



Trade Justice
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Discussion Paper: Climate Peace Clause

Allowing the planet to warm more than 1.5°C compared to preindustrial levels risks “crisis after crisis for the vulnerable people and societies” and “irreversible loss of the most fragile ecosystems,” according to climate scientists in the Intergovernmental Panel on Climate Change (IPCC).¹ Recognizing the catastrophic implications of inaction, in 2015 over 196 nations adopted the Paris Climate Agreement—a legally binding international treaty that sets a goal of limiting global warming to 1.5°C. To meet that goal, the world has until 2030 – less than a decade – to cut climate pollution in half, according to the IPCC.²

However, the global community is not on track to meet that goal to spare communities from increasingly lethal storms, wildfires, droughts, floods, and other climate disasters.³ Closing the gap will require that governments dramatically ratchet up climate action in the form of bold clean energy subsidies, stronger regulation of pollution, and other climate policies. And yet, outdated trade rules in aging trade agreements, written long before governments were contemplating how to tackle climate change, are increasingly being used to directly challenge government climate policies. Just within the World Trade Organization (WTO), Japan and the European Union successfully challenged Ontario, Canada’s, renewable energy program;⁴ the U.S. successfully challenged India’s national program to boost local solar production;⁵ India successfully challenged renewable energy programs in eight U.S. states that included “buy-local” rules;⁶ and Malaysia is claiming that the EU renewable energy target illegally discriminates against palm-oil based biofuels.⁷

With less than a decade to turn the corner on the climate crisis, we cannot afford for governments to act timidly for fear of such costly trade challenges. We urgently need a Climate Peace Clause—a moratorium on the use of trade and investment agreements to challenge countries’ climate policies.⁸ A Climate Peace Clause would help governments safeguard existing climate policies and create the space for them to adopt the bolder policies that justice and science demand.

The FAQ below outlines in more detail why a Climate Peace Clause is needed and how it could be structured.

1. What is a Climate Peace Clause?

A Climate Peace Clause is a moratorium on the use of trade or investment rules in international agreements to challenge governments' climate policies.

A Climate Peace Clause should be paired with proactive climate commitments, such as commitments to reduce climate pollution or to scale up support, including finance and technology, to developing countries for climate change mitigation, adaptation, and loss and damage.

2. How Long Would a Climate Peace Clause Last For?

A Climate Peace Clause should last until there is a permanent solution to the threats that trade and investment rules pose to climate policies.

3. Why is a Climate Peace Clause Needed?

Simply put, because 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 trade challenges. More specifically, one must understand the evolution of trade rules to understand why a Climate Peace Clause is needed.

Global trade architecture has evolved from a system focused on removing tariffs into a system focused on limiting standards and regulations—both of which are required to address climate change—so that global firms can trade and invest with fewer constraints and with the promise of a 'stable regulatory environment.' International trade rules were established in the 1940s with the General Agreement on Tariffs and Trade (GATT), transformed in the early 1990s with the signing of the North American Free Trade Agreement (NAFTA) and the creation of the WTO, and consolidated in the 2000s with the signing of thousands of bilateral trade and investment agreements.

Despite the scientific consensus on the urgent need for unprecedented government action to address the climate crisis, today's trade agreements stick to a deregulatory template written before governments committed to climate action. In fact, not a single U.S. trade and investment agreement even includes the words "climate change," much less tries to reduce the impact of trade and investment rules on climate policy. As described in FAQ #4, these rules are increasingly hindering climate action.

We urgently need to rewrite the template for these agreements to ensure that trade and investment rules facilitate – not undermine – climate action. A Climate Peace Clause would support this shift.

4. How do Trade Rules Threaten Climate Policies?

Trade cases challenging renewable energy policies are on the rise. In the 1990s, WTO cases became notorious for challenging conservation policies. For example, countries used the WTO to challenge the U.S. import restrictions on shrimp and shrimp products that were caught using methods that harm endangered sea turtles.⁹ The U.S. lost the case. The “next generation of trade and environment conflicts,” as Mark Wu of Harvard Law School and James Salzman from Duke University describe, “are driven by the rapid rise of green industrial policies—the application of traditional industrial policy instruments to spur the development of renewable energy and environmentally friendly industries.”¹⁰

As just a few examples to highlight this trend, just within the last decade Japan and the European Union successfully challenged Ontario, Canada’s feed in tariff program to support renewable energy;¹¹ the U.S. successfully challenged India’s national program that incentivized local solar production;¹² and India successfully challenged renewable energy programs in eight U.S. states that included “buy-local” rules.¹³ Right now, Indonesia is challenging the European Union’s restrictions on palm-oil based biofuels¹⁴ and Malaysia is challenging the EU, France, and Lithuania, claiming that the “EU renewable energy target” violates WTO rules by discriminating against palm-oil based biofuels.¹⁵ Moreover, trade scholars are already questioning the trade legality of the EU’s Carbon Border Adjustment Mechanism,¹⁶ and Canada and Mexico have already raised the threat of a trade case against the tax credit for electric vehicles proposed by the Biden administration and passed by the House of Representatives.¹⁷

Not only do such cases directly threaten *existing* climate policies, but the threat of entering into costly and lengthy trade litigation can deter governments from enacting the *new* climate policies that the climate crisis demands.

