

“Free Trade” vs. Stopping the Climate Crisis

How “Free Trade” Harms Climate
Action, & What to Do About It



How “Free Trade” Turns Victory into Defeat

- After years of dedication and activism, the USA abandoned the Keystone XL Pipeline project.
- Recently, TC Energy launched a NAFTA suit against the United States for stopping the Keystone XL Pipeline.
- The company is demanding \$15 billion for “lost expectation of future profits.”
 - This is about 75% of the amount it would take to end homelessness in the USA.
- Paying off polluters for “expected profits” sets horrible precedent for climate action.

One Example Among Many

- Japan and the EU successfully challenged Ontario, Canada's feed-in tariff program to support renewable energy.
- Malaysia brought a case against the EU, France, and Lithuania, claiming that the EU renewable energy target violates WTO rules.
- USA & India sue each other to stop solar energy production.
- The EU, South Korea, and others claim Biden's Inflation Reduction Act, which aims to support electric vehicles and renewable energy, have threatened to launch a WTO trade case against tax credits for EVs and other measures included in the IRA.

As the World Burns...

Our current “Free Trade” system delays, distracts, and diminishes countries’ ability to prevent the worst of the climate crisis.



Doesn't Need to be This Way

What We Have

“Free Trade” that puts corporate profits above all else.

“Free Trade” is often the ace up the sleeve for corporations to undo rules that they don't like.

What We Need

Fair Trade that prioritizes the needs of workers and the environment.

Fair Trade returns power to the people, and ensures corporations are unable to cheat the rules.

How “Free Trade” Suppresses (Climate) Action

1. **State v. State:** Governments will use WTO & other trade rules to undo another country’s climate & pro-worker policies. This is often due to a combination of nationalism and corporate influence within respective government(s).
2. **Corporation v. State:** Corporations will sue governments using Investor-State Dispute Settlements (ISDS) to force governments to pay for “loss profits” and “damaged reputations” due to policies they enact to protect their people and the planet.

**Note: These tactics don’t just apply to climate action. They also apply pro-worker action, pro-consumer actions, etc.*

Suppression Tactic 1: State v. State Disputes

What is the WTO & Why Does it have Power to Stop Climate Initiatives?

Founded in 1995, the World Trade Organization (WTO) is an intergovernmental organization that regulates and facilitates international trade. It can establish, revise, and enforce the rules that govern international trade. It can provide a forum for negotiations and for settling disputes (*but it's not the only forum*).

In theory, the WTO was founded to promote non-discrimination, transparency, reciprocity, and enforceable commitments to promote “free trade.”

In practice, the rules are manipulated by corporations in the name of “free trade” to put profits above all else, thereby creating a race to the bottom.

Examples of State v State Tactics

- Japan and the EU successfully challenged Ontario, Canada's feed-in tariff program to support renewable energy.
- Malaysia brought a case against the EU, France, and Lithuania, claiming that the EU renewable energy target violates WTO rules.
- USA & India sue each other to stop solar energy production.
- The EU, South Korea, and others claim Biden's Inflation Reduction Act, which aims to support electric vehicles and renewable energy, have threatened to launch a WTO trade case against tax credits for EVs and other measures included in the IRA.

The Solution to Trade Attacks

Problem: Trade Attacks

- Pose direct threats to climate policies.
- Add legal uncertainty and delay.
- Pose a chilling effect.

Solution: Climate Peace Clause

- Safeguard existing existing climate measures by protecting them against trade attacks.
- Create space for the adoption of stronger, bolder policies without fear of challenges.
- Incentivize and offer countries time to work together and resolve tensions between trade law and climate action.

Legal Basis of a “Peace Clause”

There is a Peace Clause for agriculture and food under **Article 13** of the **WTO’s Agreement on Agriculture**.

Article 13 stipulates that no country would be legally barred from food security programs for its own people even if the subsidy breached the limits specified in the WTO Agreement on Agriculture.

What Should a CPC Protect?

Any measure whose objective is to mitigate greenhouse gas emissions or support the transition to a clean energy economy.

