energy not as an issue that can be examined in isolation, but rather as a vital resource embedded in a development strategy that must simultaneously address other fundamentals, such as education, health care, public participation in decision-making, and economic opportunities for the poorest. And toward that goal, SEEN is working to steer the financial investments of wealthy countries away from support for fossil fuels and toward more sustainable and environmentally friendly alternatives, while ensuring that the fundamental building blocks of human development are not stripped away.

SEEN provides information resources to a global network of citizens groups, non-governmental organizations, government officials, and the media. Our research focuses on investments made by international financial institutions and government agencies in developing countries and economies in transition—where the largest energy investments will be made in coming decades—as well as in economically disadvantaged regions of the U.S.

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Acknowledgments:

This report was researched and written by Nadia Martinez. Research assistance provided by Jim Vallette, Steve Kretzmann, and Katrina Managan. Daphne Wysham, Jim Vallette, and Sarah Anderson provided editorial guidance. Cover design by Innosanto Nagara. We are very grateful to our funders who make this work possible, including the CS Mott Foundation, the Turner Foundation, the Wallace Global Fund, Fondation de Sauve, and the Lawson Valentine Foundation.

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Key Findings

This report demonstrates how the Bush/Cheney administration (and its corporate backers), international financial institutions like the World Bank and the Inter-American Development Bank, and multilateral free trade agreements like the Free Trade Area of the Americas (FTAA) and the General Agreement on Trade in Services (GATS), together promote a corporate driven, anti-environment energy agenda in Latin America and elsewhere.

Not surprisingly, Latin America is rich in energy resources: it trails only the Middle East in proven oil reserves; holds five percent of global gas reserves; and has enough coal to last for another 300 years. While oil supplies are expected to decline among OECD countries, including the U.S., they are expected to increase in Latin America at a higher rate than any other part of the world. If left unabated, the pillars that uphold this dirty energy agenda will continue their drive to access and exploit these resources, seriously undermining efforts to achieve a clean energy future. The pillars of power are described below.

- Free trade agreements are intimately connected with the policy tenets of liberalization, deregulation and privatization, known as the "Washington consensus" or neo-liberalism. Rich countries, particularly the U.S., are working to ensure greater access for their large corporations through the inclusion of liberalized energy markets in international trade agreements such as the FTAA.

- Corporate lobbying groups in the U.S., with such members as Chevron-Texaco, Conoco-Philips, El Paso Energy, Exxon-Mobil, make sure that their interests are protected in the global trade negotiations. They work closely with U.S. negotiators in designing U.S. positions on energy and other issues.

- Multilateral development banks have been openly prescribing developing countries' measures to boost trade-related activities. Both the World Bank and the IDB allocate significant resources to helping countries more rapidly integrate into the world trading system, whether through lending for policy and institutional reform, or financing infrastructure projects to facilitate trade.

Introduction

Trade agreements such as the North American Free Trade Agreement (NAFTA), the Free Trade Area of the Americas (FTAA) and the General Agreement on Trade in Services (GATS) ease the global expansion of large energy corporations. They do not seek to broaden the scope of efficiency, conservation, or the provision of energy resources to meet human needs. On the contrary, they hinder the ability of governments to establish such programs by ensuring that foreign corporations have the right to profit from the exploitation and exportation of developing countries' common goods.

At the same time, multilateral development banks (MDBs) advocate neo-liberal policies of privatization, deregulation and liberalization of the energy sectors of developing countries, with the justification that foreign investment will bring much needed revenue and will spark economic growth, which will, in turn, translate into development. Like the free trade agreements, MDBs are part of a global trade regime; the conditions they impose on their loans, such as privatization and deregulation of the energy and power sector, have had consequences that have contributed to the widening gap between rich and poor, the depletion of valuable natural resources, and the devastation of the environment. These MDBs promote policies identical to those promoted in trade agreements—policies that mainly benefit private corporations, the rich countries of the North – particularly the U.S. – and the already privileged political elites of poor countries.

In his national security strategy, U.S President George W. Bush linked the idea of national security with the world economy, and promised that his administration would "promote economic growth and economic freedom beyond America's shores."[1] The main pillars of this strategy include: strengthening the WTO, creating the FTAA, and furthering bilateral free trade agreements.

Similarly, President Bush's notion of "energy security" does not mean that the U.S. should reduce its dependence on foreign oil; rather, the current administration wants the U.S. to diversify its non-OPEC sources of oil and gas. Although the Middle East will continue to play a central role in the U.S. energy strategy, the Bush energy strategy prioritizes the oil and gas sources in the U.S.'s geographical areas of greatest influence, including Latin America.

"Latin America... is expected to be one of the fastest-growing sources of oil and gas for the American market," claimed Vice President Dick Cheney in his controversial 2001 National Energy Policy.[2]

The energy sector previously had not been an integral part of the global trade negotiations. Until the early 1990s, much of the energy industry in Latin America was characterized by state-owned monopolies operating principally within domestic markets. Public energy companies controlled the entire production and distribution chain, thus resulting in relatively closed energy markets. However, beginning with the Uruguay Round of the World Trade Organization's trade negotiations (1986-1994), energy became a central topic of discussion. Several agreements now include negotiations of "energy services" which are defined in dangerously broad terms. This means that all aspects of the energy industry -- from exploration and extraction of oil and gas, to generation and distribution of electricity, to the consumption of energy and energy products -- could be privatized and taken over by foreign corporations.

The attractiveness to multinational corporations of including energy services within the international trade regime is clear, given the economic importance of the sector. Financial analysts estimate that energy services globally account for close to US$ 2 trillion annually in economic activity.[3] Although all services, including energy, telecommunications, banking, health, education, and other basic services, account for 50-60% of the GDP of most countries, less than 20% of these services are being traded globally. At the same time, demand for energy services is estimated to increase with the rising demand for energy. Some

industry analysts predict that total world primary energy demand will grow by 25 percent over the next decade.[4] The corporate desire to tap into opportunities for redistributing the profits from those services is enormous.

