

THE TTIP THREAT TO CLIMATE ACTION

Across the world people are already being hit hard by climate change. Some communities are being evacuated to avoid the rising oceans, while droughts and record-breaking floods made worse by climate change are devastating the lives of people across the planet. 2015 was the warmest year on record and saw global sea levels reach their highest since records began.¹

And the world is responding - investments in renewables are growing rapidly,² the world is saving more energy from energy efficiency³ and communities across the planet are making the transition to low carbon energy. In December last year the Paris Agreement was signed which proposed keeping global warming to 1.5°C above pre-industrial levels.

But these efforts, though still too little⁴ even to keep to a 2 °C target are being undermined by a trade policy which carries on regardless of the imminent threat of climate disaster.



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INCREASED GREENHOUSE GAS EMISSIONS

The Commission's own impact assessments already admit that the Transatlantic Trade and Investment Partnership (TTIP) will increase greenhouse gas emissions.⁵ In addition, proposals for the TTIP agreement also pose further threats to the fight against climate change in Europe and the United States.

IMPORTING FRACKING

The first shipments of US fracked gas arrived in Europe in March 2016. The EU's TTIP proposals aim to ensure that this continues. Central to the EU's proposals for an energy chapter in the TTIP agreement is a proposal to prevent the US from restricting exports of natural gas. With two thirds of US gas production coming from fracking⁶ and in the absence of any import restrictions in Europe the EU will increasingly be providing support to this dangerous industry, and undermining its own commitment to tackling climate change. Fracked gas has a higher greenhouse gas profile than conventional gas and, due to fugitive methane emissions, can be more dangerous for the climate than coal. Not only will continued reliance on natural gas undermine Europe's climate objectives when we need to be phasing out our use of fossil fuels but by importing high emission fracked gas it will deliver an even bigger blow to the climate.

SUED FOR TACKLING CLIMATE CHANGE?

The EU and US have proposed the inclusion of an Investor-State Dispute Settlement (ISDS) chapter in the TTIP agreement. Renamed by the EU as an Investment Court System, this ISDS proposal will open new possibilities for fossil fuel companies to disrupt effective climate action.

US investors will be empowered to sue European governments in these exclusive tribunals for climate policies or actions which they claim threaten their future profits. This risks European tax-payers being forced to pay foreign companies for actions taken on their behalf to halt climate change, with payouts potentially in the billions of euro. It also risks 'regulatory chill' where governments and legislatures lessen their ambition to tackle climate change for fear of being sued.

Investor State disputes under existing investment agreements already heavily feature energy investments. In the year to June 2016 the International Centre for Settlement of Investment Disputes reported that 43% of cases regarded oil, gas or mining and 17% were about energy or electricity.¹⁰ The Canadian government, for example, has been sued for a precautionary moratorium on fracking in Quebec and in Europe the German government has been sued for imposition of environmental standards for water use at a coal-fired power plant in Hamburg. Providing new opportunities for companies to challenge climate change laws will make the urgent transition to a low-carbon future yet more difficult.

THE EU'S GAS PROBLEM

The EU is on track to continued gas dependency and is even encouraging it. 21.4 %⁷ of Europe's energy currently comes from gas. It can radically reduce this with more ambitious energy efficiency measures and through switching to renewables, but instead the EU is encouraging the continued consumption of gas across Europe - providing political support and even finance to projects to import and transport gas across Europe - threatening to lock Europe into fossil fuel consumption for decades to come, just as the EU needs to be removing fossil fuels from its energy mix.

THE KEYSTONE CASE

The United States government is facing a \$15 billion dollar ISDS case as a result of its decision to block the Keystone XL tar sands pipeline. The Keystone pipeline was designed to bring high emission tarsands oil from Canada to the US Gulf Coast for refining and ultimately export. Tar sands are one of most highly climate-polluting fuels on the planet and must remain in the ground if the world is to have a chance of staying within the 1.5°C of even 2°C warming limit. The Canadian company TransCanada is taking the case under the ISDS chapter of the North American Free Trade Agreement.



ENERGY EFFICIENCY – A REGULATORY RACE TO INEFFICIENCY

Energy efficiency is a core plank of the EU's strategy to tackle climate change but the EU's TTIP proposals threaten to undermine its own efforts to save energy. The EU's proposals for a TTIP Energy Chapter and Regulatory Cooperation pose a twin threat to energy efficiency by proposing both a 'voluntary' approach to efficiency standards and a mechanism to harmonize energy efficiency standards.