A “measure” is a policy (such as a tax credit, subsidy, etc.) that supports, protects, or boosts:

- Solar, wind, & other renewable energy
 - Electric vehicles
 - Biofuels
 - Etc.
-

How a Measure Qualifies for Protection under the CPC?

1. The adopting country indicates that climate mitigation or clean energy transition are the purpose of the measure.
2. There must be some evidence &/or factual basis that the measure does seek to mitigate emissions or transition to a green energy economy.



How would a CPC be Enforced?

Let the people & their
representatives decide, not
corporations & secret tribunals.

It should be the responsibility of the
signatories of the CPC (i.e.
countries) to judge when it is
appropriate to respect the
commitments in the Peace Clause.

How Long would a CPC Last?

- Fixed term of 10 years
- Renews automatically until countries have addressed trade threats to climate action



Recap

Problem 1:

Governments use WTO and other bad “Free Trade” deals to stop each other’s climate policies.



Solution 1:

A Climate Peace Clause would prevent governments from using out-of-date or otherwise bad trade deals to stop each other’s climate policies.

Suppression Tactic 2: Corporation v. State Disputes

Another Threat to Climate Action

Investor-State Dispute Settlements (ISDS)

ISDS gives corporations the power to:

- Sue governments.
 - Force governments to overturn a law, or to pay the corporation.
-

Examples of ISDS

- In the 1990's, the Canada banned the export of PCB waste, a highly toxic chemical. A US company, using NAFTA, sued Canada and won \$20 million.
- In the 2010s, Ecuador annulled a contract with the oil firm on the grounds that it violated a clause that the company would not sell its rights to another firm without permission. A tribunal forced Ecuador to pay \$2.4 billion.
- After Canada attempted to ban MMT, a gasoline additive, over concerns that it poses a significant public health risk, MMT's manufacturer, using the USMCA, won \$251 million to cover losses resulting from the "expropriation" of both its MMT production plant and its "good reputation." The ban was overturned.

ISDS Weaponization in the Americas

In Latin and South America, **22 countries** have been subject to **371 ISDS disputes**, about 31% of all disputes worldwide.

This has cost these countries \$27.8 billion.



Removing Yet Another Means of Trade Attacks

A CPC should be accompanied by:

- Refusal to enter any trade deals with ISDS
- Termination of ISDS provisions in existing trade deals, especially the USMCA



How a CPC & Ending ISDS Work Together

Enact CPC

A CPC would prevent state-to-state disputes over climate policies.

EX:

- US v. India
- EU v. US

End ISDS

Ending ISDS would prevent corporation-to-state disputes over climate policies.

EX:

- Occidental Petroleum v. Ecuador
- Ethyl Corporation v. Canada

Call to Action:

What to do to Enact a CPC
& End ISDS

Enacting the Climate Peace Clause

A CPC could be enacted:

- Between a coalition of countries
- Through joint declarations between countries
- Within the texts of upcoming trade deals



Our Best Chance for a CPC

There are four pending trade deals where we have our best chance to enact a CPC. They include:

- US-EU Trade and Technology Council (TTC)
- Americas Partnership for Economic Prosperity (APEP)
- Kenya Strategic Trade and Investment Partnership (Kenya STIP)



Our Best Chance to End ISDS

- Renegotiate existing trade deals to remove ISDS mechanisms, including the USMCA, Dominican Republic-Central American Free Trade Agreement (CAFTA-DR), and many other “free trade” deals.
- Never entering into any new trade deals with ISDS mechanisms.



Take Action

Sign & share our petition. Staying up to date about trade negotiations & informing your friends/family about a Climate Peace Clause is our current best step forward.

<https://tradejusticeedfund.org/issues/climate>



Contact Information



Clayton Tucker
Trade Justice Education Fund
Clayton@TradeJusticeEdFund.org
512-489-0435

Follow us at @TradeJusticeEd on Facebook, X, Instagram, &
TikTok

<https://tradejusticeedfund.org>