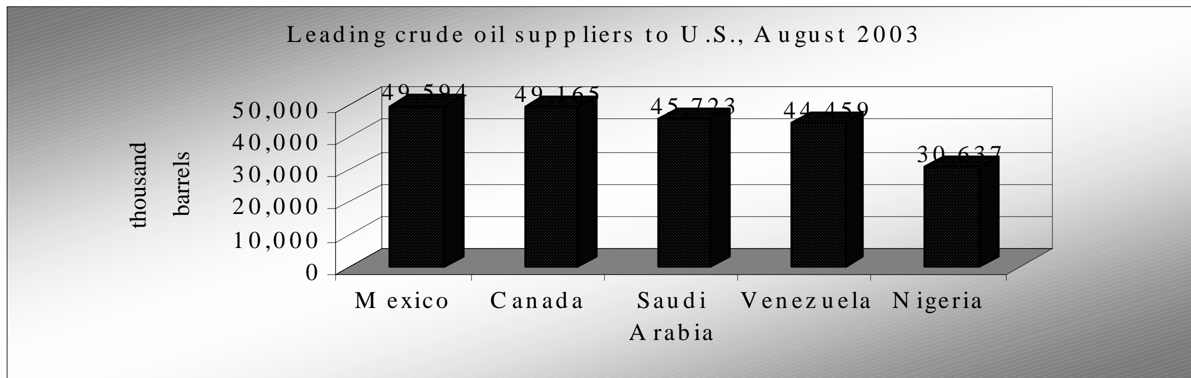
Since the most recent WTO negotiations failed in Cancun in September 2003, free trade supporters, like the U.S. government, have set their sights on the next ministerial meeting of the FTAA, which will take place in Miami, Florida, in November 2003. Pressure has been building to ensure that the FTAA moves forward as scheduled. Failure to seal a regional free trade deal could further undermine the global trading system and the efforts by the U.S. and Europe to solidify the free trade agenda worldwide.

Sitting on a Pot of Gold

"Latin America... is expected to be one of the fastest-growing sources of oil and gas for the American market."

Vice President Dick Cheney
U.S. National Energy Policy

Although most of the world's oil reserves are in the Middle East, Latin America is critical to the US energy mix. In fact, the oil exporting countries of Latin America, cumulatively, now provide the U.S. with more oil than any other part of the world. Four Latin American countries – Mexico, Venezuela, Colombia and Ecuador – provide over one third of the oil that the U.S. imports. If Canada were added to the mix, North and South America would make up close to half of U.S. oil imports. Maintaining and expanding that resource base is becoming increasingly important to the U.S., and ensuring ready access to those resources by U.S. corporations is a priority for them.

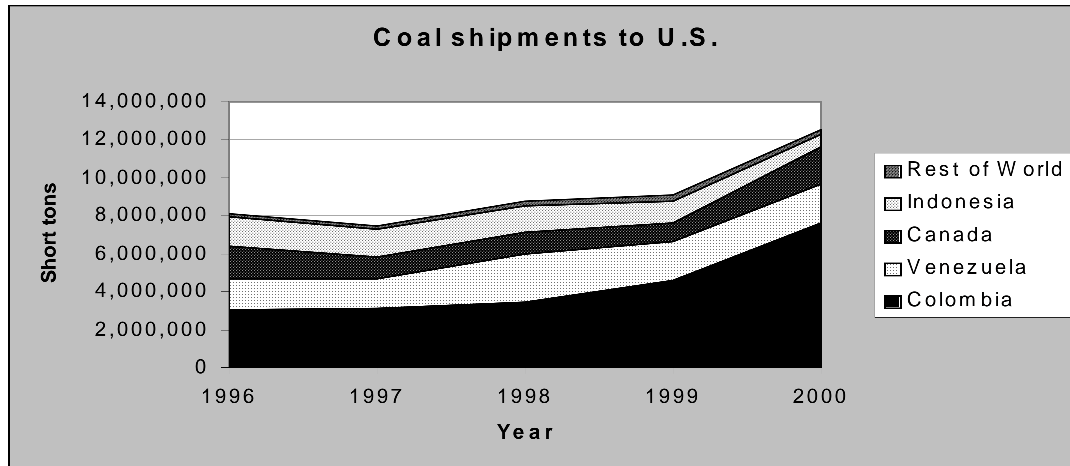


Source: U.S. Energy Information Administration

The Bush/Cheney administration views Latin America as a vast source of fossil fuels to power the U.S. economy. U.S. Secretary of Energy, Spencer Abraham, noted in 2001, "We live in an energy-rich hemisphere. We intend to build friendships and partnerships with our neighbors that can increase both the production, and flow, of electricity, oil, and natural gas for the benefit of the entire region."[5]

In 1996, the World Bank estimated that Latin America held 13 percent of the world's proven oil reserves, trailing only the Middle East, which held 66 percent.[6] The region also holds five percent of global gas reserves.[7] And while oil supplies are expected to decline by an average annual rate of 1.4 percent among OECD countries, including the U.S., they are expected to increase by 5.7 percent in Latin America, the highest increase of any region.[8]

But oil and gas are not the only minerals of interest to the U.S.: In recent years, Latin American countries – particularly Colombia and Venezuela – have emerged as major suppliers of coal to the United States.



Source: U.S. Energy Information Agency

From 1991 to 2000, Latin American coal exports quadrupled from 2.4 to 9.7 million short tons, accounting for more than 77 percent of all U.S. coal imports.[9] Under current exploration schemes, Latin American coal reserves are estimated to last over 300 years.[10]

Likewise, the economic importance of the services sector is also considerable. Energy services generate about $2 trillion of revenue a year, and global investments in that sector between 1990 and 2020 are expected to reach $30 trillion.[11]

Benefits for the U.S. services sector, in particular, are remarkable. Liberalizing international services trading would give U.S. services companies additional access to foreign markets, though already "sales of services by U.S. owned foreign affiliates are one of the principal ways in which U.S. services firms compete globally."[12] These sales amounted to US$ 393 billion in the year 2000.[13] According to the industry lobby group, the U.S. Coalition of Service Industries (CSI), "a WTO round that removes all services barriers and all tariffs on goods is estimated to generate US$ 537.2 billion in additional U.S. welfare, much of it in services."[14]

Free Trade Agreements in Latin America

Multilateral free trade agreements like NAFTA and the FTAA are legally binding accords that a group of countries (more than two) negotiates and implements, setting rules for the import and export of goods between the signatories to the agreement. Although initially, only goods were included in trade regulations, in the last decade, there has been an attempt to establish goals and rules around the cross-border provision – or trade – of services. Although not exclusively, most of the energy sector is affected within this category.

Multilateral free trade agreements have been established in all regions of the world, and the worldwide body – the World Trade Organization – is charged with guiding, managing and enforcing them. In Latin America, there are several sub-regional trade agreements already in place, including the Southern Cone Common Market (Mercosur), the Caribbean Community (Caricom), the Central American Common Market (CACM), the North American Free Trade Agreement (NAFTA), and the Andean Pact, in addition to over a dozen bilateral accords.

Several new agreements are on the negotiating table in the region. The Central America Free Trade Agreement (CAFTA) is currently under negotiation between the U.S. and the Central American countries, excluding Panama and Belize. The U.S. is also targeting individual countries for bilateral free trade agreements. Chile acceded to the first of these in June 2003. Others are likely to appear on the horizon, now that the WTO is losing credibility, given its recent breakdown in Cancun. The U.S. Trade Representative has described the bilateral strategy as promoting "competitive liberalization," which he claims will put more pressure on countries that have been less willing to go along with the U.S. trade agenda.

