Looming Trade Deals Threaten our Climate and Washington's Fight against Fossil Fuels

Across Washington, activists are organizing to protect their communities and climate from oil trains, toxic refineries, Arctic drilling and other fossil fuel dangers. But two big pending trade deals would do the opposite – they actually would empower fossil fuel corporations to sue the U.S. government over such protections in private tribunals while directly contributing to an increase in climate-disrupting emissions.

TransCanada, the corporation behind the Keystone XL tar sands pipeline, illustrated this threat in January 2016 by announcing that it would use NAFTA to sue the U.S. government for rejecting the pipeline. TransCanada plans to ask a private tribunal to order the U.S. to pay over $15 billion as "compensation" for the Keystone XL decision that avoided the threat of oil spills and increased climate disruption.[1]

But TransCanada's case could be just the beginning of such corporate challenges to our climate protections if Congress were to pass the Trans-Pacific Partnership (TPP) – a controversial pact between the U.S. and 11 Pacific Rim countries – and the Transatlantic Trade and Investment Partnership (TTIP), which the U.S. and European Union are currently negotiating.

Extreme Rights for Fossil Fuel Corporations

The TPP and TTIP would empower thousands of additional 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."[2] There, the corporations could use the trade pacts' broad foreign investor rights to demand compensation for restrictions on dangerous fossil fuel investments by claiming that they thwarted the firms' "expectations" of a stable business environment.

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 try 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 already used ISDS, helping to spur a rapid rise in ISDS 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 Washington and beyond. For example, if Congress were to approve these deals:

- Forty-five of the 50 private corporations responsible for the most historical greenhouse gas emissions would be newly empowered to use ISDS to challenge climate policies.
- The number of foreign fossil fuel corporations with the power to challenge U.S. policies in unaccountable ISDS tribunals would more than double.
- Firms that would gain this power include Netherlands-based Shell – notorious for its reckless Arctic drilling attempts – and United Kingdom-based BP – one of Washington's largest polluters.

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[1] *TransCanada Corporation and TransCanada PipeLines Limited v. The United States of America*, Notice of Intent to Submit a Claim to Arbitration under Chapter 11 of NAFTA, January 6, 2016, http://www.italaw.com/sites/default/files/case-documents/ITA LAW 7030.pdf.

[2] 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, http://bit.ly/climate-roadblocks.

A Tool to Defend Oil Trains and Refineries?

Each day, trains carrying volatile oil from the fracking fields of North Dakota roll through Washington communities from Spokane to Vancouver to Seattle, on their way to highly-polluting oil refineries on the Puget Sound. Under TTIP, some of the corporations behind Washington's oil trains and refineries could ask private tribunals for compensation from U.S. taxpayers if new policies restricted oil trains or put tougher standards on refineries. The mere threat of launching costly ISDS cases could deter policymakers from enacting such protections. TTIP would hand these broad corporate rights to:

- BP, which operates the Cherry Point oil refinery near Bellingham that relies on approximately 700 oil train cars to transport fracked oil from North Dakota across Washington. BP's refinery is Washington's second-largest greenhouse gas emitter,[3] having emitted the equivalent of more than 2.5 million metric tons of carbon in 2014.[4]
- U.S. Oil and Refining – another United Kingdom-based firm, which uses 630 oil train cars to transport oil to its refinery in Tacoma,[5] which has been consistently cited for "significant violations" of clean air standards.[6]
- Shell, which is planning a new oil train project that would allow over 100 train cars to carry oil to its Puget Sound Refinery in Anacortes, causing "unavoidable impacts to wetlands."[7] Shell's refinery is Washington's largest violator of environmental protections, having been fined for 23 serious violations of clean air standards in the last five years – more than any other facility in the state. It is also the state's third-largest greenhouse gas emitter.

A Lifeline for Arctic Drilling?

Washington activists have been at the forefront of the fight to stop corporations like Shell from drilling for oil in the Arctic. But TTIP 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.[8] No firm with an oil lease in the U.S. Arctic currently has that power.

Increased Climate Disrupting Emissions

Despite the fact that trade can significantly increase climate-disrupting emissions, the TPP text fails to even *mention* the words "climate change."[9] The omission is particularly alarming given that the TPP would directly increase climate-disrupting emissions, posing threats to communities and treasured landscapes in Washington, by:

- Offshoring U.S. Manufacturing: The TPP would shift U.S. manufacturing to countries like Malaysia and Vietnam, where production is more than two to six times as carbon-intensive as U.S. production, respectively.
- Increasing Shipping: A TPP-spurred shift in manufacturing from the U.S. to countries on the other side of the Pacific Ocean also would increase shipping-related emissions.
- Escalating Tropical Deforestation: In TPP member Malaysia, the expansion of oil palm plantations is the primary cause of tropical forest destruction. Each hectare destroyed releases up to 723 metric tons of carbon. By eliminating tariffs on oil palm products, the TPP would encourage wider oil palm expansion and climate-disrupting deforestation.

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

Opposition to toxic trade deals like the TPP and TTIP 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.

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[3] Samantha Wohlfeil, "BP Cherry Point Will Allow Only Newer-Model Train Cars at its Crude Oil Terminal," *The Bellingham Herald*, October 11, 2014, http://www.bellinghamherald.com/news/local/article22251498.html.

[4] All greenhouse gas emissions data from "2014 Greenhouse Gas Emissions from Large Facilities," Facility Level Information on Greenhouse Gases Tool, U.S. Environmental Protection Agency, accessed April 13, 2016, https://ghgdata.epa.gov/ghgp/main.do.

[5] "USOil," TrailStone, accessed April 14, 2016, http://trailstonegroup.com/physical-platform/usoil.

[6] All environmental violations data from "Facility Search – Enforcement and Compliance Data," Enforcement and Compliance History Online, U.S. Environmental Protection Agency, accessed April 13, 2016, https://echo.epa.gov/facilities/facility-search.

[7] "Shell Anacortes Rail Unloading Facility: Environmental Impact Statement," Department of Ecology, State of Washington, accessed April 14, 2016, http://shellraileis.com/ and http://shellraileis.com/event/proposed-mitigation-information-now-available.

[8] 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, http://bit.ly/climate-roadblocks.

[9] Citations and further details for all facts in this section 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, http://bit.ly/1OxfXs1.