



# The Climate Cost of FREE TRADE

How the TPP and trade deals undermine  
the Paris climate agreement

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## EXECUTIVE SUMMARY

On Earth Day 2016, the U.S. joined 175 countries in signing the United Nations Paris climate agreement setting a path forward to reduce global greenhouse gas emissions. A few months earlier, the U.S., along with 11 other countries, signed the Trans Pacific Partnership (TPP) trade and investment deal.<sup>1</sup> Remarkably, neither agreement acknowledged the other. The Paris agreement was silent on trade, and the TPP ignored the climate. As countries take action to protect the climate, conflicts between trade rules and climate goals will escalate. The intentional separation of these two global priorities is becoming increasingly untenable.

At the heart of the Paris climate agreement are national-level plans, called Intended Nationally Determined Contributions (INDCs), to reduce greenhouse gas (GHG) emissions. Within each INDC are goals, policies and strategies to reduce GHG emissions and adapt to climate change in various sectors.

The goals of trade agreements including the TPP are much different, and frequently conflict with climate objectives. Trade agreements are foremost about expanding trade, often in highly extractive, energy-intensive sectors that effect the climate. But modern trade deals like the TPP also include issues like expanded corporate legal rights, the lowering of regulations for the public good, rules for government spending, and strengthening intellectual property rights.

Conflicts between climate goals and trade rules will multiply should TPP go into effect. The massive, 30 chapter, 5,000-page, 12-nation deal is the largest free trade agreement ever negotiated – setting rules for 40 percent of the world's Gross Domestic Product.

In this paper we look at real world examples of how trade rules already conflict with climate goals, and dig into the TPP more deeply to project how the proposed deal creates barriers for countries trying to meet their Paris climate pledges. We also review a variety of trade reform proposals designed to address our climate- damaging trade regime.

### Trade rules vs. renewable energy policy

In February 2016, a WTO dispute panel ruled that India's solar program, which provides preferences and subsidies for the local production of solar panels, discriminated against foreign (in this case, U.S.) solar panel producers. India defended its support for local production of solar panels citing its Paris climate commitments. The WTO determined, however, that India's climate obligations did not protect the solar program from existing trade rules. Many other national and local governments (including many U.S. States) have programs similar to India's solar policy. WTO rulings have already knocked down a



comparable solar program in Ontario, Canada and a wind program in China.

Free trade agreements like the proposed TPP go beyond WTO rules, particularly in granting multinational corporations' special legal rights through a provision called the Investor State Dispute Settlement (ISDS) system. In June, TransCanada filed an ISDS suit seeking \$15 billion in damages from the U.S. government under NAFTA, charging that President Obama's Administration had unfairly rejected the Keystone Pipeline.<sup>2</sup> Other corporate rights cases with climate implications have challenged bans on offshore drilling to protect wildlife, and a ban on fracking to protect waterways. According to the UN Conference on Trade And Development, more than 600 ISDS cases have been filed worldwide, with the most common cases challenging policies on energy and oil, gas and mining.

## Trade rules vs agriculture, food security and land use policy

Nearly 80 percent of countries' INDCs include policies and actions related to agriculture, according to the Consultative Group on International Agricultural Research (CGIAR). The global food system, including agricultural production and associated land use, is responsible for one-third of global GHGs.<sup>3</sup> The UN Food and Agriculture Organization identifies the top sources of agricultural emissions as coming from methane produced by livestock (with much of this from large-scale, confined operations) and nitrous oxide from synthetic fertilizers used to grow commodity crops, such as corn and soybeans.

Most of agriculture's global emissions are associated with an industrial model of agriculture designed to compete in global markets and take advantage of international trade rules put in place over the last several decades. Trade rules governing agriculture reinforce a high GHG-emitting form of industrial production in a number of ways:

- They seek to harmonize food safety rules between countries, including rules governing pesticide and veterinary drug residues, demanding they be "least trade restrictive," rather than prioritizing public health and the environmental sustainability.
- Intellectual property rights provisions limit farmers and breeders from exchanging protected seeds, hindering climate adaptation efforts.

- Rules often limit a country's ability to build strong national and local food systems by placing restrictions on the extent to which governments can support farmers.
- Rules restrict tariffs countries use to slow an influx of below cost imports that undercut their domestic production, known as dumping.
- Trade and investment rules are increasingly linked to "land grabs"—large-scale land leases or purchases by foreign corporations or governments to gain access to agricultural or forest land.