The two agreements that are the focus of this report have been in negotiation since 1994. The FTAA will be the largest, most encompassing of the free trade agreements to date. The goal of the U.S. government is to obtain in the FTAA obligations and commitments that go further than those in the WTO.[15] The GATS is the primary mechanism that establishes rules around services trading within the WTO, including energy.

The Free Trade Area of the Americas

"We have a great vision before us: a fully democratic hemisphere, bound together by good will and free trade."

President George W. Bush at the Summit of the Americas,
April 21, 2001

If the FTAA is completed, Latin America would, in essence, be the testing ground for the most far-reaching multilateral trade agreement ever drafted. It would include 34 countries, with a total population of 800 million people, and a combined gross domestic product of US$13 trillion.[16] The FTAA was launched in Miami in 1994 during the Summit of the Americas gathering, and is slated to come into force in 2005. Several subsequent summits and meetings have taken place since 1994, every time consolidating key components of the agreement.

Trade vice-ministers of participating countries formed a Trade Negotiating Committee (TNC) in 1998. The TNC oversees the nine working groups within the FTAA negotiation framework. Each group addresses a major area of negotiation: agriculture, competition, government procurement, intellectual property rights, investment, market access, services, subsidies and settlement of disputes. The energy sector is affected by several of these, though the services negotiations are the most relevant, as they cover new areas that had previously not been included.

Nearly everything that is related to energy is under negotiation. The current official draft of the FTAA is almost entirely bracketed (indicating areas where there is not yet official consensus) and at the moment negotiators are locked in conflict over several key areas. However, the general thrust of the negotiations to date is quite clear. The stated objective of the FTAA services negotiating group is to "progressively liberalize trade in services" and to "ensure the integration of smaller economies into the FTAA process".[17] The agreement will have "universal coverage of all service sectors", including the energy sector. It applies to the production, distribution, marketing, sale, and supply of energy services, as well as the access to and use of distribution and transportation systems in connection with the supply of that service.
There are three areas of concern related to the FTAA and energy:

Limits on Regulation

Proposals made in the market access section of the draft FTAA would restrict the ability of governments to manage the energy sector, by providing extensive new powers to corporations that provide these services. For example, governments would be prohibited from establishing price floors for exports, which could be used to conserve non-renewable resources. They also would lose the right to from apply export taxes, which can be used to prevent the sale of natural resources at prices below the cost of their replacement.

In addition, governments would be required to provide "national treatment" to foreign energy companies, which means treatment that is at least as favorable as that provided to domestic firms. When under-funded domestic enterprises have to compete with gigantic foreign transnational corporations under the same rules, the result is almost always displacement of the domestic provider and a decrease in benefits for the poor. Since governments will be prohibited from providing preferential treatment to domestic or local service providers, they cannot guarantee viable public services, such as electricity provision, or that these services are adequately available in both profitable and unprofitable areas.

Pressure to Privatize

U.S. negotiators argue that the FTAA services chapter would not promote privatization of public services, such as electricity. However, the draft FTAA includes a flawed exemption for government services (also included in the GATS) that only applies when a service "is supplied neither on a commercial basis, nor in competition with one or more service suppliers." This could be a large loophole, since almost no government service is provided as an exclusive monopoly.

Proponents also argue that governments will have the opportunity to exclude some services sectors from the agreement altogether. However, the U.S. is pushing for a "top-down" approach to services negotiations that would mean that all sectors would be covered unless a country negotiated an exception for a particular sector. The U.S. is pushing this approach because it is likely to result in the broadest coverage.

Thus, it is likely that the FTAA would enhance existing pressures from the World Bank and IMF on developing country governments to privatize public services.

Increased deregulation and privatization in the energy sector is a matter of serious concern. A new World Bank review of the power sector admits that, "[l]ittle is known about the impact of reform on the poor because data have not been gathered systematically… The 1990s presented many opportunities that were missed to ensure that rural energy, energy efficiency, and social and environmental benefits are addressed as reforms are put in place."[18]

It further found that, "[t]he little evidence available indicates that the poor are often the last to benefit from increased access. In most countries, the rural poor tend to be overlooked because private operators are reluctant to serve low-income clients given that these markets are not financially viable on a freestanding basis. In urban areas, residential consumers are more exposed than commercial users when connection costs increase due to reforms, and the social impact is especially acute when residential use has been previously subsidized."[19]

A recent study by David McKenzie and Dilip Mookerjee, economists at Stanford and Boston University, concluded that in Nicaragua, electricity reforms "had essentially no impact on poverty and inequality, with the increases in price counteracting the improvements in access." In Mexico, and elsewhere in Latin America, "profitability and efficiency [of privatized suppliers] can come at the expense of customers,

workers and other social groups as a result of increased prices, lower levels of employment, longer work hours, worsening service conditions, and neglect of environmental effects."[20]

In other words, without effective safeguards in place, the FTAA threatens to entrench existing inequities, which find millions of people in Latin America with no access to basic electricity or commercial fuels.

Increased Foreign Investor Rights

A major interest of U.S. energy companies in the FTAA lies in the protections they would gain from the investment chapter. As in NAFTA, the draft FTAA would provide private foreign investors the right to sue governments directly over any act that diminishes the value of their investment. Consequently, if, for example, a government sought to pass a law requiring higher air quality standards, a foreign-owned power generator in that country could sue the government for compensation. This is not merely hypothetical. Investors have made use of the "investor-state" provision of NAFTA to challenge a wide range of laws or regulations that they claim interfered with their profits. And under similar rules in bilateral investment treaties, about 20 firms have filed suits against the government of Argentina for actions taken in response to the country's severe economic crisis. Many of these are providers of electricity, natural gas, and water services who are suing over the government's demand that utility rates be converted to devalued pesos and frozen at that rate.

Although the international tribunals that handle such "investor-state" lawsuits do not have the power to overturn laws, they can demand that a government pay high compensation costs if they do not agree to repeal the law. [See Metalclad case in the *Protecting the Environment* section below].

