

Rt Hon Justin Trudeau MP
Office of the Prime Minister
80 Wellington Street
Ottawa, ON KA1 0A2

Rt Hon Rishi Sunak MP
10 Downing Street
London
SW1A 2AA
[Version française](#)

23rd October 2023

Dear Prime Ministers Justin Trudeau and Rishi Sunak,

A side letter between the UK and Canada excluding ISDS as a condition of UK accession to the CPTPP

We concerned residents, non-governmental organizations and trade unionists in Canada and the United Kingdom urge you to take immediate steps to ensure that the UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) does not block either countries' ability to enact mandated climate and environmental policies.

Specifically, we urge you to sign a side-letter that will remove access to the investor-state dispute settlement (ISDS) provisions of the agreement for Canadian and UK investors operating in each other's country—exactly as the UK did with Australia and New Zealand. Failure to neutralize ISDS in the CPTPP will needlessly deter or drive up the cost of achieving a just transition when the need to rapidly cut greenhouse gas emissions could not be clearer.

The [Intergovernmental Panel on Climate Change](#) has stated that the existence of ISDS in international treaties risks stalling or blocking the phaseout of fossil fuels. Investors have already successfully used ISDS against countries for [phasing out coal-fired power](#), [banning offshore exploitation of oil and gas](#), and [strengthening environmental impact assessments](#) on high-emissions natural resource projects.

Without disapplying ISDS in the CPTPP, Canada and the UK will be liable for ISDS awards far surpassing the compensation investors would expect in domestic court proceedings. Canadian company TC Energy's \$15-billion claim against the US for the cancellation of the Keystone XL tar sands pipeline expansion, and Ruby River Capital's \$20-billion claim against Canada for the rejection of a contested LNG project in Quebec, are cases in point.

Risks to both countries

More than sixty per cent of the ISDS cases lodged against Canada under the now defunct North American Free Trade Agreement (NAFTA) targeted environmental and natural resource policies. Canada

consequently removed ISDS from the renegotiated Canada-US-Mexico Agreement (CUSMA) with the stated aim to protect the government's right to regulate for environmental and public health reasons.

UK-based firms have lodged 101 claims against foreign governments using ISDS mechanisms in investment treaties, making them the third most litigious group after US and Dutch investors. British fossil fuel company [Rockhopper Exploration](#) recently won over 163 million pounds (\$280 million CAD) after suing Italy over its 2015 ban on offshore oil drilling. That amount is six times what the firm had originally invested in the project. The company plans to invest its winnings in further oil and gas exploitation in the Falkland Islands.

Oil and gas giant Shell is the largest investor in LNG Canada, which is currently building an LNG liquefaction and export terminal in British Columbia that is set to be the [single largest source of greenhouse gas emissions in the province](#). If phase two of the project is approved, the resulting annual emissions will make it [impossible for the province to meet its climate goals](#). If the province does not approve the project, Shell, headquartered in London, could sue Canada using the ISDS process in the CPTPP—as the company has demonstrated it will do in at least four [previous ISDS cases](#).

The risk to the UK is similarly stark: Canadian companies are also particularly aggressive users of ISDS, having brought 65 cases. Canada is a hub for mining and fossil fuel firms, and the [majority of ISDS cases](#) lodged by Canadian firms relate to energy or environmental policies.

The UK government has regularly cited the lack of successful ISDS claims against the UK as justification for the inclusion of ISDS provisions in CPTPP. But the ISDS outlook is very different once integrated in treaties with countries that have major FDI stocks in the UK, such as Canada's \$56 billion. This is the second highest level of investment of all CPTPP members into the UK, and the UK has signed a side-letter with the highest, Australia. Even the Confederation of British Industry (CBI) has stated, drawing on Canada's experience under NAFTA, that there is "a risk of the UK becoming disproportionately targeted through ISDS."

The UK may find itself defending costly ISDS claims over future regulatory intervention that may be needed in the country's troubled water utilities sector, as Canadian companies are the [second biggest overall investors in English water](#). For example, London's Thames Water, whose largest investor is a Canadian pension fund, is in talks with the UK government about emergency nationalization. The CPTPP would give Canadian investors a unique power to shape negotiations between British businesses and the government from outside. Given the UK government's [strategic approach](#) to bilateral negotiations on a Canada-UK Free Trade Agreement set an objective to "ensure the agreement does not contain an investor state dispute mechanism (ISDS)", it is highly illogical to take the opposite position with CPTPP and lock in the risk.

International stances on ISDS

Many countries are walking away from the ISDS regime due to the considerable risks it creates for governments, in particular as they transition off fossil fuels. Eleven countries, including Germany, France,

Poland, and the Netherlands, [are leaving the Energy Charter Treaty](#), the world's most common venue for ISDS lawsuits, citing its incompatibility with their climate commitments. Now the European Commission has formally recommended a coordinated exit of the whole European Union from the treaty.

Australia [decided last year](#) to stop signing new treaties that include ISDS and is considering how it might remove the process from existing deals. U.S. President Joe Biden [has said](#) he will not include ISDS in any future trade deals. Given the Canadian government's principled denial of consent to ISDS in the CUSMA, we are baffled as to why Canada would open itself to costly new ISDS lawsuits from the UK, the third largest investor in Canada, under the CPTPP.

It is not too late to remove the huge financial risk to both countries, as well as the infringements on our respective rights to regulate and on the pursuit of a just transition, by signing a side-letter disapplying ISDS provisions between Canada and the UK in CPTPP. Failure to do so will only compromise our ability to effectively meet our climate obligations.

