

Five reasons modern trade deals are terrible for the climate

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Any lasting and just solution to the climate emergency must lie in changing the economic and political structures that bind us to a high carbon model. But modern trade deals will further entrench this model and block climate action. This briefing outlines the reasons why we have to stop these trade deals if we are to successfully stop climate change.

Trade agreements - either between countries or at the World Trade Organisation - have assigned new privileges to 'investors' like big business while removing the ability of governments to protect their economies or environments. But to fight climate change, we need to restrain big business from trashing the planet while encouraging governments to plan our transition to a low carbon economy. In other words, free trade agreements are at odds with the fight to halt climate change.

Trade deals today aren't merely about tariffs on goods crossing borders. They focus on public policies, from food standards to energy regulation, which have a big impact on climate change. Because trade deals have teeth, whereas international environmental and climate agreements often have weak enforcement, this also embeds in global governance the assumption that trade and business as usual is more important than tackling the climate emergency.



Photo: Rainforest Action Network

New international trade deals establish secret 'corporate courts', which hand big business new powers. Where these courts already exist they have been used, for example, to allow Chevron to evade justice for the one of the world's most serious environmental disasters in the Ecuadorean Amazon rainforest.

1. Blocking climate action

Globalisation has created a system of governance that puts the interests of those who trade internationally – mostly big business – ahead of the protection of people and the planet. Unlike environmental, human rights or labour agreements, trade agreements often have strong enforcement mechanisms which mean that governments or corporations can take legal action if other governments violate those agreements.

This means that in practice, trade deals can override climate and environment agreements. Some recent trade deals include chapters on 'sustainable development', but the wording in these chapters is far weaker – vague, nothing more than aspirational, and ineffective in practice¹. Trade deals grant additional privileges to already immensely powerful corporations while offering only platitudes to people, the environment and climate.

Trade itself has always been part of society and its effects can be positive. But trade deals have come to be about trade as an end in itself, regardless of the consequences. Trade rules embed an attitude that the market is always the answer, rather than seeing the need for trade to be managed responsibly and sustainably. Even more extreme, they favour international commodity and services markets over the need to build and support strong local economies that can be more sustainable, lower in carbon and better at sharing benefits of trade more equally.

The result is that trade deals can block climate action.

2. Freeing up fossil fuels.

Recent trade negotiations have aimed to create a 'free market' in fossil fuels, preventing countries from limiting exports of energy products or distinguishing between dirty fossil fuels and renewables.

In the TTIP negotiations between the EU and US, the EU tried to sell the chapter on the energy market on the basis that it would reduce European dependence on Russian gas. But unfortunately it would have meant simply replacing one fossil fuel dependence with another, making the EU dependent on US oil and fracked gas and on US and Canadian tar sands oil. Tar sands oil is the most toxic fossil fuel in the world – producing it releases three times the carbon emissions

of conventional oil, the strip mining process is incredibly environmentally destructive and uses huge amounts of water, while there is currently no solution for dealing with the waste.² If a similar approach is taken in post-Brexit trade deals, this would be a green light for the US and Canada to increase fracking and tar sands production. Far from being seen as 'transition' fuels to overcome short-term coal dependence, the infrastructure required to export these fossil fuels would lock-in their production for a generation.

One of the biggest casualties of the CETA trade deal between the EU and Canada was the EU Fuel Quality Directive, a regulation to allow the EU to incentivise less carbon intensive and toxic fuels. The EU agreed to water down the directive, which in its original form effectively banned Canadian tar sands oil from the EU, under pressure from Canadian and US negotiators and oil corporations³. Perhaps this is no surprise, as leaked documents showed that secret negotiating positions were being shared with big oil corporations such as ExxonMobil helping those corporations to effectively co-write TTIP's proposed Energy Chapter.⁴ The UK wants to replicate CETA after Brexit we should expect similar pressure on any regulations the UK might want to have in place.

3. Letting corporations challenge environmental protection

Corporate courts are a secretive shadow legal system that allows transnational corporations to sue governments over decisions that the corporations believe could affect their profits. Formally known as investor state dispute settlement or ISDS, the payouts are often far higher than in domestic courts, while the law is interpreted far more narrowly – looking only at the investors interest rather than balancing that against environmental and social concerns.⁵

Having a special legal system only for corporations gives them a perfect tool for bullying governments into backing down on laws and decisions related to climate. Even the threat of a case can be enough to pressure governments to hold off on taking action for fear of the cost of legal action.