Lessons to be Learned from the Past

The effects of energy sector liberalization under existing free trade agreements are indicative of the problems that will only be exacerbated in Latin America if the FTAA goes forward. NAFTA, for instance, opened Canada's energy sector to transnational energy corporations. In the ten years that NAFTA has been in force, the trade regime has accelerated the rate of exploitation of Canadian energy resources, mainly for export to the U.S. According to Maude Barlow, author of "The Free Trade Area of the Americas: the Threat to Social Programs, Environmental Sustainability, and Social Justice", the energy provisions in NAFTA:

> *…led to a spectacular increase in the sale of natural gas to U.S. markets; in a decade, exports have more than quadrupled to over 8.5 billion cubic feet a day. About 55 percent of total Canadian gas production is exported to the U.S. where American distribution, companies, supplying a much larger population, have been able to sign long-term contracts at rock-bottom prices. Canadian consumers are left to compete for their own energy resources against an economy ten times bigger with rapidly dwindling reserves and accelerating demand.*[21]

In the case of oil, the results are the same: Canada exports over half of the oil it produces to the U.S.[22]

Latin American countries – especially those with significant energy resources like Venezuela and Bolivia, and those with increasing energy demand, like Brazil – should be aware of the implications this rapid opening of their energy markets will have on them. It will infringe on their national sovereignty, as they will lose the ability to regulate those private actors; once they have access to previously public oil and gas markets, corporations will be free to make decisions about price, production quantity, and destination. It will also be increasingly difficult for countries to safeguard future supplies; in the case of Canada under

NAFTA, it had to dismantle its "vital-supply safeguard," which required the Canadian government to maintain a 25-year supply of natural gas.[23]

Mexico has not fared much better since becoming part of NAFTA. Mexico was able to retain some protections for its vibrant oil industry – mainly in oil exploration and production – because of Constitutional restrictions, and strong nationalist feelings from the public over the country's energy resources. However, NAFTA's government procurement rules required Pemex, the state-owned oil company, and the Federal Electricity Commission (CFE) to extend procurement contracts to U.S. companies,[24] thus taking initial steps to open the sector to foreign participation. The biggest oil services companies in the world, particularly Halliburton and Schlumberger, have rushed in, often with World Bank, Inter-American Development Bank, or U.S. government financial support. Recent analyses of the impacts of NAFTA on the energy industry in Mexico show an alarming increase in environmental degradation, depletion of natural resources, and decrease in economic growth in the country.[25]

General Agreement on Trade in Services

"U.S. government policy makers rely on industry representatives to identify obstacles and provide advice on how business is hindered by these trade issues.... Business executives work side-by-side with U.S. trade negotiators to eliminate trade barriers so that U.S. firms are able to compete more fairly in today's global economy".

U.S. Department of Commerce website

"Liberalization of trade in goods is best able to promote development when it's coupled with an open services market."

U.S. Trade Representative Robert B. Zoellick
Unveiling of U.S. Services Proposal to the WTO
March 31, 2003

The General Agreement on Trade in Services (GATS) is the first multilateral framework agreement on the international trade in services. It was designed during the Uruguay Round of the WTO negotiations, and came into force in 1995. It establishes rules around all service sectors, including some industries where services are not readily identifiable, such as energy. Several countries have submitted proposals for energy liberalization under GATS, including the US, Canada, Chile, the European Union, Japan, Norway, and Venezuela. The lack of similar proposals by developing countries shows their reluctance to open up their energy services sector to GATS.

The classification of energy services varies but is generally quite broad. The U.S. proposal defines energy services as:

> *"…those services involved in exploration, development, extraction, production, generation, transportation, transmission, distribution, marketing, consumption, management, and efficiency of energy, energy products and fuels."*

Through this broad classification of energy services, countries like the U.S. are seeking the removal of trade barriers involving just about every segment of the energy industry: oil and gas exploration and production; construction of energy facilities; electricity and gas networks; energy transportation and storage; and, energy supply, including trading and brokering of gas and electricity.

Although energy had not been a major focus of international trade agreements until the Uruguay Round, its importance has been increasing since then, and is likely to continue to be a central element of new negotiations. The recent trend toward privatization and liberalization of the energy sector in several developing countries has created the necessary market conditions for increased energy services liberalization. Consequently, energy services were specifically identified as a key issue in the current WTO agenda launched in Doha in 2001. Negotiators also set a target date of 2005 to conclude and begin to implement GATS.

Like the services agreement in the FTAA, the purpose of GATS is "the early achievement of progressively higher levels of liberalization of trade in services." Its scope is comprehensive. GATS covers not only cross border trade but addresses the issue of foreign corporations operating permanently in other countries and providing services locally--in essence, delving much deeper into domestic affairs than previous trade agreements.

The GATS document has several sections, each addressing particular measures deemed necessary to achieve further trade liberalization in services, including energy services. Sections I and II define the scope of the agreement and set out the general obligations and disciplines to which all GATS signatories are subject.

<u>Fostering Foreign Control of Energy Services</u>

One such discipline refers to "domestic regulation," and acknowledges that since government regulations and policies – not border measures – provide the most significant influence on services trade, "all such measures of general application should be administered in a reasonable, objective and impartial manner." As in the FTAA, this will limit the ability of governments to establish regulations that may be considered inconsistent with the liberalization of the energy sector, such as laws to improve environmental protection, or to meet the specific needs of the population.

The provision stops short of calling for independent regulation, meaning that governments would no longer regulate their energy sectors directly. Instead, GATS would establish an "independent" body to oversee the activities of the energy industry and set energy policy. This type of measure was implemented in the liberalization of the telecommunications sector through subsequent negotiations that went beyond the basic GATS provisions. Energy industry advisors and advocates have called for a similar feature in the energy services negotiations, since, as they claim, establishing an independent regulatory body would "counter rent-seeking and attempts at political interference by private and public officials and bodies."[26] The U.S. proposal also advocates for this condition.

In the same way as the FTAA, section III of the GATS contains stipulations to ensure market access and national treatment. According to the drafters of the agreement, these provisions will eliminate measures such as: "limitations on numbers of service providers, on the total value of service transactions or on the total number of service operations or people employed." Similarly, the agreement would eliminate regulations that require joint ventures between domestic and foreign enterprises, often used by governments to set limitations on complete foreign ownership of domestic companies. Energy services could be completely controlled by foreign corporations under these new stipulations.

These provisions could have disastrous effects for Latin American countries, and especially those with abundant natural resources – including oil and gas – such as the Amazon Basin countries. By prohibiting a government's right to limit the number of energy companies or operations that can exist in the country, corporations can freely tap into the country's energy resources as long as they are available. This is sure to accelerate the pace at which energy companies are exploiting climate destabilizing fossil fuels, once the opportunities to access them are boundless.

The implications for natural resource conservation or environmental protection are enormous. Evidence that the energy sector has adverse environmental and social impacts is well known: the local impacts of oil drilling, pipeline construction, fuel refining, and power plants are severe; the global impacts include climate change; and the intrusion of these operations on indigenous and poor communities is unfortunately increasingly common. Once in effect, governments will not be able to stop over-exploitation in, ecologically sensitive areas. They will be restricted from slowing down the pace of industrialization in over-polluted areas. And their responsibility to protect indigenous and other vulnerable populations will be seriously undermined.