5. What Types of Policies Would a Climate Peace Clause Protect from Trade Challenges?

A Climate Peace Clause would help governments safeguard existing climate policies and create the space for them to adopt the bolder policies that justice and science demand. This could include, for example: (a) policies to reduce use of and reliance on fossil fuels (e.g., rejecting fossil fuel permits, bans on fossil fuel extraction, removal of fossil fuel subsidies) and (b)

policies to ramp up the production and distribution of renewable energy and clean energy goods like electric vehicles, heat pumps, and wind turbines (e.g., subsidies, procurement policies, domestic content preferences).

6. How Could a Peace Clause be Established?

Countries that are willing to take leadership on climate can unilaterally announce their support for a Climate Peace Clause and commit to voluntarily refrain from using trade or investment agreements to challenge other countries' climate policies. Such commitments could take place in various fora, including, for example, in the G7, UNFCCC, Indo-Pacific Economic Framework, or World Trade Organization.

A Climate Peace Clause also should be incorporated into new and existing trade and investment agreements and frameworks. Ultimately, a Climate Peace Clause should be agreed to by all WTO countries to offer global protection for climate policies.

7. Is There Precedent for a Peace Clause?

Yes. In fact, a WTO-wide peace clause exists to protect food security measures in developing countries. The entire WTO agreed to this peace clause at the 2013 Bali Ministerial.¹⁸ India invoked that peace clause in 2020 in order to protect its food security.¹⁹

8. How Would a Climate Peace Clause Affect Investor-State Dispute Settlement (ISDS) Suits Against Climate Policies?

While focused primarily on ending state-to-state challenges against governments' climate policies, a Climate Peace Clause is consistent with the global movement against Investor-State Dispute Settlement (ISDS). In order to best protect climate policies from trade and investment challenges, a Climate Peace Clause should be paired with government commitments to not enter into any new trade and investment agreements that include ISDS; to investigate opportunities to withdraw from or otherwise mitigate the climate threats from existing ISDS obligations; and to weigh in with ISDS tribunals against any corporate attempts to use ISDS cases to attack climate policies.

Conclusion

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. A Climate Peace Clause would give countries the policy space

to maintain and enact the climate policies needed to meet or exceed their commitments under the Paris Climate Agreement. A Climate Peace Clause also would create space to permanently remove the threats that outdated trade rules pose to the climate action our communities urgently need.

ENDNOTES

¹IPCC, 2018: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. In Press.

<https://www.ipcc.ch/sr15/about/foreword/>

²Berwyn, Brown. 2019. *What Does 12 Years to Act on Climate Change' (Now 11) Really Mean?* Inside Climate News. <https://insidclimateneews.org/news/27082019/12-years-climate-change-explained-ipcc-science-solutions/>³ Boehm, Sophie; Lebling, Katie; Levin, Kelly et al. 2021. *We're Not on Track for 1.5 Degrees C. What Will it Take?* World Resource Institute. <https://www.wri.org/insights/climate-action-progress-indicators-2030-2050-targets>⁴ Sierra Club, Public Citizen. 2013. *Ontario's Feed-in Tariff. Will the WTO Trump Climate Imperatives?*

<https://www.citizen.org/wp-content/uploads/ontario-feed-in-tariff-briefing-paper.pdf>

⁵ Beachy, Ben; Solomon, Ilana. 2017. *The WTO Just Ruled Against India's Booming Solar Program.*

https://www.huffpost.com/entry/the-wto-just-ruled-against_b_9307884

⁶ Kanth, Robbi D. 2019. *India Wins Solar Case against US at WTO.*

<https://www.livemint.com/news/india/india-wins-solar-case-against-us-at-wto-1561634893762.html>⁷ World

Trade Organization. European Union and certain Member states — Certain measures concerning palm oil and oil palm crop-based biofuels.

https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds600_e.htm

⁸ For the purposes of this proposal for a Climate Peace Clause, a climate policy is defined as any policy that a government deems necessary to implement their commitments under the Paris Agreement, including their nationally determined contributions. Measures related to countries' subsidies for renewable energy production and development are covered by this Peace Clause to the extent that the production is for domestic use; countries remain free to use domestic policy measures to restrict imports that have been subsidized by another country.⁹ World Trade Organization. United States — Import Prohibition of Certain Shrimp and Shrimp Products.

https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm

¹⁰ Salzman, James; Wu, Mark. 2014. *The Next Generation of Trade and Environment Conflicts: The Rise of Green Industrial Policy.*

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1022&context=nulr>¹¹ Sierra

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¹² Beachy, Ben; Solomon, Ilana. 2017. *The WTO Just Ruled Against India's Booming Solar Program.*

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Blenkinsop, Philip. 2019. Reuters. *Indonesia Files WTO Palm Oil Suit as Tensions with EU Grow.*

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¹⁵ World Trade Organization. European Union and certain Member states — Certain measures concerning palm oil and oil palm crop-based biofuels.

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¹⁶ Bacchus, James. 2021. CATO Institute. *Legal Issues with the European Carbon Border Adjustment Mechanism*.

<https://www.cato.org/briefing-paper/legal-issues-european-carbon-border-adjustment-mechanism>. ¹⁷ Nikolewski,

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¹⁸ World Trade Organization. 2014. *The Bali decision on stockholding for food security in developing countries*.

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¹⁹ Suneja, Kirtika. 2020. The Economic Times. *India uses WTO peace clause for higher rice sops*.

<https://economictimes.indiatimes.com/news/economy/foreign-trade/india-uses-wto-peace-clause-for-higher-rice-sops/articleshow/74938392.cms>