## Trade rules vs. carbon pricing and regulation

As we enter into this new era of post-Paris climate policy, approaches like a carbon tax or carbon markets will undoubtedly be affected by trade rules. TPP countries that already have some type of carbon pricing policy in place include the U.S., Mexico, Canada, Japan, New Zealand, and Chile—with others in the exploration phase.

The practice of moving GHG emissions from one country to another, without actually reducing the total level of global emissions, (aka carbon leakage) remains a serious problem for carbon taxes and markets. One leading proposal to address carbon leakage is through border taxes or tariffs, though doing so would run counter to the trade liberalization goal of tariff reduction or elimination found in the TPP and other trade regimes.

## The Tip of the TPP iceberg

When looking at the TPP from a climate impact lens, it becomes clear that many of the chapters could in various ways, big and small, impact the climate. The ISDS and intellectual property provisions are clear examples. This paper doesn't review the climate implications of all 30 TPP chapters, but we highlight a few that may have important implications for the climate:

**THE TRADE PART OF TPP:** Tariff reduction has been traditionally considered the heart of trade agreements. The tariff cuts within the TPP cover a variety of goods, from agricultural to forestry to mining to auto parts.<sup>4</sup> Expanded trade in energy intensive and resource extractive sectors could have important impacts on the climate.

**REGULATORY COHERENCE:** The TPP is the first U.S. free trade agreement to include a Regulatory Coherence chapter.<sup>5</sup> The chapter, which emanated from corporate lobbyists, requires countries to fully report publicly on planned regulations (including at the state level), provide justification and pre-implementation impact assessments.

**FOOD SAFETY (SANITARY AND PHYTOSANITARY STANDARDS OR SPS):** Climate change is expected to increase risks related to food safety, plant and animal health due to variances of temperatures, and the spread of animal and plant diseases.<sup>6,7</sup> To expedite food exports, the TPP includes a Rapid Response Mechanism managed by trade officials, not food safety experts. The TPP also sets low standards for using of scientific data in assessing risks of new food and agricultural technologies that go beyond WTO standards.<sup>8</sup>

**FINANCIAL SERVICES:** Poorly regulated financial markets can hinder our ability to respond to climate change by undermining food security and slowing emerging markets for renewable energy. TPP's financial services chapter (which governs financial markets) grants financial firms expanded power to legally challenge national level regulations intended to limit excessive speculation.<sup>9</sup> Carbon markets are also vulnerable to financial speculators.<sup>10,11</sup>

**OPENING THE DOOR FOR MORE GMO CROPS AND GHG EMISSIONS:** Numerous international assessments have pointed to the imperative of greater biodiversity in agricultural systems to adapt to climate change. The TPP is the first agreement to specifically identify rules for expanding trade in GMOs, which are used primarily as part of single crop, less diverse systems. The GMO section is not within the food safety chapter, but rather within the chapter related to market access. The result is that human and environmental safety criteria involving GMOs and products derived from new technologies like plant synthetic biology will not be adequately considered.

**GOVERNMENT PROCUREMENT:** Governments use preferential procurement policies to promote renewable energy development or local food systems. Local renewable energy production and requirements, as well as other green purchasing requirements are likely to run into new obstacles under the TPP. The agreement requires countries to begin negotiations on procurement policies at the sub-federal (or state) level within three years.<sup>12</sup>

**ENVIRONMENT CHAPTER:** The TPP does contain an Environment Chapter, but some TPP commitments on the environment are actually weaker than in previous U.S. Free Trade Agreements.<sup>13</sup> The TPP simply reaffirms already existing commitments to seven multilateral environmental agreements. Some TPP environmental commitments, like for illegal logging, are actually weaker than those in previous U.S. Free Trade Agreements.<sup>14</sup> As in past free trade deals, enforcement of environmental commitments is expected to be limited under the TPP.

## TPP countries and climate concerns

The INDCs by TPP countries are voluntary as opposed to the mandatory legal requirements of the TPP. There is no indication that countries who signed the TPP have considered how the trade deal might impact their Paris climate commitments. We looked at TPP member countries' climate commitments, their major sources of GHG emissions, and some considerations for how those commitments might be effected by the TPP. Some areas of concerns among TPP countries include:

**AUSTRALIA:** Australia is a major global exporter of liquefied natural gas, coal, iron and beef. It expects the TPP to expand exports in each of these high GHG emitting industries. Additionally, the TPP will expose Australian policies to U.S. based investor state challenges for the first time.

**CANADA:** Canada is home to more than half of the world's publicly listed mining companies. Nitrogen fertilizers used in agriculture, crude oil and related products, are among Canada's largest exports. Several NAFTA-related cases have already challenged Canadian policies regulating offshore drilling, mining and fracking.<sup>15</sup> The TPP will increase Canada's exposure to future ISDS cases.