Bound to further liberalization

Section IV of the GATS agreement sets the stage for further liberalization through additional rounds of market-opening negotiations, ensuring that more and more sectors will be committed to open up to foreign investment and ownership in the future, and that commitments that already exist will be entrenched. It also provides rights for "interested parties" to receive compensation from a government, in the case of a modification or withdrawal of a commitment – after three years – making it nearly impossible to reverse previous commitments.

Section V of the GATS contains provisions for the settlement of disputes, and establishes the Council for Trade in Services to oversee implementation of the GATS. The energy services negotiations are taking place under the Council's auspices. Disputes between parties are addressed in the Dispute Settlement Body of the WTO, which is composed of un-elected so-called "trade experts," who meet in closed sessions to resolve disagreements between countries about trade rules. They have the power to enforce their rulings by allowing the winning country to impose economic sanctions until the losing country changes its laws – basically, condoning retaliation. In the recent ruling against U.S. steel tariffs, the European countries that brought the claim can, in accordance with the WTO ruling, impose similar – retaliatory - sanctions on U.S. exports entering Europe. These tribunals can rule against national, provincial, state or local regulations that strive to protect the environment or the public interest, if they are found to be "more burdensome than necessary," based on a GATS provision that would force governments to demonstrate that policies they have adopted are the least restrictive to trade and foreign investment available.

Widening the Access Gap

Opponents of the GATS agreement fear that it will accelerate the pace of fossil fuel exploitation by making it easier and cheaper for oil and gas companies to operate in countries rich in these resources. At the same time, it will become increasingly difficult for governments – especially poor country governments – to manage their energy sectors, and to ensure that the environment is protected and the needs of local people are met. They warn that GATS, like the FTAA, will bolster increased privatization of electricity services, further undermining equitable access, especially to clean energy.

A 2001 Public Services International Research Unit study argued that "if governments are not able to effectively manage electricity themselves, then they are even less likely to be able to regulate powerful international companies."[27]

Even World Bank economists acknowledge that inequities must be redressed before electricity is privatized. "The upshot is that if governments fail to correct this exclusion of the poor through specific policies, the poor will be as excluded post-privatization as they were before," they write.[28]

ENERGY PROVISIONS OF THE MAJOR FREE TRADE AGREEMENTS IN LATIN AMERICA AND THE CARIBBEAN		
NAFTA	**GATS**	**FTAA**
• Established access for foreign companies to invest in the energy sector • Prohibited the right to set preferential pricing for domestic customers • Eliminated required impact assessments for export applicants • Banned export taxes • Established a "proportional sharing" system, which guarantees supplies to the US, indefinitely • Terminated Canada's 25-year "vital-supply safeguard"[1]	Existing: • Few commitments in the energy sector, primarily in oil field services Current negotiations: • May expand the definition of energy services to include all those "services involved in the exploration, development, extraction, production, generation, transportation, transmission, distribution, marketing, consumption, management, and efficiency of energy, energy products, and fuels".[2]	• Prohibits minimum or maximum export price requirements • Eliminates present and future export taxes[3] • Prohibits preferential pricing for domestic consumption • Imposes "national treatment rules" by which foreign corporations are allowed to compete equally with domestic providers • Prohibits setting limits on the number of service suppliers or operations allowed in the country • "Other Restrictive Export Measures"[4]

[1] Barlow, Maude. IFG Special Report, "The Free Trade Area of the Americas".
[2] U.S. Proposal for the General Agreement on Trade in Services, July 2002.
[3] Some countries are trying to negotiate exceptions to this rule, by adding a clause that reserves Parties the right to apply a tax to certain products listed in the Annex. However, the Annex is not part of the draft agreement, therefore it is not clear which products are included.
[4] Article 13 of the FTAA refers to "Other measures", though no text is currently available. A similar section appears in the NAFTA, which limits the rights of governments to suspend exports, even during times of national shortages.

The Bush/Cheney Corporate Agenda

"We will strengthen our own energy security and the shared prosperity of the global economy by working with our allies, trading partners, and energy producer to expand the sources and types of global energy supplied, especially in the Western Hemisphere…"

The National Security Strategy of the United States of America,
September 17, 2002

In a September 2003 speech to the U.S. Department of Commerce, Deputy Trade Representative Peter F. Allgeier, thanked "the chamber and its members… who over the years have been so supportive of U.S. trade negotiators and also have been key advisors in helping us to frame U.S. negotiating priorities."[29]

Who is mobilized behind this corporate agenda being molded by the WTO, FTAA, the MDBs, and others? The powerful U.S. Chamber of Commerce, for one. The Chamber has prioritized the "completion of the Free Trade Area of the Americas (FTAA) agreement…. The Chamber will actively encourage efforts to complete work on these FTAs [free trade agreements] but without environment and worker provisions subject to trade sanctions."[30]

Another key player in pushing the free trade agenda is the Council of the Americas – another industry lobby group. The Chamber co-chairs a "National Advisory Board" with the Council of the Americas "which speaks for US business on Latin America and Caribbean issues." Council Vice President Eric Farnsworth testified in May 2003 that the unified corporate agenda has a ready audience in the office of the U.S. Trade Representative (USTR).

"We commend USTR and other agencies within the US government for their willingness to consider our recommendations with a view toward incorporating them into US negotiating positions," said Farnsworth.[31]

Other important corporate formulators of the U.S.' FTAA postures include the U.S. Coalition of Services Industries (USCSI), the U.S. Council on International Business (USCIB), and the Business Roundtable, which the Polaris Institute describes as a "cabal of chief executive officers of the 200 largest U.S. corporations."[32]

Considerable overlap resides between the positions advanced by the Bush/Cheney administration and those held by these industrial lobbying blocs. The administration's pliability to industry requests can be found in its aggressive quest to open the region's energy services sector to U.S. companies.

In an October 9, 2001, letter to the U.S. Trade Representative, the president of the USCSI urged "negotiators to develop a framework of energy services commitments that accomplishes three goals: (1) locks in existing levels of liberalization and market access around the region through binding commitments to keep markets open; (2) facilitates growth of trade in areas where energy services trade is already permitted, for instance, through establishing energy services-related regulations through transparent and predictable regulatory mechanisms; and (3) removes current barriers to energy services trade where governments are prepared further to liberalize their markets."[33]

The U.S. Trade Representative now seeks "broad market access" to energy services through the FTAA.[34]

"U.S. government policy makers rely on industry representatives to identify obstacles and provide advice on how business is hindered by these trade issues," according to the U.S. Commerce Department.

