



Stopping Trade Attacks on Climate Policies: The Need for a Climate Peace Clause

In August 2022, President Biden signed the Inflation Reduction Act (IRA) — the most ambitious climate legislation ever passed in the United States. Yet before its ink even dried, the new law found its historic investments in clean energy manufacturing under repeated threat of attack by the European Union and other nations as a violation of outdated trade rules within the World Trade Organization (WTO) and other trade agreements.

The Biden administration has since spent considerable time and effort trying to avoid these trade challenges, often to the chagrin of Members of Congress and others involved in the delicate political coalition that enabled the IRA's passage in the first place. Tragically, this is just the most recent example of countries using or attempting to use trade rules to undermine climate initiatives. Whether or not the President's attempts to appease other nations over the IRA succeed, the threat that trade attacks pose to ambitious climate action is clear.

With less than a decade to turn the corner on the climate crisis, we cannot afford for governments to act timidly for fear of similar trade challenges in the future. **We urgently need a Climate Peace Clause — a commitment by governments to refrain from using dispute settlement mechanisms in international trade agreements to challenge other countries' climate mitigation and/or clean energy transition measures.**

Need for and Benefits of a Climate Peace Clause

State-to-state trade cases challenging climate policies are on the rise and will likely *continue* to rise as countries increasingly put in place climate measures. These trade challenges: (1) pose direct threats to climate policies at a time in which governments need to be ramping *up* climate action; (2) add legal uncertainty and delay at a moment when delayed action poses catastrophic and shared global risks; and (3) poses a chilling effect, as the mere *threat* of timely and costly trade litigation may deter governments from adopting climate measures or move policymakers to weaken policies in ways they think will make them less likely to be challenged and/or more defensible on trade grounds.

A moratorium on the use of international trade agreements to challenge countries' climate mitigation and/or clean energy transition measures would:

- Help governments safeguard existing climate mitigation and transition measures by protecting them from trade challenge;
- Create the space for governments to adopt the bolder climate policies that justice and science demand without fear or threat of trade challenges; and
- Incentivize and offer countries time to work together and resolve the underlying tensions between current trade law and the imperative for climate action.

Scope of a Climate Peace Clause

A Climate Peace Clause should, at a minimum, include any measure which the adopting country claims, with some factual basis, has an objective of mitigating greenhouse gas emissions and/or supporting the transition to a clean energy economy. As just an illustrative list, the types of policies a Climate Peace Clause would protect include: rejections of fossil fuel permits or development; removal of fossil fuel subsidies; green energy subsidies; local content preferences that help ramp up the production and distribution of renewable energy and clean energy goods; and policies to create and/or protect jobs that facilitate a transition to a clean energy economy.

Given the need to ensure that climate mitigation does not come at the expense of worker rights and other forms of environmental protection, both the labor and environmental chapters of trade agreements and frameworks must be exempt from the scope of a Climate Peace Clause.

Corporate Rights and a Climate Peace Clause

Recognizing the rise in and grave threats of investor-state dispute settlement (ISDS) claims challenging climate policies, a Climate Peace Clause should be accompanied by government commitments not to enter into any new trade and investment agreements that include ISDS, and to terminate ISDS provisions in existing agreements.

Duration of a Climate Peace Clause

A Climate Peace Clause should have a fixed-term of at *least* ten years, renewing automatically until countries have addressed the ways in which trade and investment policies could undermine climate action. This approach both provides certainty for countries seeking the benefits of the Climate Peace Clause and incentivizes countries to work together and resolve the tensions between current trade law and the imperative for climate action.

Venues for Climate Peace Clause Agreement

A Climate Peace Clause should be agreed to in multiple venues, including between coalitions of willing countries and within the texts of pending bilateral and regional trade agreements.

In Summation

We are running out of time to address the climate crisis and countries need every policy tool in the toolbox to reduce emissions and ramp up renewable energy without fear of costly challenges based on decades-old trade rules. For more information on a Climate Peace Clause, please see: [*Discussion Paper: The Case for and Design of a Climate Peace Clause.*](#)

Email: climate@tradejusticefund.org

www.tradejusticefund.org