

# DISCUSSION PAPER: A NEW, CLIMATE-FRIENDLY APPROACH TO TRADE



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## INTRODUCTION

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Opposition to corporate trade deals has reached unprecedented heights, as reflected in the 2016 elections and the widespread repudiation of the Trans-Pacific Partnership (TPP). The movement that halted the TPP spanned several countries, thousands of diverse organizations, and millions of people.

In the aftermath of the TPP fight, divergent voices will seek to fill the trade policy void. Since President-elect Trump's approach to trade is rooted in the same xenophobia and hypocrisy that drove his campaign, it is more important than ever that we, as progressives, offer an alternative that is rooted in fighting inequality, respecting workers' rights across the globe, fostering healthy communities, and seeking climate justice. The time is ripe to answer the question: What is *our* vision for a new trade model that advances our shared values?

We urgently need a new approach to trade that prioritizes the needs of people and planet. This discussion paper presents fresh, bold ideas for one component of a broad new approach: how to move from polluter-friendly deals to ones that support the critical challenge of tackling climate change.

The template for today's trade deals was written decades ago under the advisement of fossil fuel and other corporations. These outdated rules prioritize the narrow interests of multinational corporations over all else, seeking to maximize trade and investment even if the goods being traded or the investments being protected spell more

climate pollution. They even empower corporations to challenge policies that protect our communities and climate if they affect the corporations' bottom lines.

It doesn't have to be this way, and with the climate crisis upon us, we cannot continue with business as usual. What, then, will it take for trade and investment agreements to support—not undermine—action on climate change? In short, a wholesale transformation of status quo trade policy.

This discussion paper challenges us to reorient our thinking about what trade agreements are for. The ideas below start from a simple premise that marks a fundamental departure from the status quo: Trade and investment should be treated as *tools* for advancing public interest objectives—not *ends* in and of themselves.<sup>1</sup> Agreements between countries should encourage trade and investment that support a more stable climate, healthy communities, and good jobs, while discouraging trade and investment that undermine these goals. This means, for example, incentivizing investments in renewable energy but not in fossil fuels,<sup>2</sup> lowering barriers to the spread of green technology, and using taxes on high-emissions trade to support increased climate protection and climate-friendly job growth.



Now is a critical moment to bring decades-old trade rules into alignment with our climate goals. The recent entry into force of the Paris climate agreement codifies the global consensus on the urgent need to tackle climate change. Meanwhile, the recent elections and rejection of the TPP have highlighted the broad U.S. public consensus on the need for a new trade model. At this pivotal juncture, we have a responsibility and an opportunity to envision trade agreements that would reinforce our climate and other public interest goals.

To that end, the chart below offers concrete proposals for new trade rules across 15 core issue areas related to tackling climate change. It has been informed by input from over 50 academic and civil society trade and climate specialists. The proposals range from the relatively simple to fundamental shifts that, while difficult, may be necessary to achieve trade policies that actually reflect today's stark climate realities.

The proposals are divided into three sections:

**1. Changing trade rules to protect climate policies:**

Trade rules that conflict with climate action should be eliminated to allow communities and governments to advance bold climate protections without fear of being challenged in trade tribunals.

**2. Using trade rules to increase climate protections:**

To align trade policies with climate objectives, trade pacts should include enforceable commitments to implement international climate accords and to make climate-protecting policy changes, from eliminating fossil fuel subsidies to financing renewable energy investments.

**3. Mitigating the climate impacts of trade:**

While trade agreements should encourage trade in goods that meet public interest criteria, they should discourage trade in climate-polluting fossil fuels, in addition to tackling the climate emissions that result from shipping and international shifts in production.

To secure trade agreements that include such climate-friendly rules, the opaque and corporate-dominated system for negotiating U.S. trade deals should be replaced with an open, public process. The paper concludes by suggesting some elements that could characterize this new process.

As you read the proposals below, we invite you to offer feedback and suggest your own ideas for what a climate-friendly trade model could look like. Please help us build a new approach to trade by sending your input to [climate-friendly-trade@sierraclub.org](mailto:climate-friendly-trade@sierraclub.org).

## OVERARCHING QUESTIONS

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In crafting the proposals below for a new, climate-friendly approach to trade, the Sierra Club grappled with several important questions. These include:

**Why focus on climate?** The existing trade model, in its narrow pursuit of corporate interests, threatens not just our climate, but also clean air and water, good jobs, access to affordable medicines, consumer safety, income equality, healthy ecosystems, financial stability, internet freedom, economic development, Indigenous and human rights, and other public interest priorities. As with climate action, a new trade model needs to support rather than undermine *all* of these broadly-shared goals. While a number of the proposals below (such as the “carve-out” for public interest policies) would make progress toward that end, a wider array of fundamental changes to the existing trade model will be necessary.

Thus, this discussion paper is intended to inform the climate plank of a broader trade policy overhaul. The climate focus allows us to offer more specific proposals on one of the defining challenges of our time. We hope to refine these proposals based on additional consultation and feedback and, ultimately, to stitch the resulting climate-focused ideas into a proposal for a new approach to trade that reflects a wide array of public interest goals.

Within the issue of climate change, our proposals focus primarily on the urgent need to move beyond fossil fuels and fully transition to renewable energy, while ensuring a just transition for affected workers and communities so as to simultaneously advance economic, racial, and climate justice objectives. While this focus on energy-related mitigation allows for more precise proposals for new trade rules, further such proposals should be developed to support the goals of

reducing greenhouse gas emissions outside of the energy sector, increasing adaptation capacity, and compensating for loss and damage.

**Why include *requirements* for climate action rather than just *allowing* climate action?** Some of the proposals below simply try to free communities and their governments from the constraints that status quo trade rules place on climate policies. Other proposals use trade rules to actually require climate policies. Some people may argue that the latter category unfairly limits the autonomy of democratic governments. We agree that many domestic policy issues should be left out of trade agreements in order to preserve democratic self-determination. However, climate change is a global problem in which one country's inaction can spell dire consequences for other countries, limiting their capacity to determine their own future. Thus, climate requirements in trade agreements actually can support the self-determination of communities in the U.S. and around the world that are vulnerable to climate change, many of which have long called for strong international rules requiring climate action.

**How should one account for the inequities inherent in climate change?** A new, climate-friendly approach to trade must recognize that the causes and consequences of climate change, and the burden of tackling the climate crisis, are not equitably shared. Throughout this discussion paper we try to account for the following inequities:

- Countries that bear little responsibility for climate change: Given that a handful of mostly richer countries are responsible for most of history's greenhouse gas emissions while dozens of mostly poorer countries have insignificant historical emissions, it would not be fair for a trade agreement to simply require an equal level of climate action from all countries. Recognizing the unequal distribution of responsibility for climate change and the capacity to respond to it, the proposals below require countries that are historically high emitters to transfer technology and financing to historically low emitters to support their mitigation and adaptation efforts. For historically low emitters, a number of the proposed requirements for climate action are made contingent on such transfer of technology and finance, and longer timelines are available for implementation.