Signed:

From the UK

Organizations:

Compassion in World Farming
E3G
Friends of the Earth England, Wales and Northern Ireland
Global Justice Now
Greenpeace UK
Just Treatment
Oil Change International
Public and Commercial Services (PCS) union
Trade Justice Movement
Transform Trade
UNISON
War on Want

As individuals:

Julia Calvert, Senior Lecturer in International Political Economy, University of Edinburgh
Peter Newell, Professor of International Relations, University of Sussex
Tara Van Ho, Senior Lecturer in Law, University of Essex
Gabriel Siles-Brügge, Professor in Global Governance & Public Policy, University of Bristol
Marie Claire Brisbois, Senior Lecturer of Energy Policy, University of Sussex
Anil Yilmaz Vastardis, Senior Lecturer in Law, University of Essex

Claiton Fyock, Lecturer in Law, University of Essex
Andrea Brock, Lecturer in International Relations, University of Sussex
Judith Bueno de Mesquita, Senior Lecturer in Law, University of Essex
John Gaventa, Professor, Institute of Development Studies, University of Sussex
Adrian Smith, Research Professor in Technology & Society, Science Policy Research Unit, University of Sussex
Sung Kyu Kim, Lecturer in Energy Policy and Sustainability, University of Sussex
Fergus Green, Lecturer in Political Theory & Public Policy, Department of Political Science and School of Public Policy, University College London
Chukwumerije Okereke, Professor of Global Climate Governance and Public Policy, School of Policy Studies, University of Bristol, UK
Jan Selby, Professor of the International Politics of Climate Change, University of Leeds, UK
Rob Byrne, Senior Lecturer, Science Policy Research Unit, University of Sussex
Bryony Parrish, Postdoctoral Researcher, Environmental Change Institute, University of Oxford
Colin Nolden, Senior Research Fellow, Law School, University of Bristol
Sarah Darby, Emerita Research Fellow, Environmental Change Institute, University of Oxford
Tonia Novitz, Professor of Labour Law, University of Bristol
Donatella Alessandrini, Professor of Law, University of Kent
Liam Campling, Professor of International Business and Development, Queen Mary University of London
Courtney Mcnamara, Lecturer in Public Health, University of Newcastle
Sarah Higginson, Research Knowledge Exchange Manager, University of Oxford
Matthew Paterson, Director of the Sustainable Consumption Institute, University of Manchester

From Canada

Organizations:

ATTAC-Québec
Canadian Centre for Policy Alternatives
Canadian Labour Congress
Canadian Union of Public Employees
Centre québécois du droit de l'environnement (CQDE)
Climate Emergency Unit
Council of Canadians - Le Conseil des Canadiens

- Council of Canadians Edmonton Chapter (TBD)
- Council of Canadians Hamilton Chapter
- Council of Canadians Kitchissippi Ottawa Valley Chapter
- Council of Canadians London Chapter
- Council of Canadians Medicine Hat Chapter
- Council of Canadians Northumberland Chapter
- Council of Canadians Quinte Chapter

Friends of the Earth Canada

Greenpeace Canada
Legal Advocates for Nature's Defence
MiningWatch Canada
National Farmers Union
National Union of Public and General Employees
Réseau québécois pour une mondialisation inclusive (RQMI)
Saskatchewan Coalition for Sustainable Development
Saskatchewan Forest Protection Network
Trade Justice Network
United Steelworkers

As individuals:

Kyla Tienhaara, Associate Professor, Canada Research Chair in Economy & Environment, Queen's University
Mark Winfield, Professor, Faculty of Environmental and Urban Studies, York University
Gavin Fridell, University Research Professor in Global Development Studies, Saint Mary's University
Richard Elliott, Health & Human Rights Lawyer
Drena McCormack, Council of Canadians Powell River Chapter
Ronald Labonté, Professor Emeritus and former Distinguished Research Chair in Globalization and Health Equity, University of Ottawa
Laura Macdonald, Professor, Department of Political Science, Carleton University
Jean-Frédéric Morin, Canada Research Chair in International Political Economy, Université Laval.
Ryan Katz-Rosene, Associate Professor, School of Political Studies, University of Ottawa.
Susanne Soederberg, Professor, Department of Global Development Studies, Queen's University
William K. Carroll, Professor, Department of Sociology, University of Victoria
Laurie E. Adkin, Professor, Department of Political Science, University of Alberta
Byron Miller, Professor, Department of Geography, University of Calgary
Trevor Harrison, retired professor, Department of Sociology, University of Lethbridge
Marcus Taylor, Professor, Global Development Studies, Queen's University
Paul Fauteux, attorney, accredited mediator and arbitrator, and former Head of the Canadian delegation to the United Nations Framework Convention on Climate Change negotiations
Emily Eaton, Professor, Department of Geography and Environmental Studies, University of Regina.
Pamela Banting, Associate Professor, Department of English, University of Calgary
Sheena Wilson, Professor of Energy Humanities, Campus Saint-Jean, University of Alberta
Christian Seiler, Assistant Professor, School of Environmental Studies, Queen's University
Amy Janzwood, Assistant Professor, Department of Political Science & Bieler School of the Environment, McGill University
Avril Torrence, Retired College/University Professor
Deborah Cowen, Professor, Department of Geography & Planning, University of Toronto
Matthew Hoffmann, Professor, Department of Political Science, University of Toronto
Walter E. Hildreth, LL.B. (Ret.)

Rebecca Hall, Assistant Professor, Global Development Studies, Queen's University

John Calvert, adjunct professor, Faculty of Health Sciences, Simon Fraser University

Glenn Wright, P.Eng, environmental and human rights lawyer

Simon Archer, Goldblatt Partners LLP

Lisa Barrett, Arbitrator, ADRIC

Ken Collier, Professor of Economics (retired), Arts Integrated Studies, Athabasca University