

TTIP: a box of tricks for corporate climate criminals

This winter, governments of the world are coming together for the UN climate talks in Paris, COP21. Avoiding dangerous climate change requires us to leave at least 80% of fossil fuels in the ground. That means an enormous transition in our economies, the kind of energy we use, and the way we use it. Doing so, however, needs strong public leadership based on rules to reign in the corporations heavily invested in the polluting status quo.

Yet a free trade agreement threatens to take us in exactly the opposite direction, putting a stranglehold on our ability to create the

energy transition required to tackle climate change. TTIP, the Transatlantic Trade and Investment Partnership currently under negotiation between the US and the EU, gives corporations extensive new rights that could kill at birth any prospective climate solutions – and lock us into business as usual.

Laws that could deliver a fair and just energy transition, for example on financial flows, energy efficiency or strict environmental standards, could be seen as trade treaty violations. Such climate-friendly laws could be overturned or never even see the light of day if the US and EU sign up to TTIP.

Two aspects of TTIP are a particular threat to transforming our energy systems in Europe and the US.

ISDS (Investor-State Dispute Settlement) would allow corporations to sue governments in private tribunals over laws – such as those that protect the climate – they see as affecting projected future profits.

'Regulatory Cooperation' would require existing and future laws and regulations

to not 'get in the way' of transatlantic trade. Corporations would enjoy a privileged inside track, allowing them to co-write legislation and push back against proposed climate or other public interest policies.

While understandably, the highly controversial ISDS has been getting a lot of attention (see box), the lesser known aspect of TTIP, Regulatory Cooperation, poses an even greater threat to meaningful climate policies.

Regulatory Cooperation: corporations shape the rules

'Regulatory cooperation' sounds harmless enough. It's presented merely as a way for the EU and US to get their different rules in line with one another to help transatlantic trade. But in reality it offers a box of tricks for corporate attacks on regulations, both

existing ones and future ones, including those we will need to reduce fossil fuel use and transition to a low carbon economy. Regulatory cooperation in TTIP would be overseen by a transatlantic Regulatory Cooperation Body (see picture).

Free trade agreements are already having a disastrous impact on climate change regulations

The European Union could have penalised the extraction of the most polluting oils, such as tar sands. Instead, the Canadian tar sand lobby succeeded in convincing the European Commission to scrap this proposal and keep treating tar sands as conventional oil, despite their disastrous social, environmental and climate impact. They used the context of the negotiations of the free trade agreement between Canada and the EU (CETA) to increase pressure on EU decision makers. The new tar sands penalisation would have been a 'barrier to trade' according to the polluters. Unfortunately the EU happily complied with the demands. Thanks to regulatory cooperation, soon available to big polluters, this type of anti-climate lobbying will be strengthened and institutionalised.

The gift that keeps us polluting

US State

Washington

Brussels

EU
Member
State

Big Business

Citizens

National Parliaments

US and EU Regulators

Regulatory Cooperation Body

FUTURE REGULATIONS




The corporate power-grab that is regulatory cooperation has far reaching implications for both the climate, and the democratic process.

Regulatory cooperation comes from two of the world's most powerful corporate lobby groups, BusinessEurope and the US Chamber of Commerce, giving industry the opportunity, as they put it, to “essentially co-write regulation”¹.

The US Chamber of Commerce even described regulatory cooperation with satisfaction as the “gift that keeps on giving”².

Any rules that threatened the bottom line of business – for example strict energy efficiency standards, or financial rules on dirty energy – could be strangled by business lobbies before they are even debated by parliaments or the public.

 **Let's take a look at how** regulatory cooperation would work, using hypothetical examples from both sides of the Atlantic:

Impact on business prioritised

Example Imagine the US wanted to ramp up the energy efficiency of electrical appliances.

Tactic With regulatory cooperation, the US would have to undertake an assessment on how their new regulations could affect transatlantic trade, in addition to existing impact assessments.

Result The trade-related impact assessment could provide a useful counter-weapon for industry lobbying, but crucially would massively delay the process, allowing industry more time to campaign against it. Through regulatory cooperation, trade is enshrined above climate impacts or indeed the public interest, skewing the regulatory process.

