



Looming Trade Deals Threaten our Climate and Oregon's Progressive Values

Across Oregon, activists are organizing to protect their communities from oil trains, climate pollution, and destructive infrastructure for shipping fossil fuels to Asia. But two big pending trade deals would do the opposite – empowering fossil fuel corporations to sue the U.S. government over such protections in private tribunals.

A recent decision by the Federal Energy Regulatory Commission to reject the application of Canadian firm Veresen to build a new liquefied natural gas export terminal in Coos Bay, Oregon, represents a major victory for local campaigners, communities, and landowners.¹ But this is just the type of decision that foreign fossil fuel corporations can challenge in private, unaccountable tribunals under trade deals. TransCanada, the corporation behind the Keystone XL pipeline, illustrated this threat in January 2016 by announcing it would use NAFTA to sue the U.S. government in a private tribunal and demand \$15 billion as “compensation” for the pipeline rejection.² Over 1,000 new fossil fuel firms would gain such rights if Congress were to pass the Trans-Pacific Partnership (TPP) – a pact with 11 Pacific Rim countries – and if broad corporate rights were to stay in the Transatlantic Trade and Investment Partnership (TTIP), under negotiation with the EU.

Extreme Rights for Fossil Fuel Corporations

The TPP and TTIP, as proposed, would empower thousands of foreign corporations, including major polluters, to follow TransCanada's example and sue the U.S. government in tribunals not accountable to any domestic legal system, in which corporate lawyers act as “judges.”³ There, the corporations could use the trade pacts' broad foreign investor rights to demand compensation for restrictions on dangerous fossil fuel projects, claiming interference with their expectations.

Fossil fuel corporations are increasingly using this private tribunal system – called “investor-state dispute settlement” (ISDS) – in existing trade and investment pacts to demand payment for environmental protections and to deter policymakers from enacting environmental policies. ISDS cases have targeted a fracking moratorium in Quebec, a court order to pay for oil pollution in Ecuador, and new restrictions on a coal-fired power plant in Germany. Shell, BP, Chevron and ExxonMobil are among the fossil fuel corporations that have used ISDS, contributing to a rapid rise in cases. Indeed, half of the new cases launched in 2014 targeted policies affecting oil or gas extraction, mining, or power generation.

The TPP and TTIP would dramatically expand this threat to climate and environmental protections in Oregon and beyond. For example, if approved by Congress, these deals would:

- Empower 45 of the 50 biggest climate-polluting corporations in history to use ISDS to challenge climate policies, and
- More than double the number of foreign fossil fuel corporations with the power to challenge U.S. policies in unaccountable ISDS tribunals. Firms that would gain this power include Shell, BHP Billiton, Rio Tinto, and BP.

A Tool to Defend Oil Trains

As the number of oil trains carrying explosive oil has surged in recent years, so have the number of fatal explosions, mass evacuations, and polluting spills caused by derailments.⁴ The threat to Oregon is very real, as shown by the fiery derailment of 16 oil-carrying train cars in the Columbia River Gorge on June 3 this year.⁵ Oregonians have been fighting back, with public pressure leading the Portland City Council to unanimously pass a resolution opposing oil trains in the Portland metro area.⁶ Further, June's derailment has prompted a call from the Oregon Department of Transportation and

¹ “[Order Denying Applications for Certificate and Section 3 Authorization](#),” Federal Energy Regulatory Commission, 154 FERC ¶ 61,190, March 11, 2016.

² *TransCanada Corporation and TransCanada PipeLines Limited v. The United States of America*, [Notice of Intent](#), January 6, 2016.

³ Citations and further details for all facts in this section can be found in Sierra Club's new report: Ben Beachy, “[Climate Roadblocks: Looming Trade Deals Threaten Efforts to Keep Fossil Fuels in the Ground](#),” The Sierra Club, March 2016.

⁴ Jared Margolis, “[Runaway Risks](#),” Center for Biological Diversity, February 2015.

⁵ Everton Bailey Jr., “[Derailed Train Cars Emptied of Oil, Being Moved from Mosier](#),” *The Oregonian*, June 8, 2016.

⁶ [ENN-10.01 - Oil Trains](#), City of Portland, Resolution No. 37164, November 4, 2015.