- Frontline communities that face the biggest threats: Climate change disproportionately threatens low-income and working-class communities and communities of color, given increased vulnerability to extreme weather, higher temperatures, and rising sea levels. Fossil fuel projects contributing to climate change also routinely violate Indigenous peoples' right to free, prior, and informed consent. The proposals below would give frontline communities greater power to protect against these threats. For example, this new model would require investors, including fossil fuel firms, to abide by domestic laws and international agreements protecting the environment, workers, public health, human rights, and Indigenous rights. If investors failed to comply with these protections, the affected communities could get assistance to challenge them before independent panels. Frontline communities also could challenge governments before panels of climate experts for failing to meet binding requirements for climate action. If governments or investors failed to take corrective action in line with the rulings of the panels, they could be required to pay compensation to the affected communities.
- Workers that are impacted by the transition to renewable energy: Requirements to reduce greenhouse gas emissions can disproportionately impact workers and communities that rely on fossil fuel and other high-emitting industries for their livelihoods. To ensure a just transition to a renewable energy economy, governments should invest in worker benefits, training, and new job growth opportunities, including renewable energy jobs, in such communities. These renewable energy jobs should be stable, high-wage, and pro-union, rather than being subject to a global race to the bottom in which renewable energy manufacturing is continually offshored to countries where workers earn lower wages and endure worse conditions. To that end, governments should enact "buy local" and other policies that encourage growth in local renewable energy manufacturing. The proposals below call for such measures to support fossil fuel workers as they transition to a renewable energy economy.

# NEW, CLIMATE-FRIENDLY TRADE RULES

The following chart proposes specific new trade rules that could support efforts to tackle climate change (right-hand column), juxtaposed against the old, polluter-friendly rules found in existing and pending U.S. trade agreements (left-hand column). The chart's proposed rules are intended primarily for U.S. trade agreements, including, in some cases, multilateral deals to which the U.S. is party. The rules would be binding on all governments that are party

to such deals, with some noted exceptions. While many of these proposals are new, they have been informed by prior academic and civil society efforts to rethink prevailing trade rules,<sup>3</sup> in addition to input from over 50 trade and climate specialists in academic institutions and environmental, labor, development, consumer, and other public interest groups.

CHANGE TRADE RULES TO PROTECT CLIMATE POLICIES	
Old Trade Model	Climate-Friendly Trade Model
<p><b>1. Exposes climate protections to challenge:</b></p> <p>Existing and pending U.S. trade agreements include over-reaching rules that restrict the policy tools that governments can use to tackle climate change. Other governments, and even corporations, can challenge climate policies as violations of these antiquated rules in trade tribunals. If a tribunal rules against a challenged climate policy, the government can face trade sanctions or be required to pay cash compensation to fossil fuel firms unless they remove the policy.</p> <p>No existing or pending U.S. trade deal effectively protects climate policies from these rules. At best, these pacts include a weak “general exception” that does not even apply to the most restrictive trade rules and that has consistently failed to protect challenged environmental policies.<sup>4</sup></p>	<p><b>Shields climate policies:</b></p> <p>Trade pacts should include a broad <b>carve-out for public interest policies</b>,<sup>5</sup> including climate policies, to ensure that governments maintain their prerogative to use a full array of policy tools to tackle challenges like climate change.</p> <p>The climate portion of the carve-out could state that the pact’s terms do not apply to policies related to the objectives of reducing or adapting to greenhouse gas emissions, except insofar as those terms require greater climate protection. If a government sought to use this climate carve-out to defend a challenged policy, the case could not proceed until an independent panel of climate experts (the deciding body described in box 11) decided if the carve-out applied. If so, the challenge would be dismissed.</p> <p>This carve-out would:</p> <ul style="list-style-type: none"><li>• Provide a strong deterrent and an early defense against challenges to climate policies, rather than offering a weak, last-ditch provision with a track record of failing to protect public interest policies.</li><li>• Ensure that <i>no</i> rules in a given pact could be used against strong climate policies, rather than only applying to a select set of rules.</li></ul>

Old Trade Model	Climate-Friendly Trade Model
<p><b>2. Protects toxic investments:</b></p> <p>Status quo trade agreements give broad rights to foreign investors, including fossil fuel corporations, and empower them to sue governments over climate and other domestic policies in private, unaccountable tribunals.<sup>6</sup> The tribunals, which are primarily composed of corporate lawyers,<sup>7</sup> are not bound by appeal, precedent, or meaningful requirements to be impartial.</p> <p>Status quo agreements, meanwhile, do not require these investors to comply with standards to protect the environment, workers, public health, human rights, or Indigenous rights. Nor do they give the communities affected by the investments, or even governments, the ability to hold investors to account if they cause harm.</p> <p>Fossil fuel corporations are increasingly using this “investor-state dispute settlement” (ISDS) system to demand payment for climate and environmental policies and to try to deter the enactment of new protections.<sup>8</sup> Indeed, about one of every four new ISDS cases in the last five years has targeted policies affecting oil and gas extraction, mining, or fossil fuel power generation.<sup>9</sup></p>	<p><b>Protects climate-friendly investments and policies:</b></p> <p>Trade agreements should exclude ISDS. However, trade deals could still include basic protections to encourage investments that further the public interest. That includes investments that reduce greenhouse gas emissions and bolster climate change adaptation, but not those, for example, that are incompatible with a full transition to renewable energy. Any investment protections included in trade deals should:</p> <ul style="list-style-type: none"> <li>• <b>Only apply to investments that meet clear public interest criteria</b>, such as the investments’ compatibility with the transition to renewable energy.</li> <li>• <b>Limit foreign investors’ rights</b> to protection against clear discrimination,<sup>10</sup> gross denial of justice, and uncompensated direct expropriation of tangible property.<sup>11</sup> Exceedingly broad rights, such as a guaranteed “minimum standard of treatment” and compensation for “indirect expropriation,” should be excluded.<sup>12</sup></li> <li>• <b>Only be enforceable in domestic courts.</b> As an alternative, investors could be required to exhaust the legal process in domestic courts before being allowed to ask their governments to pursue state-to-state dispute settlement. No investors should be able to directly sue governments in unaccountable tribunals of private lawyers.</li> </ul> <p>In addition to offering protections for public interest-compatible foreign investments, trade deals should include <b>basic obligations for foreign investors</b>. These could include requirements to comply with domestic policies of their home and host countries, in addition to international treaties and conventions regarding the protection of the environment, workers, public health, human rights, and Indigenous rights (including the right to free, prior, and informed consent). If investors would fail to comply with these obligations, public interest groups and communities harmed by the non-compliance should be able to use the new dispute settlement system outlined in box 11 to initiate disputes against the investors. Host and home country governments also should have the power to enforce these obligations in their domestic legal systems.</p>

