cidental, but rather a structural part of regional US energy supply. This form of trade has been the subject of study. Both sides have indicated the need for some guarantees. The Americans needed assurance that the power could not be suddenly repatriated, for without backup capacity, interruption of exports would leave them with a supply crisis. The Canadians needed secure long-term market access and trading relations, for if the export market simply became a temporary bubble they would be left with the financial burden of capacity well beyond the needs of domestic markets. How did the Free Trade Agreement deal with these issues?

**FTA: a framework for continental investment**

Promoters of this trade have emphasized that the whole question needs to be openly discussed because of nationalism — the resentment of Canadian exports by both Canadians and Americans. Binational coordinating institutions and firm and public governmental support have been their major objective. Bourassa's Power From The North attempts, among other things, to convince the Canadian and US publics that the hydro option is by far the cheapest and most environmentally acceptable. The Northeast-Midwest Institute, a large congressional lobby, on the other hand, tends to emphasize the importance of less expensive energy for the economic revitalization of the region. The Free Trade Treaty accomplishes all of these objectives, and as such can be the major political underpinning for new directions in energy investiment. Energy markets will be continental, not national.

**Declining NEB and federal power**

The major changes provided in the Treaty relate to existing poweres to control the quantity, price, form and duration of export contracts, as well a powers to repatriate the energy or terminate contracts during national emergencies. The Treaty substantially diminishes the powers of the Canadian and US governments to place restrictions on energy trade.

Essentially the Treaty asks the governments to treat energy as any other commodity within the free trade market. Sections 902-905 affirm that each government maintain existing GATT rights concerning the import and export of energy goods, including the right to take measures to conserve natural resources. However, aside from the GATT exceptions, neither can place quantitative, or price, restrictions on the import and export of energy. (The one limitation to this is the application of countervail and anti-dumping measures on imports.) Nor can either levy special taxes on exports unless they are also placed on the domestic market. Annexes provide that each country (that really means Canada) implement legislation to have the definition of "exportable surplus" changed to reflect these provisions, and also to have the NEB "third price test" eliminated. US utilities regarded the latter to be an assault on the underlying economic rationale behind the trade.

The National Energy Board is waiting for a ministerial statement and enabling legislation before it responds to the Treaty. That makes it difficult to speculate on the practical consequences of the Treaty's provisions. The Treaty establishes a continental market whose entities have "national treatment," i.e., foreign firms are treated as domestic ones. The rights of US importers, through the treaty, extend beyond the length of the licences; they are long-term rights that grow in proportion to the amount of resources they consume.

**Loss of repatriation right**

During the 1963-87 period we noted a progressive weakening of Canadian federal powers to repatriate energy committed to the US market. The Canadian government, however, maintained the sovereign power to control the terms of international trade, a power it exercised with regard to petroleum during the energy crisis. This Treaty formally limits the power to the Canadian government to do the same in the future. Canada and the United States keep these powers, but in a limited form. Restriction cannot take away the proportional market position of the importer (calculated with reference to the last thirty-six months), or include the direct imposition of higher prices on exports, or disrupt normal channels of supply or normal distribution of product mix. Essentially these provisions safeguard the US from Canadian export reduction in the advent of another energy crisis. Moreover, the agreement on an international energy program, when completed, will take precedence over the whole of the energy provisions of the FTA.

A series of defence-related national security provisions can override the rights of access by buyers. Those provisions speak more directly to the ability of the Untied States to suspend Canada's limited access to Alaskan crude than to Canadian rights to curtail electricity exports. Those provisions are also more related to the politics of petroleum and uranium than they are to electricity.

To what extent are these provisions a major departure from existing regulatory policy? Recently the NEB Act was changed to reduce the Board's powers to terminate contracts. Now it may only do so when the terms of the contract have been grossly violated, although existing GATT rules allow Canada the right to conserve national resources. What the FTA means for the ongoing management of cross-border trade will therefore depend upon the still-to-come implementation legislation. The Treaty provides for a diminished role for government, and supports a more decentralized energy policy. In Canada this may translate into a greater role for provincial governments and utilities in shaping energy strategies. At the same time it may also limit the provincial governments' traditional wide scope in hydro affairs. The Treaty's influence may also be more directly felt over time, when it becomes difficult to repatriate the Canadian electricity capacity dedicated to the continental market. The logic of the Treaty is to make energy a commodity like others, hence limited both the national and provincial governments' ability to use it as a tool of domestic development.

**FTA and the provinces**

One outstanding question, particularly to provinces without an abundance of inexpensive hydro power, such as Prince Edward Island — and perhaps in the future, Ontario — concerns the NEB's "second price test," the one requiring that the export price be not lower than the Canadian one. As a substitute for working out comparable