Leaving energy efficiency to voluntary measures risks little if any effective action. A recent study of voluntary standards found that voluntary approaches are rarely if ever an effective substitute for regulatory or fiscal measures in seeking to achieve public policy objectives.¹¹

Meanwhile TTIP proposals for regulatory cooperation aiming for 'harmonization' or 'mutual recognition' of energy efficiency regulations may result in products with lower energy efficiency on the EU market. As the Commission's own draft sustainability impact assessment states 'it will be (very) difficult to establish whether MEPS [Minimum Energy Performance Standards] or labelling requirements are functionally equivalent, without compromising the level of environmental protection.'¹²

In addition, the proposals for Regulatory Cooperation also threaten to introduce an additional lobbyist into the EU regulatory process – the United States government and by proxy U.S. business interests. This chapter proposes that the US (or the EU Commission) will be consulted at 'the earliest possible stage' on new, or amendments of existing, regulatory measures.

KEEPING FOSSIL FUEL SUBSIDIES

In May 2016 the EU and the US joined with the G7 in announcing a phase out of 'inefficient' fossil fuels subsidies by 2025. The EU's proposals for a sustainable development chapter in TTIP reiterate the call for phasing out fossil fuel subsidies (though leaving out the date). They also simultaneously undermine that commitment by introducing new loopholes to allow for continued fossil fuel subsidies. The EU is proposing, in the trade talks, get-out clauses to allow continued support to the fossil fuel industry for 'economic' and 'security' reasons. Another reason why climate policy should not be determined in trade negotiations.

RENEWABLES – AN INSECURE FUTURE/PUTTING IT ON THE LINE/NEGOTIATING INSECURITY?

TTIP proposes a liberalisation of services trade with the US across a broad set of sectors. The EU has proposed a reservation for energy services from its commitments. Without this reservation public EU energy policies would be subject to market access rules which would restrict government action to support communities establishing and supplying their own renewable energy (monopolies, restrictions on foreign capital, restrictions on type of legal entity). It is not clear if the US has accepted this reservation.

After the Paris Agreement and with climate change increasing month by month there is no time to lose to ramp up efforts to stop climate chaos. TTIP threatens to put in place considerable obstacles to effective climate action in exchange for small economic benefits. It's time to stop TTIP and ensure that the way is clear for Europe to focus on building a clean green future.

"I'VE SEEN THE LETTERS FROM THE NEW YORK AND D.C. LAW FIRMS COMING UP TO THE CANADIAN GOVERNMENT ON VIRTUALLY EVERY NEW ENVIRONMENTAL REGULATION [...] VIRTUALLY ALL OF THE INITIATIVES WERE TARGETED AND MOST OF THEM NEVER SAW THE LIGHT OF DAY." FORMER CANADIAN GOVERNMENT OFFICIAL⁸ ON THE DANGERS OF ISDS CLAIMS

"THE ENERGY WE WON'T CONSUME IS BY DEFINITION THE CHEAPEST, MOST SECURE AND MOST SUSTAINABLE SOURCE WE WILL EVER FIND."⁹ MARIO ŠEFČOVIČ EUROPEAN COMMISSION VICE-PRESIDENT FOR THE ENERGY UNION

ENDNOTES

- 1 <https://www.theguardian.com/environment/2016/aug/02/environment-climate-change-records-broken-international-report>
- 2 <http://fs-unep-centre.org/sites/default/files/publications/15028nefvisual9mediumres.pdf> p.11
- 3 <https://www.iea.org/publications/freepublications/publication/MediumTermEnergyefficiencyMarketReport2015.pdf>
- 4 Pledges made in Paris, even if fully implemented, leave the world on course to warming of up to 3°C <http://www.foei.org/press/archive-by-subject/climate-justice-energy-press/paris-agreement-climate-change>
- 5 http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf p.79
<http://www.trade-sia.com/ttip/wp-content/uploads/sites/6/2014/02/TSIA-TTIP-Interim-Technical-Report.pdf> p.23
- 6 <http://www.eia.gov/todayinenergy/detail.cfm?id=26112>
- 7 Inland Energy Consumption https://ec.europa.eu/energy/sites/ener/files/documents/pocketbook_energy-2016_web-final_final.pdf p.42
- 8 <https://www.thenation.com/article/right-and-us-trade-law-in-validating-20th-century/>
- 9 https://ec.europa.eu/commission/2014-2019/sefcovic/announcements/speech-central-and-eastern-european-energy-efficiency-forum-through-live-video-confernece_lt
- 10 The ICSID Caseload Statistics (ISSUE 2016-2) [https://icsid.worldbank.org/apps/ICSIDWEB/resources/Documents/ICSID%20Web%20Stats%202016-2%20\(English\)%20Sept%2020%20-%20corrected.pdf](https://icsid.worldbank.org/apps/ICSIDWEB/resources/Documents/ICSID%20Web%20Stats%202016-2%20(English)%20Sept%2020%20-%20corrected.pdf)
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- 12 <http://www.trade-sia.com/ttip/wp-content/uploads/sites/6/2014/02/TSIA-TTIP-Interim-Technical-Report.pdf> p. 216



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