Old Trade Model	Climate-Friendly Trade Model
<p><b>3. Prohibits job-creating renewable energy programs:</b></p> <p>Many U.S. states, like countries around the world, have renewable energy programs with “buy local” rules that support local, renewable energy jobs and entrepreneurs. Such policies condition renewable energy incentives on use of local products, labor, or other inputs. These provisions can broaden domestic support for bold climate policies and lower renewable energy costs over time, while ensuring that renewable energy manufacturing is not subject to a global race to the bottom in wages and working conditions.<sup>13</sup></p> <p>But such buy local programs have been challenged by governments and investors as a violation of status quo trade rules that prohibit preferences for domestic goods.<sup>14</sup> Indeed, the World Trade Organization (WTO) has ruled against successful buy local renewable energy programs from Canada to India, and now India is threatening to launch a WTO case against similar programs in eight U.S. states.<sup>15</sup></p>	<p><b>Allows creation of local renewable energy jobs:</b></p> <p>To halt the brewing trade war over buy local provisions in renewable energy programs, WTO members should adopt <b>an indefinite “peace clause”</b> that bars such disputes. This would allow governments in the U.S. and abroad to maintain and enact renewable energy job programs without fear of WTO reprisal.</p> <p>New trade deals should preclude the threat of government or investor challenges to such programs by including a climate carve-out and <b>exempting buy local policies related to renewable energy</b> from the trade rules typically used against such measures (e.g., “national treatment” rules).</p>
<p><b>4. Restricts climate labels:</b></p> <p>Green labeling policies can allow consumers to choose to purchase climate-friendly products (e.g., energy efficiency labels for electronics and labels showing the greenhouse gas emissions embodied in products).</p> <p>However, current trade rules allow such policies to be challenged as a “technical barrier to trade” if they are deemed “more trade-restrictive than necessary” or have the unintended effect of favoring comparably greener domestic producers.<sup>16</sup></p>	<p><b>Safeguards climate labels:</b></p> <p>To ensure that trade rules are not used against climate-friendly and other public interest labels (whether voluntary or mandatory), trade pacts should include the carve-out mentioned in box 1. In instances where a majority of signatory governments have comparable climate labels, trade pacts could <b>require the adoption of such labels</b> to prevent concentrated sales of climate-polluting goods in signatory countries without labels.</p>
<p><b>5. Protects polluting fossil fuel practices:</b></p> <p>U.S. states and governments around the world are banning toxic, climate-polluting fossil fuel practices such as fracking and offshore drilling. But proposed trade pacts actually limit the ability of governments to ban such “services.” Such bans could fall afoul of rules barring, for example, “limitations on the number” of fracking or offshore drilling firms operating in a country.<sup>17</sup></p> <p>Even policies that restrict, rather than ban, climate-polluting practices can contradict status quo trade rules if they inadvertently affect foreign firms more than domestic firms. For example, restrictions on offshore drilling could be challenged as a violation of these broad trade rules if there happen to be more foreign drilling firms operating in the country than domestic ones.</p>	<p><b>Protects restrictions on pollution:</b></p> <p>Trade agreements should not threaten governments’ ability to ban or restrict polluting fossil fuel practices. To that end, trade deals should <b>allow policies that limit the number or size of firms providing fossil fuel “services,”</b> including bans on polluting practices that limit the number of firms to zero.<sup>18</sup></p> <p>To further protect pollution restrictions that are designed to apply equally to foreign and domestic firms, rules on the treatment of foreign firms should be narrowed to <b>bar only policies that are discriminatory in both intent and effect.</b><sup>19</sup></p>

# USE TRADE RULES TO INCREASE CLIMATE PROTECTIONS

Old Trade Model	Climate-Friendly Trade Model
<p><b>6. Fails to even mention climate change:</b></p> <p>No existing U.S. trade deal mentions “climate change,” despite the significant climate emissions of signatory countries and the various ways that the deals exacerbate emissions.<sup>20</sup></p> <p>Nor does any U.S. trade pact require countries to live up to their international climate commitments, despite requiring compliance with other multilateral environmental agreements. Such requirements are important, as they help establish a floor of environmental protection among trade partners so as to avoid a race to the bottom in climate and other environmental standards.</p>	<p><b>Requires meaningful climate commitments:</b></p> <p>Climate-friendly trade deals should require signatory countries to <b>“adopt, maintain, and implement” policies to fulfill their Paris climate agreement commitments.</b> This should include an enforceable requirement for signatory countries to live up to the Nationally Determined Contributions they submitted under the Paris agreement. In addition, a trade deal’s reductions in tariffs, or taxes on traded goods, could be made contingent on the exporting country’s implementation of its Paris commitments.</p> <p>Trade pacts also should require signatory countries with high historical greenhouse emissions to help <b>finance mitigation and adaptation efforts</b> in low-emissions signatory countries, building on the finance commitments in the Paris climate agreement. This requirement, in addition to accounting for the inequitable distribution of responsibility for climate change, could help create a more level playing field of climate protection among trade partners.</p> <p>Climate-friendly trade agreements should further require signatory countries to <b>ratify the 2016 Montreal Protocol amendment to control climate-polluting hydrofluorocarbons</b> and any future climate-related amendments, and to “adopt, maintain, and implement” policies to fulfill their obligations under these amendments.<sup>21</sup></p>
<p><b>7. Limits climate-friendly subsidies:</b></p> <p>Governments use tax reductions, preferential lending, cost reimbursements, and other subsidies to incentivize production and use of renewable energy. But decades-old trade rules have repeatedly been used at the WTO to challenge renewable energy subsidies.<sup>22</sup></p> <p>By contrast, these same trade rules have yet to be used at the WTO to challenge the far greater amount of money – hundreds of billions of dollars – that governments spend on <i>fossil fuel</i> subsidies, which encourage climate pollution while distorting trade.<sup>23</sup> The status quo trade model’s allowance of massive fossil fuel subsidies contradicts the G20’s repeated call for their phase-out.<sup>24</sup></p>	<p><b>Limits polluter-friendly subsidies:</b></p> <p>A climate-friendly trade deal should protect subsidies for renewable energy and low-emissions goods and services via the carve-out in box 1. At the same time, it should <b>prohibit fossil fuel subsidies</b>, whether for domestic use or overseas investment promotion. Developing countries should have longer to implement this requirement if necessary to ensure energy access for the poor. To the extent that fossil fuel subsidies elimination negatively impacts vulnerable communities, countries should take measures to offset those impacts, such as rebates for low-income families and investments in benefits and job alternatives for fossil fuel workers.</p>