"Business executives work side-by-side with U.S. trade negotiators to eliminate trade barriers so that U.S. firms are able to compete more fairly in today's global economy."[35]

Influential members of these lobby groups include AES (the leading private power investor in the Americas), and every other large U.S. fossil fuel production and power company, such as Chevron-Texaco, Conoco-Philips, El Paso Energy, Exxon-Mobil, General Electric, Halliburton, and Shell. Enron was a key member of the services coalition but ended its membership after its U.S. bankruptcy.[36] Enron still maintains most of its international corporate activity. Its global operations, comprising assets in some 14 countries, are now under its new name – Prisma Energy International.[37]

Energy, Trade and the MDBs

"Major oil and gas resources are currently unexploited in developing or emerging economies, due to lack of access to viable commercial markets…Oil and Gas trade, especially pipeline trade, has the potential to bring substantial economic benefits to producers..."

World Bank Group, International Finance Corporation
Oil, Gas, Mining and Chemicals Department Website

Multilateral development banks, like the World Bank, have been openly prescribing measures for developing countries to boost trade related activities for years. Both the World Bank and the Inter-American Development Bank (IDB) allocate significant resources to trade activities and to helping countries more rapidly integrate into the global trading system. Some of the ways in which they carry out this agenda include lending for policy and institutional reform, extending lines of credit to private sector exporters and importers, supporting infrastructure projects to facilitate trade, and sponsoring negotiation and capacity building workshops and seminars.

Trade liberalization (especially elimination of tariff and non-tariff barriers) in the hemisphere over the past two decades has been accompanied by sweeping structural reforms fostered by the World Bank and IDB.

World Bank Policy Evolution

According to the World Bank's International Trade Department, with respect to global trade lending, "the Bank extended loans amounting to $US 800 million per year (about 6 percent of total lending) in the early 1980s. This increased to around US$ 1.6 billion per year (about 9 percent of Bank lending in the second half of that decade."[38]. The World Bank itself has questioned the success of these projects given that post-reform growth "did not replicate the East Asian or past LAC [Latin America and the Caribbean] growth "miracles" as promised by some reformers."[39]

In the energy sector, since 1992, the World Bank and IDB provided $2.7 billion for institutional and sector reforms in 18 Latin American countries.

Recent massive energy projects like the Chad-Cameroon and Baku-Ceyhan oil pipelines, and the Bolivia-Brazil pipelines, have galvanized the opposition of international civil society. However, often the structural and legal changes encouraged in developing countries by the Bank have much broader and longer-term implications. For a fraction of the cost of large extraction projects, bureaucrats quietly work long-term changes in a country's regulatory structure towards the long-term neoliberal goals of deregulation and privatization. These changes improve the prospects for further investment by oil and gas companies, which usually are headquartered the United States, Europe, or Japan. Most disturbingly, the rationale for these changes -- an increase in investment in the oil and gas sector -- has little or nothing to do with poverty alleviation or sustainable development.

The World Bank began to invest in oil and gas in 1977, on the heels of the Organization of Petroleum Exporting Countries (OPEC) oil embargo and oil price shocks of the 1970s. In a July 1981 report entitled *An Examination of the World Bank Energy Lending Program*, the U.S. Treasury Department prescribed measures the World Bank should take to encourage private investment in oil and gas projects. The report noted that the World Bank played an important role as a multilateral investor, encouraging private investment in projects. It argued that the Bank should increase its investment in the oil & gas sector in

order to "expand and diversify global energy supplies to enhance security of supplies and reduce OPEC market power over oil prices". The U.S. Treasury Department (which wields more power than any other institution over the World Bank) also wanted to ensure that developing countries were able to service their debt payments to Northern commercial and public banks.

The U.S. Treasury Department further noted that, as opposed to the U.S. government, "the neutral stance of the Bank can play an important role. As a multilateral "development advisor" it can help LDCs [least developed countries] revise their incentive structure to encourage investment."[40]

As a World Bank executive later explained, "After the oil crisis of the 1970s, the Bank began to play a prominent role in the oil and gas sector, assisting member countries in developing their indigenous energy resource. Bank lending, initially concentrated in exploration and development of hydrocarbon resources, climbed to $1 billion in 1983. This rapid expansion caused concern that the Bank might pre-empt the private sector… By 1990… the emphasis was on promoting private sector investment."[41]

Given the World Bank's aggressive tactics, many new areas of the world are now opening up their energy resource supplies to the United States and Europe. The legislative and regulatory reforms encouraged by the Bank's legal staff have set the stage for billions in investment from export credit agencies, other international financial institutions, and private capital.

According to William T. Onorato, the Principal Counsel for Energy & Mining at the World Bank: "Since 1980, the Bank has financed PEPP's (Petroleum Exploration Promotion Projects) and other forms of petroleum sector legal reform and TA (technical assistance) with *the consistent objective of acting as a catalyst to mobilize the inflow of foreign direct investment into the developing petroleum sectors of many of the Bank's borrowing members."*[42]

These investments and the policies that enable them are a service to those Northern countries that direct the World Bank – not to the developing countries from whom the petroleum is drilled. Enabling an industry to generate profit and provide a service for the ever-thirsty U.S. public does not translate into poverty alleviation or sustainable development, which forms the World Bank Group's stated mission.

A glimmer of hope

A new Bank-sanctioned review of its involvement – past, present and future – in the extractive industries was launched in 2002 and currently in its final phase. The Extractive Industries Review (EIR), in draft form, currently includes language that calls for:

- An immediate phase-out of World Bank support for coal projects;
- Full support for impacted workers and communities through "just transition funds"
- A phase-out of Bank support for oil projects (the draft EIR recommends that the Bank should focus on gas, and leave "oil exploration and oil transport to the private sector")
- A reversal of "the lending ratio between fossil fuels and renewables, efficiency, and conservation as soon as practicable."

Transnational oil, gas, and mining corporations, the traditional beneficiaries of World Bank energy financing, are lining up to strike this language. It remains to be seen whether these recommendations will remain in the final report when it is delivered to World Bank President James Wolfensohn in December 2003.

Here, in one document, lies the best opportunity for the World Bank to actually start fulfilling its mission of a "world without poverty."

Source: "The World Bank and Fossil Fuels: At the Crossroads", A Sustainable Energy and Economy Network / Institute for Policy Studies Brief, September 2003.

The Inter-American Development Bank and Energy Liberalization

"Governments must stop doing what the private sector can do better"

Jeffrey Davidow
U.S. Assistant Secretary for Inter-American Affairs (1996)

The Inter-American Development Bank has been intimately involved in the formulation of, and support for liberalized markets in Latin America. As part of the tri-partite committee for the FTAA – along with the Organization of American States (OAS) and the Economic Commission for Latin America and the Caribbean (ECLAC) – it provides technical and financial support to assist with the negotiating process.

Similar to the World Bank, the IDB established a private sector department in 1995, and has been lending directly to the private sector at a rate of 10 percent of total Bank lending. The composition of the private sector department's portfolio includes 74 percent of total financing for projects in the energy sector.

