

Trading away our future?

How trade and investment rules damage the environment and restrict action on climate change

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AFTINET
Australian Fair Trade
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We are facing a climate emergency. Global warming is predicted to exceed the 1.5-degree limit that was agreed in the Paris Agreement by as early as 2030. The impacts of climate change are already being felt across the world. A new report by the International Panel on Climate Change (IPCC) has called for radical action. To stay below 1.5 degrees we must reduce global emissions by 45% below 2010 levels by 2030 and reach net zero emissions by 2050.

Australia has one of the highest per capita emissions rates in the world, and our emissions are continuing to rise. Urgent action must be taken to transform our energy systems and economy. The domestic obstacles are many. What is often overlooked is the role that trade agreements can play in increasing greenhouse emissions and restricting governments from taking action to address climate change and protect the environment.

International trade is given preference over the environment

We live in an increasingly globalised world, with the international movement of people, information and commodities rising dramatically over the last 50 years. Between 1980-2016 trade exports increased in value from US \$2.3 trillion to US 20.9 trillion. In 2011, 25% of the world's emissions resulted from international trade flows.

Shipping emissions: More trade means that more products are transported across the world via ships, lorries and aviation. Shipping alone is responsible for about 2.5 percent of annual global emissions. Shipping emissions are not counted in countries' emissions calculations. There is an urgent need to both count these emissions and to convert shipping and other transport from fossil fuels to hydrogen and other non-fossil fuels.

Trade in dirty commodities: Trade and investment agreements can expand the production of dirty commodities like fossil fuels or palm oil by opening up local industries to foreign investment and linking local production to international markets. These industries are damaging to the climate and can harm local environments and communities.

International environmental law overlooked in trade agreements

Trade agreements often contain no or very weak references to environmental standards and commitments under international environmental law. Leaked negotiating texts for the Regional Comprehensive Economic Partnership (RCEP) Agreement that Australia is currently negotiating with 15 countries in the Asia-Pacific region, show that it does not include any enforceable environmental standards.

The Trans-Pacific Partnership Agreement includes weak and unenforceable provisions. There is no mention of climate change and no emission reduction targets. Parties commit only to "cooperate to address matters of joint or common interest."



Trade and investment rules restrict government's power to regulate

Trade and investment rules can restrict governments' ability to implement policies needed to protect the environment and to transition to a low-carbon economy. Investor-state dispute settlement provisions (ISDS) give international investors the right to sue governments for changes in policy that undermine their profits. ISDS has been widely used by mining, oil and gas corporations to restrict government action to address climate change and environmental degradation.

WTO rules prohibit the use of subsidies and local content requirements, which are often necessary to support the development of national renewable energy sectors. Environmental exemptions provide some cover for environmental interventions, but they are too limited to provide adequate protection, and several disputes have been brought against renewable energy projects at the WTO.

ISDS cases taken against environmental policies

- The US Westmoreland company is using ISDS in the North America Free Trade Agreement to sue Canada for US \$441 million because the Alberta provincial government is phasing out coal-powered energy.
- Chevron used ISDS in the US-Ecuador Bilateral Investment Treaty to sue Ecuador after a court ruled it must pay compensation after a devastating oil spill in the Amazon rainforest that is now recognised as one of the world's worst environmental disasters. Chevron won the case in 2018 and the arbitrators ordered that the Ecuadorian government prevent the original judgement from being enforced.

Environmental disputes at the WTO

- The USA won a WTO dispute against India for the use of domestic content requirements for solar cells and modules produced under the Jawaharlal Nehru Solar Mission.
- Japan and the EU also used WTO to push Canada to remove the buy-local rule in its landmark clean energy program in the province of Ontario.

Trade and agriculture rules promote carbon-intensive agriculture

Trade and agriculture rules open up agriculture to privatisation and foreign investment. This has enabled the expansion of carbon-intensive industrial agriculture, cash crops and intensive livestock rearing and is responsible for extensive deforestation and widespread use of chemical fertilisers that have devastating impacts on local environments and communities. The IPCC reports that agriculture, forestry and other land use accounts for 24% of global greenhouse gas emissions.

Leaked RCEP negotiating texts include provisions for global companies to patent and own seeds that make it more difficult for small-scale farmers in developing countries to save and exchange seeds as they have done for centuries. This increases the power of large agriculture and seed companies, undermines small-scale farmers and further entrenches an unsustainable and carbon-intensive farming model.



Trade rules enable industrialised countries to outsource emissions but restrict the transfer of green technology

The transition to a globalised economy enabled global corporations to transfer manufacturing from industrialised countries to developing countries, where wages are lower and regulation less developed. Industrialised countries still consume most of the goods produced, but it is developing countries that are held responsible for the greenhouse gas emissions associated with their production. This means that industrialised countries like Australia can effectively outsource their emissions to developing countries, reducing their accountability for developing climate solutions.

To make matters worse trade agreements often include intellectual property rules that can extend technology patents and increase the cost of green technologies. This can prevent developing countries from accessing the technology necessary to transition to a post-carbon economy.

Seven principles for an environmentally friendly trade and investment system

We need a new approach to trade and investment policy that is environmentally sustainable and supports the transition to a low-carbon economy in Australia and globally. To achieve this, trade and investment agreements must:

Be transparent and democratic: Negotiating texts must be published for public and parliamentary scrutiny during trade negotiations. The final text of the agreement must be released for independent assessment, including assessment of environmental impacts, before signing and the full agreement should be put to a vote in Parliament.

Comply with international environmental law: Agreements must contain enforceable environmental standards and a commitment to the supremacy of international environmental law. Provisions that have negative environmental impacts or restrict action to address climate change must be removed from agreements.

Exclude investor-state dispute settlement provisions: ISDS provisions must be excluded from Agreements and corporations must not be empowered to use trade and investment agreements to restrict government action to address environmental degradation and climate change.

Preserve the right to regulate: Governments must not be prevented from developing more stringent environmental regulation and alternative energy and economic policies, or from using subsidies, local content rules, tariffs and other policy tools to support the transition to renewable energy and low-carbon production.

Promote sustainable agriculture: Intellectual property rules must not restrict the right of farmers to store and exchange seeds, and Governments must retain the flexibility to use trade policy tools to develop and protect local food markets.

Enable the reduction of dirty commodities: Agreements must not prevent governments from using tariff and non-tariff measures to limit trade in dirty commodities and to restrict the production, trade and consumption of fossil fuels.

Include flexibilities for sharing green technologies: Intellectual property rules must be adapted to ensure they do not restrict access to green technologies. Governments should not be restricted from using compulsory licensing for green technologies.

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7/321 Pitt St, Sydney NSW 2000
campaign@aftinet.org.au (02) 96993686