Old Trade Model	Climate-Friendly Trade Model
<p><b>8. Threatens green procurement:</b></p> <p>The U.S. federal government and many state governments use “green purchasing” requirements to ensure that government contracts support renewable energy and energy efficiency (e.g., requiring government buildings to use an increasing share of renewable energy).</p> <p>But status quo trade rules regarding procurement expose such policies to challenge as having an unintended “effect of creating an unnecessary obstacle to trade.”<sup>25</sup></p>	<p><b>Encourages procurement as a climate-friendly tool:</b></p> <p>While the carve-out mentioned in box 1 would protect environmental procurement policies from trade disputes, a climate-friendly trade deal should go a step further and require <i>greater</i> use of green and local purchasing. For example, a trade deal could state that signatory governments must include <b>a preference for goods and services with low life-cycle greenhouse gas emissions in procurement decisions</b>. Countries with low historical climate emissions should have longer to implement this requirement, which should be contingent on the transfer of technology and financing from high historical emitters.</p>
<p><b>9. Impedes diffusion of green technology:</b></p> <p>Status quo trade rules include overreaching intellectual property protections that could inhibit the diffusion of technology to increase energy efficiency or lower the costs of renewable energy production. Excessive patent protections in trade deals can particularly deter the development, transfer, and use of recent green technology innovations (e.g., thin film solar power) in developing countries.<sup>26</sup></p> <p>In addition, the investment rules of current trade pacts restrict policies that require transfer of such technologies or investment in green research and development, even though these are stated goals of the Paris climate agreement.<sup>27</sup></p>	<p><b>Creates pathways for green technology:</b></p> <p>New trade agreements should explicitly allow for <b>compulsory licenses</b> (which let firms produce cheaper versions of patented products) and other policy tools that enable diffusion of green technology. Any restrictions on technology transfer or research and development policies should generally <b>not apply to renewable energy technologies</b>.<sup>28</sup></p> <p>To facilitate <i>increased</i> diffusion of such technologies, climate-friendly trade deals also should require signatory countries with high historical greenhouse emissions to <b>transfer green technology</b> to low-emitting signatory countries, building on the technology transfer commitments in the Paris climate agreement. This could help build a more level playing field of climate protection among trade partners.</p> <p>Such deals could further require signatory governments to establish <b>public financing</b> for research and development on renewable energy and energy efficiency.</p>
<p><b>10. Prioritizes policies that maximize trade:</b></p> <p>“Regulatory cooperation” rules proposed for the Transatlantic Trade and Investment Partnership (TTIP) could require the U.S. and European Union (EU) governments to subject proposed climate policies to a “trade impact test” in which potential costs to trade would have to be calculated, reported, and considered before the policy proposals could be enacted. This would offer firms greater leverage to chill new climate policies, which inherently restrict trade in polluting goods and services.<sup>29</sup></p> <p>Other regulatory cooperation terms (e.g., “mutual recognition” and “equivalence”) could require the U.S. to automatically allow products that pass as climate-friendly in other countries (e.g., ostensibly low-emissions Volkswagen cars) to be sold as such in the U.S. without further testing.<sup>30</sup> This would undercut the government’s duty to tackle climate change.</p>	<p><b>Prioritizes policies that minimize climate pollution:</b></p> <p>No “trade impact test” should be established in trade deals. Instead, new deals should establish public interest criteria for policymaking, including a <b>“climate impact test”</b> in which environmental ministries are required to calculate, report, and consider the potential impact of proposed policy options on greenhouse gas emissions.</p> <p>Trade pacts should not facilitate trade in products that could undercut established climate or other public interest policies. This means <b>excluding “mutual recognition” or “equivalence” requirements</b> from trade deals. Efforts to “harmonize” regulations in a trade pact would only be acceptable if changes were democratically enacted and resulted in stronger – not weaker – regulations in signatory countries.</p>

Old Trade Model	Climate-Friendly Trade Model
<p><b>11. Fails to enforce environmental provisions:</b></p> <p>Though all U.S. trade deals since 2007 have subjected environmental provisions to state-state dispute settlement, this “enforcement” mechanism has failed to produce a single formal case against documented environmental violations.<sup>31</sup></p> <p>The Office of the U.S. Trade Representative, for example, has refused to respond to repeated requests from environmental groups to use the U.S.-Peru trade deal’s supposedly “enforceable” environmental provisions to curb Peru’s clear rollbacks in environmental protection and widespread illegal logging.<sup>32</sup></p> <p>No existing U.S. trade or investment deal allows the communities affected by such environmental abuses, nor any public interest groups, to directly challenge the governments or investors that are committing the violations.</p>	<p><b>Uses an independent, binding enforcement system:</b></p> <p>To effectively enforce a trade deal’s public interest commitments, including the climate-related obligations in this chart, these provisions should be subject to <b>a new dispute settlement system</b> with these elements:</p> <ul style="list-style-type: none"> <li>• <b>Investigation:</b> An independent body of issue-area experts (e.g., climate scientists) should continuously monitor governments’ and foreign investors’ compliance with a trade deal’s climate and other public interest obligations. Communities protected by those obligations, along with public interest groups, also should be able to petition relevant government ministries to investigate.<sup>33</sup></li> <li>• <b>Disputes:</b> If a signatory government or foreign investor is not complying with its climate or other public interest obligations under a trade pact, affected communities, public interest groups, and the independent body should be able to directly challenge the non-compliance in a deciding body.<sup>34</sup> Signatory governments also should be able to use this body to challenge other governments’ non-compliance. Affected communities and public interest groups should have access to technical support from the independent body for such challenges.</li> <li>• <b>Decisions:</b> The body that decides challenges of governmental or investor non-compliance should be composed of issue-area experts (e.g., climate scientists) from academic or civil society institutions, bound by strong and enforceable impartiality and transparency rules. Their decisions should follow legal precedent and be subject to appeal to a body of academic or civil society issue-area experts bound by the same rules.</li> <li>• <b>Enforcement:</b> The rulings of the deciding body should be subject to the same sanctions used to enforce the commercial provisions of a pact. Any resulting tariff or cash revenue should go to the communities most affected by the infraction.<sup>35</sup></li> </ul>

# MITIGATE THE CLIMATE IMPACTS OF TRADE

Old Trade Model	Climate-Friendly Trade Model
<p><b>12. Cuts tariffs on climate-polluting goods:</b></p> <p>Status quo trade deals indiscriminately cut countries' remaining tariffs, regardless of the potential impact on greenhouse gas emissions. The TPP, for example, would have:</p> <ul style="list-style-type: none"> <li>• Reduced tariffs on palm oil, encouraging greater expansion of oil palm in TPP member Malaysia, where it is the primary cause of carbon-emitting deforestation.</li> <li>• Reduced beef tariffs in leading beef-importing nations like Japan, encouraging greater beef production in countries like the U.S. where the meat industry is particularly greenhouse gas-intensive.</li> <li>• Eliminated tariffs on refrigerants that use hydrofluorocarbons, spurring greater production of these potent climate pollutants.</li> <li>• Eliminated the few remaining tariffs on coal products between TPP countries, incentivizing greater production of these carbon-intensive goods.<sup>36</sup></li> </ul> <p>Some trade deals propose to cut tariffs on “environmental goods.” But with no clear criteria for what constitutes an “environmental good,” such deals risk encouraging trade that would actually harm the environment.<sup>37</sup> In addition, such deals remove the possibility of using tariffs as tools to help cultivate domestic renewable energy industries, which can help strengthen the push for climate action.</p>	<p><b>Uses tariffs to incentivize climate-friendly trade:</b></p> <p>A new trade model should <b>increase tariffs on fossil fuels</b>. To allow for this, the WTO should adopt an indefinite “peace clause” on disputes related to such tariffs. Countries should take measures to offset the impact of these tariff increases on vulnerable communities. For fossil fuel sectors dependent on exports, this could include investing in alternative jobs, training, and benefits for workers. In addition, countries with low historical climate emissions should have longer to increase their fossil fuel tariffs, and the requirement to do so should be contingent on the transfer of technology and financing from high historical emitters.</p> <p>Trade agreements also should employ a <b>“public interest screen” that includes climate-friendly criteria</b> to determine which goods should be subject to potential tariff reductions. Goods whose production is found to cause significant greenhouse gas emissions in a negotiating country (e.g., palm oil in Malaysia) should be excluded from the list of tariff reductions that could be granted to that country. This would incentivize countries to mitigate key sources of climate emissions before negotiating trade deals in order to qualify for tariff reductions.</p> <p>Meanwhile, trade deals should allow governments to use tariffs and related tools (e.g., variable import levies) to achieve a balance between lowering the costs of renewable energy goods (e.g., solar panels and wind turbines) and cultivating domestic renewable energy production.</p>