**CHILE:** Chile's top five exports are refined copper, copper ore, sulfate chemical wood pulp (used to make paper products), and fish.<sup>16</sup> In preparation for the TPP, the state-owned copper company Codelco is now opening itself to private investors. The melting of Andean glaciers (brought about by climate change) is already affecting water systems, and public debate is growing about private ownership of the diminishing fresh water supply.

**JAPAN:** Japan is the world's largest importer of liquefied natural gas (accounting for 35 percent of global LNG trade), and is positioning itself to become a major LNG trading hub under the TPP.<sup>17</sup> Japan has become increasingly dependent on coal since the Fukushima nuclear disaster. In agriculture, Japan is a major meat importer, and is the largest buyer of U.S. exported beef and pork.

**MALAYSIA:** Malaysia has the highest rate of deforestation in the tropical world.<sup>18</sup> Much of that deforestation is linked to expanded palm oil production, expected to increase under the TPP.<sup>19</sup>

**MEXICO:** Mexico's top exports include crude petroleum. In 2013, Mexico amended its constitution to open its oil and gas reserves to private investment. U.S. and Canadian oil companies are investing billions in Mexico—so are electric companies as the country updates its power grid. Mexico has also seen significant growth in beef exports, with feed coming from the U.S.<sup>20</sup>

**NEW ZEALAND:** Agriculture accounts for half of GHG emissions in New Zealand,<sup>21</sup> with dairy production the largest GHG contributor.<sup>22</sup> The government says 445,000 hectares of forest (over one million acres) are under threat of clearing for pastoral use, mainly for the dairy sector.<sup>23</sup> TPP's Intellectual Property chapter will require New Zealand to make changes to law that will limit the ability of farmers to share seeds. The country also faces expanded exposure to ISDS challenges.<sup>24</sup>

**PERU:** Peru is home to the second largest share of the Amazon, one of the most important carbon sinks (capturing carbon from the air) in the world.<sup>25</sup> One third of the country's emissions are linked to land use—forestry, agriculture and mining.<sup>26</sup> The oil and gas industry's extensive presence in Peru is tied directly to Amazonian forest clearance and illegal logging.

**UNITED STATES:** The energy sector (production and distribution) is by far the largest contributor of U.S. GHG emissions.<sup>27</sup> The TransCanada Keystone Pipeline investor state challenge highlights the growing legal exposure U.S. government entities will be under with TPP. The U.S. will be obligated to automatically approve *all* exports of Liquefied Natural Gas (LNG) to TPP countries. The TPP is also expected to open markets for U.S. based industrial meat companies. Finally, the U.S. has numerous local content requirements among various state-level renewable energy mandates that could face challenges.<sup>28</sup>

**VIETNAM:** Coal-fired power plants are the country's leading source of carbon emissions. Vietnam, a Communist country, reported a total of 3,135 state-owned enterprises in 2013. The TPP limits state-owned enterprises, so the country will experience a major restructuring in some industries, including the energy. Agriculture is also among the country's top GHG sources. Vietnam is a major pork producer, and already a big importer of dried distillers grains (animal feed from corn ethanol) from the U.S.<sup>29</sup>

## New Approach on Trade needed

In this paper we have raised a number of points of conflict between trade and climate policy. At a minimum, improvements and more detailed climate assessments should be completed for future trade agreements, including the Transatlantic Trade and Investment Partnership, prior to any signing. But ultimately, climate goals and commitments should be integrated trade objectives at the beginning – before negotiations even begin.

It is impossible to separate the outcomes of current trade regimes from the ways in which they were negotiated – often in secret, with heavy corporate influence and very little public scrutiny or input. Further, trade agreements should no longer be considered in isolation, or given legal priority over other global agreements. Trade policy is too influential, and provides too many obstacles for successful governing on issues like climate change, health, food security and natural resource management.

The official signing of the Paris climate treaty is an important first step toward a global response to climate change. But no climate deal will work if it is not supported by other policies. The TPP and the WTO are outdated trade regimes modeled on 19<sup>th</sup> century ideas of “big power” treaties and commercial might. The 21<sup>st</sup> century demands something very different—trade rules that move countries together towards sustainability, starting with the urgent need to curb greenhouse gas emissions and support adaptations to climate change.

Find the endnotes and full report at [iatp.org/climate-cost-of-free-trade](http://iatp.org/climate-cost-of-free-trade).