ISDS has already been used to protect the interests of big oil, gas and coal companies on numerous occasions, for example:

- Energy company Lone Pine is suing Canada over a fracking moratorium in Quebec⁶

- Energy company Vattenfall started suing Germany over the introduction of stricter environmental requirements for a coal power station and in the face of the case, Germany backed down and dropped the requirements ⁷
- Oil company Occidental sued Ecuador over cancellation of an oil concession and won US\$1.8bn – the largest known payout at the time and roughly equivalent to Ecuador's entire annual health budget
- Oil company Chevron also sued Ecuador as a counter move when local communities tried to take it to court over the dumping of toxic waste and crude oil in the Amazon, and won ⁸
- UK oil company Rockhopper is suing Italy, over a ban on oil drilling within 12 nautical miles of the coast ⁹

Corporate courts are written in to many trade and investment deals. The Energy Charter Treaty, between around fifty countries, is one deal with corporate courts that is especially relevant to fossil fuels and climate.

Corporate courts are unjust and illegitimate and we should get rid of them.

4. Helping corporations shape our environmental law

At the core of the new generation of trade deals is a deregulatory agenda. Regulatory standards are seen as 'trade barriers' by businesses, placing 'unnecessary burdens' on their ability to export. But many of these regulations are important and democratic ways of managing our society, protecting the environment and directing action on climate.

Two ways that trade deals can push deregulation are through a 'necessity test' and 'regulatory cooperation'.

The necessity test requires that all regulations are judged not on whether they are effective at whatever they are intended to do - protect the environment, reduce climate emissions, or any other purpose, - but whether they are the 'least burdensome necessary' for business. Yet the scale of the climate emergency demands strong binding regulations to compel the action needed, not flimsy excuses for changing nothing.

Regulatory co-operation councils have been proposed for recent trade deals. They would make it compulsory for parliaments to give companies 'early warning' of any new regulation that might

What can you do?

To find out more about our campaign to stop free trade deals handing unprecedented powers to big business, and threatening the climate, see www.globaljustice.org.uk/campaigns/trade

Join our climate activist network! For more details contact our activism team on activism@globaljustice.org.uk

We have local groups across England, Scotland and Wales. To find your nearest group go to:

www.globaljustice.org.uk/contact

impede trade. And this in turn would mean that corporations would, in effect, be given a right to lobby.

Big business would have even more influence over our laws, for instance allowing them to see and comment on proposed legislation before elected representatives have had an opportunity to do so. Suppose a government wanted to pass legislation to encourage companies to use renewables rather than fossil fuels or discourage banks from investing in coal. Such proposals would have to be influenced by big business lobbyists, who could object and try to prevent or weaken any legislation.

Leaked reports of US-UK trade talks so far, reveal that US officials definitely see the talks as a way to influence the UK's post-Brexit legal system, being quoted as saying "it was easier to change a regulation before it is finalised"¹⁰

5. Encouraging high carbon agriculture

Agriculture is a significant contributor to climate change. A key culprit is intensive industrialised farming, geared towards meat exports to Western markets and using high levels of chemicals and synthetic fertilisers.

In the debate around possible post Brexit trade deals with countries beyond the EU, US agriculture has been symbolised by its use of chlorine to rid chicken carcasses of bacteria and the use of steroids and antibiotics in cattle. All of these methods are geared to an unsustainable, intensive, low welfare, high climate emissions approach to farming. A key concern is that

through harmonising regulations, there will be downward pressure on more climate-friendly forms of agriculture, in favour of industrial methods. Small farmers practising less carbon intensive methods such as organic, will find it increasingly difficult to compete with industrial farming as practiced in the US.

Lobbying by agribusiness and the food industry during past trade negotiations has been intensive. A study by the Transnational Institute on the failed TTIP negotiations between the EU and US found that lobby group meetings by this sector far outnumbered any other sector.¹¹ Agribusiness saw the trade negotiations as a key way of getting the

EU to drop opposition to antibiotics, chemicals and genetically modified products in agriculture. In fact, an EU official reported that the very negotiations had led the EU to dilute its position on beef washed in lactic acid, and accelerated approval of GM ingredients in food exported to EU markets¹². The US ambassador to the UK, Woody Johnson, has said all these things would need to be on the table in a US-UK trade deal.

infrastructure required to export these fossil fuels would lock-in their production for a generation¹³.

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Take action

To find out how you can help tackle corporate power and become part of a movement for real change visit globaljustice.org.uk or call 020 7820 4900.



With local groups around the UK, Global Justice Now campaigns for a world where resources are controlled by the many, not the few, and works in solidarity with social movements to fight injustice.

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