Old Trade Model	Climate-Friendly Trade Model
<p><b>13. Encourages fossil fuels trade:</b></p> <p>Status quo trade agreements perpetuate global fossil fuel dependency and undercut domestic climate policies by:</p> <ul style="list-style-type: none"> <li>• Prohibiting export and import restrictions on fossil fuels (e.g., bans), which deprives governments of tools to limit their production.<sup>38</sup></li> <li>• Requiring automatic exports of gas. U.S. law states that the Department of Energy (DOE) must determine whether liquefied natural gas (LNG) exports are in the public interest.<sup>39</sup> But DOE is required to forego this analysis and automatically approve all LNG exports for any countries with which the U.S. has a trade pact requiring “national treatment for trade in natural gas”<sup>40</sup> – a feature of most current and proposed U.S. trade agreements.<sup>41</sup> This locks in dependency on a fossil fuel with high greenhouse gas emissions, while incentivizing increased fracking and fossil fuel infrastructure.<sup>42</sup></li> </ul>	<p><b>Restricts fossil fuels trade:</b></p> <p>Climate friendly deals should <b>require export and import controls on fossil fuels</b> so that domestic efforts to stop climate pollution do not result in greater pollution abroad. Signatory countries should take measures to offset the impact of these restrictions on vulnerable communities, such as by investing in alternative jobs, training, and benefits for fossil fuel workers. In addition, signatory countries with low historical climate emissions should have longer to implement this requirement, which should be contingent on the transfer of technology and financing from high historical emitters. (As an alternative to requiring export and import controls, trade rules should at least include an exception to allow governments to use such restrictions to limit trade in fossil fuels.)</p> <p>Trade agreements also should <b>exclude “national treatment” for trade in gas</b> in order for DOE to retain its ability to analyze the public interest impacts of exporting gas.</p>
<p><b>14. Escalates shipping and aviation emissions:</b></p> <p>Status quo trade deals have spurred increased shipping and aviation-related emissions by incentivizing the offshoring of production (and jobs) from higher-wage consuming countries like the U.S. to distant lower-wage countries. (Such offshore destinations also tend to have more carbon-intensive production<sup>43</sup> – see box 15 for more on this problem.)</p> <p>Shipping-related emissions are expected to grow by 50 to 250 percent by 2050, driven largely by growth in demand for traded goods – the stated objective of trade deals.<sup>44</sup> Such deals are also likely to increase aviation emissions, as cargo planes are also used for trade in some goods. Despite this, existing U.S. trade pacts have not included limits on shipping or aviation-related climate emissions.</p>	<p><b>Limits shipping and aviation emissions:</b></p> <p>Climate-friendly trade deals should include explicit requirements to reduce shipping and aviation-related emissions so as to counterbalance any resulting increase in goods trade. For example, for each shipment of goods between a trade deal’s signatory countries, the deal could <b>make tariff reductions for those goods contingent</b> on the shipping or aviation vessel:</p> <ul style="list-style-type: none"> <li>• Meeting design efficiency requirements that exceed those of the International Maritime Organization or International Civil Aviation Organization;</li> <li>• Using alternative, renewable energy sources;<sup>45</sup> or</li> <li>• Employing more fuel-efficient practices.</li> </ul> <p>Goods transported on ships and planes meeting such requirements would benefit from the trade deal’s tariff cuts, while those transported on non-compliant vessels could be subject to tariff increases. Countries with low historical climate emissions should have longer to implement this requirement with respect to their exports, and the requirement should be contingent on the transfer of technology and financing from high historical emitters.</p>



Old Trade Model	Climate-Friendly Trade Model
<p><b>15. Facilitates emissions leakage:</b></p> <p>One impediment to strong climate action in many countries is the fear that greenhouse gas restrictions would put domestic firms at a competitive disadvantage <i>vis a vis</i> firms in countries with weaker climate standards.</p> <p>The result of this imbalance could be increased offshoring of jobs and “carbon leakage,” in which domestic climate standards are rendered less effective as production of greenhouse-gas-intensive goods shifts to countries without such standards.<sup>46</sup></p> <p>No existing U.S. trade deal has attempted to address this problem, despite its frequent citation as a reason not to enact bolder climate policies in the U.S., and despite that trade deal tariff reductions can incentivize companies to shift production to low-wage countries with weaker climate standards.</p>	<p><b>Creates incentives to tackle emissions:</b></p> <p>For trade to become a tool for emissions mitigation rather than a source of emissions leakage, trade deals should include a “border adjustment” mechanism with these components:</p> <ul style="list-style-type: none"> <li>• A <b>climate duty</b> should be imposed on imports of goods whose embodied greenhouse gas content (the emissions associated with producing that category of good in the country of production) exceeds a stipulated threshold.<sup>47</sup></li> <li>• An independent panel of climate scientists and economists could calculate the embodied emissions for each category of goods in each signatory country, with regular revisions to account for countries’ policy and technological changes.</li> <li>• Least Developed Countries and countries with insignificant historical climate emissions should qualify for exemptions from this climate duty.</li> </ul> <p>This climate duty would help:</p> <ul style="list-style-type: none"> <li>• Ensure that stronger climate protections are not undercut by the offshoring of production.</li> <li>• Build broader and stronger support for climate mitigation policies in the U.S. and other countries.</li> <li>• Provide an incentive for high-emissions trading partners to do more to tackle climate pollution.</li> </ul>

# A NEW, PUBLIC PROCESS FOR NEGOTIATING TRADE AGREEMENTS

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To achieve climate-friendly trade rules such as those proposed above, it also will be necessary to replace the opaque, corporate-dominated system for negotiating U.S. trade deals with one that grants the U.S. public, and groups that defend their interests, full access to negotiating texts and meaningful opportunity to influence trade negotiations. To that end, we suggest the following:

## 1. Ending the closed-door system of corporate trade

**advisors:** Since the 1970s, U.S. trade negotiators have used largely the same system of official trade “advisors” to influence the content of trade deals. About 85 percent of these more than 500 advisors explicitly represent corporations,<sup>48</sup> while just 1 percent represent environmental groups.<sup>49</sup> For example, during the TPP negotiations, the energy advisory committee included representatives from Chevron, fracking pioneer Halliburton, and the National Mining Association, which represents coal corporations. These mostly corporate advisors get privileged access to U.S. trade proposals and are invited to suggest changes before they are proposed by U.S. trade negotiators. The public, including the communities most impacted by trade agreements, is barred from seeing, much less commenting on, these proposed trade rules, which would impose binding restrictions on U.S. environmental, health, labor, and other public interest laws. A new system for negotiating trade agreements is long overdue.