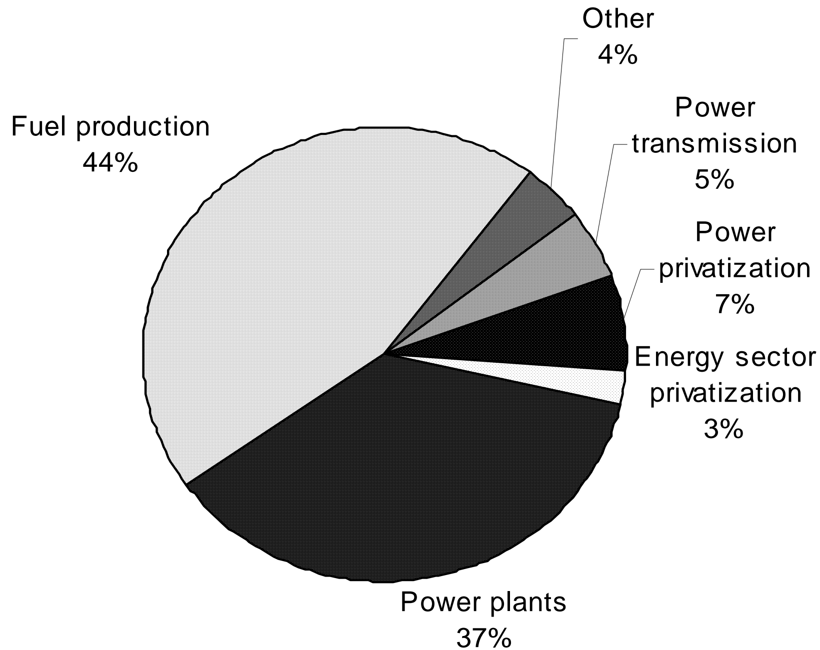
By its own admission, the IDB has been the main source of financing for the energy sector in Latin America. The Bank's energy strategy focuses on four main goals:

- Consolidation of structural and economic reforms
- Providing comprehensive support for the development of new energy markets emerging as a result of the reforms
- Providing an overall approach to energy problems that addresses supply and demand
- Using new energy markets on an experimental basis[43]

Toward that end, the IDB has provided over US$7 billion in financing for fossil fuel projects since 1992 – the year of the Earth Summit. Despite growing evidence that the burning of fossil fuels is catastrophically changing the earth's climate -- and despite commitments to reduce greenhouse gas emissions made at that Summit – public lending institutions are continuing their roles as key financiers of fossil fuel projects in the developing world.

To this shortsighted end, the IDB continues to finance dirty energy projects over more sustainable forms, at an alarming rate. As recently as September 2003, the Bank approved a multimillion-dollar loan for the controversial Camisea gas pipeline project in Peru. Recognized by environmentalists as one of the most destructive projects in the world because of its environmental and social impacts, especially on the lives of indigenous people, other public financing institutions agreed. The Overseas Private Investment Corporation (OPIC) refused to consider the project, based on its inability to meet OPIC guidelines. Likewise, the U.S. Export-Import Bank, after several months of review, rejected a loan for US$ 200 million, citing environmental concerns.

Following the same free market push as the World Bank, the IDB can set conditions on loans to governments, such as implementation of national reforms, which can include "modernization" of government institutions or privatization of state-owned industries. Assisting financially and from an advisory role, the IDB encourages countries to liberalize their energy sectors, to attract private investment, and to help Latin American countries build stronger commercial links with the world economy. At the same time, the IDB has dedicated an entire department to provide technical and other assistance to ensure that countries in the hemisphere can "participate actively in the Free Trade Area of the Americas process."[44] By combining an aggressive fossil fuel agenda with an equally forceful trade agenda, the IDB is ensuring that Latin America will forever condemned to poverty and environmental destruction.



Since 1992, the World Bank Group and Inter-American Development Bank approved energy and power sector privatization programs in 18 Latin American countries, with financing of $2.7 billion. In turn, these institutions, along with the U.S. Overseas Private Investment Corporation and U.S. Export-Import Bank, supported 83 new fossil fuel power projects with $10.8 billion in financing and 71 oil, gas and coal production projects, with $13.2 billion in financing. Over all, these U.S. taxpayer-funded institutions have approved nearly **$30 billion in financing for extracting or burning fossil fuels** in the Americas over the past 10 years.

Source: Jim Vallette, Sustainable Energy and Economy Network, Institute for Policy Studies

Attracting private investment: Is it worth the cost?

"The 1990s presented many opportunities that were missed to ensure that rural energy, energy efficiency, and social and environmental benefits are addressed as reforms are put in place."

World Bank, 2003

"The upshot is that if governments fail to correct this exclusion of the poor through specific policies, the poor will be as excluded post-privatization as they were before."

World Bank economists, 2000

A common argument for privatizing public enterprises is that private access to these sectors will increase efficiency and expand access through increased productivity. However, evidence of previous privatizations of the energy sector in Latin America demonstrates the opposite. Prodded by the World Bank and the IMF, most Latin American countries began to open their energy sectors in the 1980s. Some countries, such as Argentina, Chile, and Panama implemented sweeping reforms, while others – Brazil, Costa Rica, and Venezuela – allowed only restricted participation of private companies. Argentina and Bolivia opened their natural gas markets to private investment, while oil-rich Mexico and Venezuela have remained more guarded.

The touted benefits remain questionable, and the case of the Dominican Republic is a useful example. In 1998, the World Bank loaned the government of the Dominican Republic US$ 20 million to privatize the power sector. Foreign private corporations – specifically Enron and AES –purchased stakes in the generation and distribution capacity of the *Corporación Dominicana de Electricidad* (CDE), the country's previously state-owned power company. After the CDE was privatized, and the private companies took over, electricity rates nearly doubled, forcing the government to absorb most of the rate increase in order to avoid leaving poor consumers without power. In just a few years, the government had amassed a strangling debt of US$ 217 million, over half of which was owed to the private companies.[45] When the government was unable to pay, the new owners shut down the power, causing long blackouts that sparked frustration from the public. As the situation continued without resolve, widespread discontent triggered public protests, which at times were violently countered by the police.[46]

Examples of the sometimes-deadly consequences of World Bank reform prescription abound. Opponents of the FTAA and GATS fear that once these types of policies are codified through free trade agreements, situations like that in the Dominican Republic will become the norm instead of the exception throughout Latin America.

Other arguments for privatization of state owned enterprises are technological modernization, existing service inefficiencies, and the need for private investment. These are at best, dubious arguments, given that past experiences with capitalization or privatization of public energy sector companies has yielded little significant private investment in new services. Neither has it shown to result in more efficient provision of services.