Oregon leaders – including Reps. Bonamici and Blumenauer, Sens. Merkley and Wyden, and Gov. Brown – for a moratorium on oil trains along the Columbia River.⁷

However, polluter-friendly trade deals allow foreign corporations to challenge such moratoria in private tribunals. A gas corporation named Lone Pine Resources, for example, is using NAFTA to ask an ISDS tribunal to order Canada to pay \$119 million for Quebec’s moratorium on fracking under the St. Lawrence River.⁸ The TPP and TTIP, as proposed, would give virtually the same broad rights used by Lone Pine to over 1,000 additional fossil fuel firms, increasing the risk of such challenges against future U.S. moratoria on oil trains. Indeed, the train that derailed in Oregon was carrying oil for a British corporation that would gain the right to challenge any such U.S. oil train moratoria under TTIP.⁹

A Lifeline for Arctic Drilling

Oregon activists have been at the forefront of the fight to stop corporations like Shell from drilling for oil in the Arctic. But TTIP, as proposed, would newly empower oil corporations that control 85 percent of leased area in the U.S. Arctic, including Shell, to go to unaccountable ISDS tribunals and challenge new restrictions on Arctic oil exploration, such as cancellation of oil leases or lease renewals.¹⁰ No firm with an oil lease in the U.S. Arctic currently has that power.

Increased Climate Disrupting Emissions

Though trade can significantly increase climate-disrupting emissions, the TPP text fails to even *mention* the words “climate change.”¹¹ The omission is particularly alarming given that the TPP would increase emissions by:

- Offshoring Manufacturing: The TPP would shift U.S. manufacturing to countries like Malaysia and Vietnam where production is two to six times as carbon-intensive as in the U.S. This also would increase shipping emissions.
- Escalating Tropical Deforestation: In TPP member Malaysia, new oil palm plantations are a major cause of climate emissions from deforestation. The TPP’s elimination of tariffs on palm oil would encourage wider oil palm expansion.

The TPP and TTIP, as proposed, also would empower fossil fuel corporations to use private ISDS tribunals to challenge new policies to curb climate pollution in Oregon. The TPP would allow a statewide carbon tax or cap-and-trade program, for example, to be challenged as an “indirect expropriation.” And TTIP would let Spain-based Iberdrola launch an ISDS case against Oregon climate policies on behalf of its gas plant in Klamath Falls – the state’s 5th-largest climate polluter.¹²

More Nike Labor Abuses in Vietnam

By removing tariffs on footwear and sportswear imported from Vietnam,¹³ the TPP would enable Oregon-headquartered Nike to shift even more production to Vietnam, where production is highly climate-polluting, as explained above. Vietnam also has poor labor conditions and minimum wages that average 70 cents an hour.¹⁴ Nike producing factories in Vietnam have been cited recently for under-payment of wages, working hours that exceed legal limits, and shocking mistreatment, such as the gluing of a worker’s hands together.¹⁵ Though workers in a Nike factory in Vietnam recently went on strike to protest such abuses, Nike has denied access for an independent watchdog to inspect the factory.¹⁶

The TPP would do little to combat the abuses faced by Vietnam’s workers, despite further opening the U.S. market to products made under such abuse. The deal’s labor chapter allows countries to self-determine “acceptable” working hours, minimum wages, and health and safety standards, and has very weak language on corporate social responsibility.

Let’s Replace These Toxic Deals with Climate-Friendly Trade

Opposition to toxic trade deals like the TPP is broad and growing. It’s time to create a new model of trade that protects communities and the environment, not the bottom lines of corporations. Join us at www.sierraclub.org/trade.

⁷ “Oregon Leaders Call for Oil Train Moratorium in the Columbia River Gorge,” Office of U.S. Rep. Suzanne Bonamici, June 6, 2016.

⁸ *Lone Pine Resources Inc. v. The Government of Canada*, ICSID Case No. UNCT/15/2, [Claimant’s Memorial](#), April 10, 2015, at para. 408.

⁹ Tony Hernandez, “Oil Train Derails Near Mosier in Oregon’s Columbia River Gorge,” *The Oregonian*, June 3, 2016.

¹⁰ Citations and further details can be found in Sierra Club’s new report: Ben Beachy, “Climate Roadblocks: Looming Trade Deals Threaten Efforts to Keep Fossil Fuels in the Ground,” The Sierra Club, March 2016.

¹¹ Citations and further details, including for the following bullet points, can be found in Sierra Club’s report: Ilana Solomon and Ben Beachy, “A Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate,” The Sierra Club, updated July 2016.

¹² “2014 Greenhouse Gas Emissions from Large Facilities,” U.S. Environmental Protection Agency, accessed June 17, 2016.

¹³ See Trans-Pacific Partnership, Chapter 2, [Annex 2-D: Tariff Commitments](#), 2015.

¹⁴ Decree 122/2015/ND-CP, Government of Vietnam, accessed on June 17, 2016 at [WageIndicator.org](#).

¹⁵ “Made in Vietnam: Labor Rights Violations in Vietnam’s Export Manufacturing Sector,” Worker Rights Consortium, May 2013, at 8, 14, and 18.

¹⁶ Chris Teare, “College Campus Protests Include United Students Against Sweatshops,” *Forbes*, March 31, 2016.