## 2. Inviting the public to shape U.S. trade proposals:

For trade agreements to reflect the public interest, the public needs to be able to see and shape the deals’ proposed content. Indeed, to create most U.S. regulations, U.S. agencies must publish proposed policies, solicit public comments on the proposals,

and respond to those comments before developing final regulations.<sup>50</sup> If we are invited to see and shape domestic policy proposals that would impact us, should we not be allowed to see and shape trade policy proposals that would do the same? In future trade negotiations, the U.S. Trade Representative should invite public input on what to include in U.S. proposals for an agreement, publish online draft textual proposals that are informed by that input, and solicit and respond to public comments on the drafts before publishing the final proposals.

**3. Making trade negotiations transparent:** The U.S. public has been barred not only from seeing the initial U.S. proposals for trade agreements, but the draft texts of the deals themselves, which change after each round of negotiation. The negotiated texts for the TPP, for example, were kept secret for over seven years of negotiations, forcing environmental organizations, unions, public health groups, and the public at large to rely on delayed and unverified leaks to have an idea of the binding trade rules that were being discussed. Such opacity runs the risk of negotiators agreeing to trade rules that undermine protections for our communities, jobs, air, water, and climate. To keep trade negotiators accountable to such public interests, the public must have access to the draft texts that will be on the negotiating table. The U.S. should condition its participation in future trade negotiations on agreement by all involved countries that all consolidated negotiating texts and textual proposals will be made public online after each negotiating round.

# CONCLUSION

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For decades, multinational corporations have disproportionately shaped U.S. trade deals, resulting in pacts that cater to their profit-making interests over society's needs. But it does not have to be this way. If trade policy objectives could be aligned with the interests of the majority, trade pacts could help society tackle some of its biggest challenges.

With climate change as a defining challenge of our time, the need to revamp our approach to trade becomes all the more urgent. A problem as pressing and systemic as climate change requires a comprehensive and coherent policy response, not more steps backwards. As we push for a swift transition to renewable energy, we cannot afford a decades-old trade model that advances the cause of fossil fuel proliferation.

Now, more than ever, it is critical that we stake out a progressive alternative to the status quo trade model that aligns with climate imperatives. We will enter 2017 with unprecedented opposition to the old model and a rare break from the perennial fights over polluter-friendly trade deals. With the halting of the TPP, we have the responsibility to ensure that the next trade model is one centered on people and planet. Doing so will require further envisioning, broad consultation to refine and combine proposals such as those in this paper, and an expansion of the grassroots power needed to turn fresh ideas into trade policy realities. This effort will require many minds and voices—please join us in building a new approach to trade that puts people over profits.

# ACKNOWLEDGMENTS

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# ENDNOTES

1. Throughout this discussion paper, we define “public interest” policies as measures related to achieving objectives such as environmental protection; human health; public and consumer safety; financial stability; protection of essential freedoms; social or economic equality; access to technology; economic development; and protection of the rights of workers or of historically disadvantaged groups.
2. Throughout this discussion paper, we define “renewable energy” as sustainable, low-impact forms of solar, wind, geothermal, and hydro power. We do not support most forms of large-scale biomass electricity, corn-based ethanol, or landfill gas production. We do support some forms of sustainable biofuels. “Renewable energy” does not include any form of energy produced from nuclear plants, coal, oil, or gas (including hydrocarbon gas liquids and methane hydrates). For more information, see [www.sierraclub.org/policy](http://www.sierraclub.org/policy).
3. Prior efforts to rethink prevailing trade rules include: [Alternatives to Economic Globalization](#), by the International Forum on Globalization, 2002; [Alternatives for the Americas](#), by the Hemispheric Social Alliance, 2002; [Trade as if People and Earth Matter](#), by the Interfaith Working Group on Trade and Investment, 2008; the [Trade Reform, Accountability, Development, and Employment Act of 2009](#) (pushed by a broad array of U.S. civil society groups, introduced by Representative Mike Michaud, and co-sponsored by more than 100 members of Congress); [The Alternative Trade Mandate](#), by a broad array of European civil society groups, 2013; [A Call for the Building of an Alternative Legal Framework to the International Investment Treaties](#), by the Working Group on Investment of the Americas, 2014; [Global Rules for Mutually Supportive and Reinforcing Trade and Climate Regimes](#), by the International Centre for Trade and Sustainable Development and the World Economic Forum, 2016; [Investment-Related Dispute Settlement: Towards an Inclusive Multilateral Approach](#), by the International Institute for Sustainable Development, 2016; and [The Trade System and Climate Action: Ways Forward under the Paris Agreement](#), by Climate Strategies, 2016.
4. In the more than two decades of the WTO, only one attempt to use the “general exception” to defend a challenged policy has succeeded. U.S. trade agreements typically replicate the weak language of the “general exception,” and do not even allow governments to use the provision for the trade rules for which an exception is most needed (e.g., the broad rules of the investment chapter). Public Citizen, [“Only One of 44 Attempts to Use the GATT Article XX/GATS Article XIV ‘General Exception’ Has Ever Succeeded,”](#) August 2015. The WTO general exception can be found at: World Trade Organization, [“The General Agreement on Tariffs and Trade \(GATT 1947\),”](#) 1947, Article XX; and World Trade Organization, [“General Agreement on Trade in Services,”](#) 1995, Article XIV.
5. As mentioned, we define “public interest” policies as measures related to achieving objectives such as environmental protection; human health; public and consumer safety; financial stability; protection of essential freedoms; social or economic equality; access to technology; economic development; and protection of the rights of workers or of historically disadvantaged groups.
6. For example, see Office of the U.S. Trade Representative, [TPP Full Text](#), Chapter 9. The TPP investment rules largely replicated those included in past U.S. trade deals. For discussion of these rules and the threats they pose to climate and environmental protections, see Ilana Solomon and Ben Beachy, [“A Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate,”](#) The Sierra Club, December 2015, at 4-9.
7. A recent study of ISDS cases brought under the rules of the International Centre for Settlement of Investment Disputes (ICSID – the rules system used for a majority of ISDS cases) finds that 63 percent of tribunalists in existing cases have been full-time private lawyers. Michael Waibel and Yanhui Wu, [“Are Arbitrators Political?”](#) University of Bonn, 2012, at 27.
8. TransCanada, for example, launched an ISDS case against the U.S. in June 2016 to demand \$15 billion for the rejection of the Keystone XL pipeline. *TransCanada Corporation & TransCanada PipeLines Limited v. The Government of the United States of America*, [Request for Arbitration](#), June 24, 2016. For more information, see Ben Beachy, [“The Corporation behind Keystone XL Just Laid Bare the TPP’s Threats to Our Climate,”](#) *The Huffington Post* blog, The Sierra Club, January 7, 2016.
9. According to United Nations data, 71 of the 300 publicly-available ISDS cases launched from 2011 through 2015 stemmed from investments in mining, oil and gas extraction, or fossil fuel power generation. United Nations Conference on Trade and Development, [“Investment Dispute Settlement Navigator,”](#) accessed October 2016.
10. “Clear discrimination” should be limited to discrimination that is clear in both intent and effect. This protection would not apply to government measures that inadvertently affect foreign investors more than domestic ones. In addition, it would not apply to buy local policies related to renewable energy, as stated in box 3.
11. Tangible property should include real property and goods typically classified as tangible personal property in the host state’s domestic legal system.
12. These foreign investor protections are included in most U.S. trade and investment deals. For an analysis of the threats they pose to environmental protections, see Ilana Solomon and Ben Beachy, [“A Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate,”](#) The Sierra Club, December 2015, at 6-7.
13. A 2015 study finds that 23 U.S. states have alternative energy programs with buy local provisions. Regarding the utility of buy local provisions in renewable energy, the study concludes: “Local governments internalize few of the benefits from providing global public goods, such as reducing greenhouse gas emissions through costly investments in renewable energy