¹ <http://corporateeurope.org/sites/default/files/commission-assessment-bechamber-paper.pdf>

² <http://corporateeurope.org/sites/default/files/the-gift-that-keeps-on-giving.pdf>



Corporate lobby head start

Example Imagine Germany decided to change its banking rules, to make it more expensive to invest in the dirty coal.

Tactic Big business in the US has the right to directly comment if a law is good for climate but bad for transatlantic trade (read: business). In this case, coal and finance companies could intervene to claim new rules are a 'trade barrier'.

Result The right to comment means industry has seen and amended a law before it even reaches parliament, as otherwise it could be in violation of TTIP. Commenting – even if the comments are not taken on board – means early access to draft laws and therefore ample time to hone a lobby strategy. It's clear that regulatory cooperation is being designed to protect trade and not the public interest,

Businesses tangle up regulations they dislike



which is why the Regulatory Cooperation Body overseeing it operates so far from democratic oversight.

Business access to 'co-write' rules

Example Imagine the EU tightens its industrial emissions directive to reduce CO2 from the cement sector.

Tactic Big business would have the right to put forward its own alternative, 'trade-friendly' regulations to the Regulatory Cooperation Body. US cement companies could claim the original measure was a barrier to investment, and instead argue the EU's failed carbon market, the EU ETS, was already sufficient with an additional financial incentive for 'innovation'.

Result The cement industry – one of the biggest emitters – would avoid tougher regulations while the public subsidised what they should do anyway. Meanwhile, climate change rolls on.

Exactly those companies that need to be regulated to tackle the climate crisis are being invited to directly shape the regulatory agenda in their own interest.

Lower safety regulations, bigger profits

Example Imagine Washington wanted to tighten up safety regulations around fracking.

Tactic Instead of the onus being on business to prove products and processes such as fracking are safe, governments will have to prove they



are unsafe. So EU fracking companies can question the existing science and demand further studies.

Result This not only massively delays the process, but it is very difficult to conclusively prove something is harmful in an age when industry-funded research conveniently proves the opposite. Worryingly for Europe, this could reverse the entire basis of its safety laws (the precautionary principle) and would allow businesses to keep selling their products without being able to prove they are safe. This undoubtedly fuels a 'race to the bottom', where regulations on both sides of the Atlantic are relaxed.

When in doubt, threaten to sue for millions

Example Imagine that after a big scandal on car manufacturers cheating vehicle CO₂ emissions tests, the European Union wanted to immediately introduce tougher testing procedures.

Tactic Big business can drop in the threat of ISDS during a regulatory cooperation dialogue, so that if the introduction of tougher testing procedures was not stopped there (e.g. by claiming they were a barrier to trade), the car industry could claim the measure led to a loss in projected future profits.

Result Potential legislation in favour of climate action and not trade would be put on ice, as the exorbitant costs of going before a private tribunal acted as a deterrent.

ISDS: companies sue governments

Investor-State Dispute Settlement (ISDS) is a measure in TTIP that gives corporations the right to sue governments, if they feel profits are affected by new laws. The cases are heard in secret by private tribunals, and the companies can be awarded millions in compensation. The compensation can include not just actual lost profits but loss of projected future profits: imagine what a fossil fuel company, say, could claim under this system, if a government made a law banning all new extraction.

ISDS could not only reverse existing laws that further the cause of climate justice, but create a chill factor whereby governments avoid putting environmental laws in place, to escape the threat of being sued.

These threats aren't just theoretical. ISDS is already being used by corporations in existing trade treaties. To take a few energy-related examples:

- *Swedish energy company Vattenfall used ISDS to demand €4.7 billion in compensation from the German government for moving away from nuclear energy.*
- *The Egyptian government removed its ban on coal imports after a foreign cement company operating in the country threatened to take it to court. Simply the threat of a long and costly ISDS procedure and potential huge pay-outs to the foreign cement company were enough to reverse the law.*

In short, corporations whose profits are threatened by taking rigorous action on climate change will be given a privileged role in creating the regulations we need to take those actions. A fundamental problem if we are serious about tackling climate change, and one which needs to be addressed. Luckily TTIP is still under negotiation, and regulatory cooperation is by no means certain if the public

outcry is strong enough. Our governments will be in Paris this winter for COP21 and while no one thinks they will do what is necessary to transform our energy system, it is an opportunity to make the voice of people heard – not climate criminals – the one that rings out across the city demanding climate justice and an end to the cosy relationship between politicians and polluters.



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