In Bolivia, for instance, capitalization of the oil company, YPFB, has resulted in little benefit for the majority of the country, though it has sparked massive protests from disgruntled citizens. After the now deposed president, Gonzalo Sanchez de Lozada, opened Bolivia's gas sector to private participation, Enron took over the entire gas network in that country. Together with Shell, Enron built a series of gas pipelines – despite strong opposition from the communities in the pipelines' path – to export Bolivian gas

to Brazil. After the company's infamous demise, Enron continued to receive public financing for its operations, scoring a $132 million loan from the IDB, less than a year after its implosion.

Liberalizing the energy sector involves considerable cost for the host government by having to borrow to develop its resources or by guaranteeing private sector loans, thus contributing to the increasing debt of most developing countries. Similarly, countries neglect other revenue potential by becoming dependent on one source of export (energy resources), which makes them vulnerable to price drops or market shocks. Additionally, lending institutions like the IMF and the World Bank actually contributed to inefficiency problems by forcing restrictions in public expenditures as conditions for loans and as part of their structural adjustment programs for developing countries. Governments strapped for cash had to choose among the many necessary public-spending programs, which in some countries contributed to the subsequent neglect in modernizing and adequately maintaining public utilities or power companies.

Protecting the Environment: A Trade Barrier?

"Believe me, the natural and expected opposition to a landfill in your backyard is no different in Mexico than it is in the United States. We felt that the key to the broader political support was not direct to the people. And every adviser that I had in Mexico told me if the governor supports this project, you don't have to worry about that local community."

Grant Kesler, President of Metalclad Corporation
From the Transcript of Trading Democracy - A Bill Moyers Special
February 2, 2002

Since the very nature of the FTAA and the GATS is to liberalize energy markets in order to maximize corporate profit, there is an inherent contradiction between the trade rules imposed by these agreements and environmental policy goals. Environmental regulations can represent a higher cost for business, whether real or perceived. Therefore corporations weigh the presence of such measures when deciding where to set up their operations. Countries find themselves prodded to lower existing, or avoid creating new, regulations that may deter foreign investment, since corporations often oppose environmental initiatives.

Policy prescriptions or conditions for lending imposed by the World Bank and the IDB have sought to facilitate the attractiveness of developing countries for foreign investors, and the FTAA and the GATS will further encourage this trend. Neither GATS nor the FTAA include specific environmental provisions. There are, however, clear provisions that require governments to demonstrate that their particular environmental standard or regulation is both necessary and the least trade restrictive.

If corporations consider that environmental regulations set by a government are inconsistent with the trade agreement provisions, they can easily challenge them. Under the FTAA, transnational corporations have the right and ability to sue governments that are conceived to be hindering complete open trade by denying a company the ability to undertake a particular activity in that country, whether at the national, state, or local level of government authority.

In the first ruling in an investor-state lawsuit under NAFTA, a U.S. waste disposal company, Metalclad Corporation, sued the Mexican government for monetary compensation. Metalclad filed the complaint in 1997, when the state of San Luis Potosi – a state government jurisdiction – refused it permission to open and operate a hazardous waste disposal facility. The state governor decided to close the site – located in the poorest region of the state – after a geological audit showed the facility would contaminate the local water supply. The governor declared the site part of a 600,000-acre ecological reserve. The NAFTA

tribunal ruled in favor of the company and ordered the Mexican government to pay Metalclad Corp. US$16 million in compensation.[47] The local municipality argued that the facility was not environmentally sound and declared that its intention was to protect the local population from environmental and health hazards linked to the waste site. The NAFTA case set a precedent whereby a foreign corporation can sue a government if it does not like the local environmental rules. The FTAA will allow the same investor-state settlement dispute provisions.

Another dangerous sign for the future of the environment is that the U.S. energy services proposal for the GATS addresses the issue of "technological neutrality", and states that, "[t]o ensure that energy services providers can use the best available technology, such as in site preparation and development, market access commitments should be made without regard for the technology used to provide energy services…".[48] This provision would require that countries allow private corporations to access the energy markets without regard for the technology used. Though their stated intention is to ensure that energy services providers can use the best available technology, this provision would mean that lower-level, highly polluting or inefficient technology could also be used.

Conclusion

The push for open global markets is not a new formulation of the current U.S. administration. Past administrations, particularly since the Reagan presidency in the 1980s have used the U.S. influence in the international sphere to promote the liberalization of markets and open trade among countries, especially in this hemisphere. The drive to access other countries economies stems from a strong corporate push to increase their global reach and to garner increasingly higher profits.

Conveniently for them, Latin America is a region rich in valuable resources, especially in energy resources. Oil and gas are abundant in throughout the region, but predominantly in Mexico and several countries in South America, including Colombia, Venezuela, Peru, Bolivia, Brazil, and Argentina. Accessing these fossil fuels is particularly important for the U.S. and its large powerful corporations, given that their consumption in the U.S. is considerable and rapidly increasing.

Several avenues have been designed to ensure a continuous supply of energy resources to the U.S. and access to them by transnational corporations. When the World Bank and the IDB were created in the first half of the last century, they were the result of a vision that did not come from the countries that these institutions are purportedly helping. Instead, they were the product of the U.S. and European countries' desire to closely control the destiny of the developing world, as they had done for centuries previous, through colonial arrangements. Since their establishment of the MDBs, they have attempted to design and guide the policies of poor countries, with the justification of helping them to achieve long-term development.

Unfortunately, after more than fifty years of existence, the IDB and the World Bank have accomplished little in terms of alleviating poverty and fostering sustainable development. Instead, they have pushed, especially in the last decades, policy prescriptions that have resulted in the opposite: higher levels of poverty, further degradation of the environment, wider gaps between the rich and poor (at the international and domestic levels), and a weakening of democratic institutions by dismantling their authority and ability to meet the needs of their constituents.

Having seen little progress, the new "answer" is free trade: open markets, liberalized industries, and barrier-free trade. Together, the MDBs and the U.S. government – in consultation with its corporate backers – are ensuring that Latin American countries codify this open market agenda through binding free trade agreements. The FTAA and the GATS, if finalized in their current form, will have devastating effects for the people and the environment in the Americas.

Both agreements now include provisions for energy services liberalization, an area previously not part of multilateral trade agreements. Through a broad classification of energy services, and general provisions like market access and national treatment, these agreements will speed up the pace of deregulation and privatization of the energy sector in Latin American countries. They will accelerate exploitation of fossil fuels, undermining efforts to promote a cleaner energy future for the region. And they will undermine environmental protection and resource conservation by stripping governments of their ability to impose regulations toward that end, if they are inconsistent with the free trade spirit of the GATS and the FTAA.

Countries of the Americas should reclaim their right to foster their own development, based on the path that is most sustainable and that will meet the needs of their populations and will guarantee the protection of their environment. They should reject World Bank and IDB policy prescriptions to privatize and liberalize, and they should not bind themselves to the strict undemocratic, corporate-driven, anti-development rules of the GATS and the FTAA.

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