- technology. Local efforts to address global public goods problems thus have to be linked to a concentrated benefit within the enacting jurisdiction. Protectionist measures that discriminate against foreign products provide this link, mobilizing local economic interests to pass global public goods programs that create benefits in other jurisdictions. Reforming international trade law to allow these linkages is imperative if local governments are to continue to play a role in solving global problems.” Timothy Meyer, [“How Local Discrimination Can Promote Global Public Goods,”](#) *Boston University Law Review*, 95: 1939, October 14, 2015.
14. The rule commonly found to conflict with buy local programs can be found here: World Trade Organization, [“The General Agreement on Tariffs and Trade \(GATT 1947\),”](#) 1947, Article III.4.
  15. For details on these cases, and the specific buy local programs in the U.S. that India is challenging, see Ben Beachy, [“Wait, Why Is The World Trade Organization Attacking Renewable Energy?”](#) *The Huffington Post* blog, The Sierra Club, September 30, 2016.
  16. World Trade Organization, [“Agreement on Technical Barriers to Trade,”](#) 1995, Article 2.1 and 2.2. For discussion of these rules and the threats they pose to environmental protections, see Ilana Solomon and Ben Beachy, [“A Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate,”](#) The Sierra Club, December 2015, at 12.
  17. These broad “market access” rules, and the “national treatment” rules described in the following paragraph, are both part of the WTO’s General Agreement on Trade in Services (GATS): World Trade Organization, [“General Agreement on Trade in Services,”](#) 1995, Article XVI and Article XVII. While most U.S. energy-related services are not bound to such rules under the GATS, the Trade in Services Agreement (TISA), currently under negotiation, includes an energy chapter and largely replicates the “market access” and “national treatment” rules from the GATS, suggesting that these rules could become binding on further areas of the U.S. energy sector if TISA were to take effect. For TISA’s replication of these rules, see the leaked June 2016 TISA core text: Trade in Services Agreement, [“Draft Provisions,”](#) June 21, 2016, Article I-3 and Article I-4. For a broader analysis of TISA’s threats to climate and other energy-related policies, see Victor Menotti, [“TISA vs. Climate Action: Trading Away Democracy,”](#) Public Services International, May 2016. For examples of threats that the GATS “market access” and “national treatment” rules pose to public interest policies in various non-energy sectors, see Public Citizen, [“Public Citizen’s GATS Directory,”](#) accessed October 2016.
  18. This policy space could be preserved by excluding status quo “market access” rules for trade in services, curtailing those rules, and/or not subjecting fossil fuel sectors to the rules. In addition, were any “market access” protections for services to be included in an agreement, electric utilities should only get such protections if the signatory countries adopt climate-friendly utility requirements such as net metering, renewable portfolio standards, or feed-in tariffs.
  19. Additional protection for such policies would be provided by the carve-out for climate and other public interest policies, described in box 1.
  20. Though the TPP has been halted, the text of the deal still offers a guide for how status quo trade deals, based on the same template as the TPP, can exacerbate greenhouse gas emissions. For a summary, see Ilana Solomon and Ben Beachy, [“A Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate,”](#) The Sierra Club, December 2015, at 11.
  21. For more on the importance of this “adopt, maintain, and implement” requirement, which the TPP failed to include with regard to the Montreal Protocol, see The Sierra Club, [“TPP Text Analysis: Environment Chapter Fails to Protect the Environment,”](#) November 2015.
  22. Since 2009, at least five WTO members (Canada, China, the European Union, India, and the U.S.) have faced WTO disputes over their renewable energy programs on the basis that they violate WTO subsidy rules. Paolo Davide Farah and Elena Cima, [“World Trade Organization, Renewable Energy Subsidies and the Case of Feed-In Tariffs: Time for Reform Toward Sustainable Development?”](#) *Georgetown International Environmental Law Review*, 27: 1, December 1, 2015, at 525-528; and World Trade Organization, [“United States – Certain Measures Relating to the Renewable Energy Sector,”](#) accessed November 2016. The WTO subsidy rules typically at issue in these cases can be found at: World Trade Organization, [“Agreement on Subsidies and Countervailing Measures,”](#) 1995, Articles 3, 5, and 6.
  23. Oil Change International estimates that G20 governments alone provide \$444 billion annually in fossil fuel subsidies. Elizabeth Bast, et al., [“Empty Promises: G20 Subsidies to Oil, Gas and Coal Production,”](#) Oil Change International, November 2015, at 11.
  24. China Ministry of Foreign Affairs, [“G20 Leaders’ Communiqué Hangzhou Summit,”](#) September 6, 2016.
  25. For discussion of these rules and the threats they pose to environmental protections, see Ilana Solomon and Ben Beachy, [“A Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate,”](#) The Sierra Club, December 2015, at 12. These rules form part of the plurilateral Agreement on Government Procurement: World Trade Organization, [“Revised Agreement on Government Procurement,”](#) Article X.1. The TPP replicated the rules: Office of the U.S. Trade Representative, [TPP Full Text](#), Article 15.12.1.
  26. As an example of excessive intellectual property protections, see the text of the TPP: Office of the U.S. Trade Representative, [TPP Full Text](#), Chapter 18. A variety of studies have found that patent protections pose a significant “impediment,” if not the primary barrier, to the dissemination of renewable energy technology. United Nations Environment Programme, European Patent Office, and the International Centre for Trade and Sustainable Development, [“Patents and Clean Energy: Bridging the Gap between Evidence and Policy,”](#) 2010, at 20-21.

27. This refers to the investment rules against performance requirements found in most U.S. trade agreements. See, for example, the TPP investment chapter, which largely replicated these rules from past U.S. trade pacts: Office of the U.S. Trade Representative, [TPP Full Text](#), Article 9.10.
28. For developed countries, restrictions on technology transfer or research and development policies could apply to renewable energy technologies for an initial investment period, while for developing countries they should not apply to these technologies at any point.
29. The requirement for a trade impact test can be found in what the EU identifies as its current TTIP proposal regarding regulatory cooperation: European Union, "[TTIP- EU proposal for Chapter: Good Regulatory Practices](#)," March 21, 2016, Article 8.4.c. For an analysis of the leaked consolidated TTIP negotiating text on regulatory cooperation from April 2016, revealing additional threats to public interest policymaking, see Robert Weissman, "[Leaked TTIP Documents: Threats to Regulatory Protections](#)," Public Citizen, May 2, 2016.
30. While the U.S. Environmental Protection Agency has taken action to penalize Volkswagen for cheating on emissions tests, evidence suggests that the company, and its competitors, have been engaging in similar cheating in Europe without penalization. This has spotlighted the relative weakness of the EU's emissions testing regime, in comparison with that of the U.S. But were a trade deal like TTIP to establish "mutual recognition" of such testing, the U.S. government would be required to automatically accept the testing results of the EU rather than testing European vehicles' emissions itself, making it more difficult to catch emissions cheating such as that practiced by Volkswagen. For a summary of the relevance of the emissions cheating scandal to TTIP and mutual recognition, see Cecile Toubeau, "[The VW Scandal and What Does It Mean for TTIP?](#)" Transport and Environment, September 24, 2015. For an explanation of mutual recognition, equivalence, and harmonization, see Trans Atlantic Consumer Dialogue, "[TACD Briefing Paper on Mutual Recognition Agreements \(MRA's\)](#)," March 2001. The EU has included a push for mutual recognition, equivalence, and harmonization in its proposed TTIP chapter on regulatory cooperation: European Union, "[TTIP- EU proposal for Chapter: Regulatory Cooperation](#)," March 21, 2016, Article x5.1.
31. The TPP, for example, largely replicated this dispute settlement mechanism: [TPP Full Text](#), accessed October 2016, Article 20.23.
32. For a summary of these environmental abuses in Peru and the non-responsiveness of the Office of the U.S. Trade Representative, see Ilana Solomon, "[The Peru Trade Deal Turns 10: The Consequences of Irresponsible Trade Past, Present, and Future](#)," *The Huffington Post* blog, April 12, 2016.
33. Signatory governments should provide the financing required for the operation of the independent body, which includes funding the technical support provided for challenges initiated by communities or public interest groups. Governments should be required to contribute to the budget of the independent body in proportion to their historical greenhouse gas emissions.
34. This proposed new trade model would give communities and public interest groups direct access to tribunals to challenge governments' or investors' non-compliance with a trade pact's climate and other public interest obligations, but would not give foreign investors such access to challenge governmental non-compliance with a trade pact's investor protections (given the elimination of ISDS). This is an intentional privileging of obligations to protect the public interest over obligations to protect individual corporations' private interests. Public interest protections warrant such privileging given that they afford benefits that are more broadly shared. In addition, most multinational corporations already have ample tools at their disposal (e.g., risk insurance) to protect their interests.
35. For cases in which the deciding body finds that a foreign investor has not complied with its obligations, the preferred form of penalty is targeted trade sanctions, imposed by the host government on the investor found to be non-compliant. For cases in which the deciding body finds that a signatory government has not complied with its obligations, the preferred form of penalty will depend on the party that brought the case. If the party bringing the case is another signatory government, a foreign affected community, or a foreign public interest group, the preferred form of penalty is targeted trade sanctions, imposed by the home country of the party bringing the case, on the specific industry benefiting from government non-compliance (e.g., fossil fuel industries benefiting from non-compliant maintenance of fossil fuel subsidies). If the party bringing the case against the government is a domestic affected community or public interest group, the preferred form of penalty is cash payment to the communities affected by the non-compliance. If the party bringing the case is the independent investigating body, the preferred form of penalty will depend on whether the case was brought on behalf of domestic communities and public interest groups (in which case cash payments are preferred) or foreign communities and public interest groups (in which case the preference is for targeted trade sanctions imposed by their government). In any case in which the preferred form of penalty is for a signatory government to impose targeted trade sanctions, but that government does not wish to impose sanctions, the government should publish its reasons for this decision, and the deciding body should order the non-compliant government or investor to instead give cash payments to the affected communities.
36. Office of the U.S. Trade Representative, [TPP Full Text](#), accessed October 2016, Annex 2-D.
37. Indeed, the Environmental Goods Agreement suffers from this lack of definition. See Ben Beachy, "[Comments Regarding the EGA Environmental Review](#)," The Sierra Club, February 1, 2016.
38. The World Trade Organization, "[The General Agreement on Tariffs and Trade \(GATT 1947\)](#)," 1947, Article XI.
39. [15 U.S.C. § 717b\(a\)](#).

40. [Energy Policy Act of 1992](#), Public Law No. 102-486, Sec. 201.
41. The TPP, for example, replicated the standard language included in past U.S. trade pacts: [TPP Full Text](#), accessed October 2016, Article 2.3 and Annex 2-A. For TTIP, the EU has proposed that the deal should “eliminate all existing restrictions on the export of natural gas.” European Union, “[EU Textual Proposal: Energy and Raw Materials](#),” July 14, 2016, at 1.
42. For a summary of this problem, see Ilana Solomon and Ben Beachy, “[A Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate](#),” The Sierra Club, December 2015, at 9-10.
43. For example, the U.S. International Trade Commission projected that the TPP would spur a shift in certain manufacturing output from the U.S. to Vietnam and Malaysia, where manufacturing is six times as carbon intensive, and twice as carbon intensive, respectively, as in the U.S. “[Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors](#),” U.S. International Trade Commission, May 2016. These figures reflect calculations, with the most reliable data known to be available, of the approximate carbon intensity of manufacturing in each country: the total carbon emissions from manufacturing industries and construction (including from those industries’ electricity consumption) in 2013, divided by the total value-added manufacturing output in that year. Data on carbon emissions of manufacturing industries and construction from International Energy Agency, “[CO2 Emissions from Fuel Combustion: Highlights](#),” 2015, at 69-71. Data on value-added manufacturing output from The World Bank, [World Development Indicators](#), accessed July 2016.
44. International Maritime Organization, “[Reduction of GHG Emissions from Ships](#),” July 25, 2014, at 13 and 34.
45. An increasing number of shipping companies are developing and using wind power to reduce fuel use and emissions. While currently limited, use of wind power on cargo ships is expected to grow. Linus Mofor, Peter Nuttall, and Alison Newell, “[Renewable Energy Options for Shipping](#),” International Renewable Energy Agency, January 2015.
46. A review by the Congressional Budget Office concluded, “Studies of economywide programs have produced estimates of leakage ranging from 1 percent to 23 percent of the emission reduction the programs would achieve in the countries implementing them.” Bruce Arnold, “[International Trade and Carbon Leakage](#),” Congressional Budget Office, December 2013.
47. Such climate duties could be challenged as violations of various WTO non-discrimination rules, such as this “national treatment” provision: World Trade Organization, “[The General Agreement on Tariffs and Trade \(GATT 1947\)](#),” 1947, Article III:2. To avoid the risk of such disputes, WTO rules should be altered to make clear that such climate duties are compliant. As an alternative, WTO members could adopt a “peace clause” that indefinitely bars challenges of such climate duties.
48. During the TPP negotiations, *The Washington Post* calculated that about 85 percent of the advisors represented corporations or industry associations. Howard Schneider, “[Trade Deals a Closely Held Secret, Share by More than 500 Advisers](#),” *The Washington Post*, February 28, 2014.
49. During the TPP negotiations, just seven of 582 advisors represented environmental organizations. Office of the U.S. Trade Representative, “[Advisory Committees](#),” accessed July 2015.
50. Office of the Federal Register, “[A Guide to the Rulemaking Process](#),” 2011.





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