



TTIP and Climate Change: Low Economic Benefits, Real Climate Risks*

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The recent climate change negotiations should inform many spheres of global governance—including international trade and investment policy. One of the most discussed new initiatives in Europe is the Trans-Atlantic Trade and Investment Partnership (TTIP)—a trade and investment agreement currently under negotiation with the United States. The current model that the TTIP is based on will increase carbon dioxide emissions and jeopardize the ability of Europe and the United States to put in place effective policies for mitigating climate change. Trade and investment treaties should be used to help achieve the broader climate change objectives of Europe and the United States, not hinder them.

The IMF's Managing Director, Christine Lagarde has said that climate change "is by far the greatest economic challenge of the 21st century."ⁱ The TTIP should not be an exception to meeting this challenge. The adverse implications of the TTIP for climate policy are significant given the role the agreement will likely play in establishing rules for the global economy in the 21st century. This rule-setting function of the TTIP is particularly important given the very modest economic benefits that the agreement is projected to generate.

This short policy brief outlines how the TTIP can increase emissions and restrict the ability of nations to adequately mitigate and adapt to climate change and offers a set of policies that would make EU-US trade policy more consistent with our climate change goals.

1. TTIP will Increase Carbon Emissions

Given that the United States and Europe already enjoy a strong trade and investment relationship, the economic benefits of the treaty are projected to be relatively small. **Even the small increase in economic activity that will result from the TTIP is projected to increase carbon dioxide emissions.** Rather than an agreement about economic gains and losses then, the TTIP is primarily about setting the rules of the game. It is imperative that the rules advance a progressive climate agenda.

Estimates of the economic impact of the TTIP on Europe and the United States reveal that the economic benefits will be very limited. The most cited studies in the European debates are by Ecorys, the Centre for Economic Policy Research (CEPR) and Tufts University. The Ecorys and CEPR studies were commissioned by the European Commission (EC). The Ecorys study also includes an environmental assessment.

The Ecorys and CEPR studies show very small economic gains for Europe and the United States—both find that the treaty will boost GDP among the parties by less than one percent in 2027. Ecorys and CEPR rely on 'computable general equilibrium models' that make questionable assumptions such as full employment—even though unemployment is still over 10 percent in the Eurozone as a whole and much higher in Greece, Spain, and elsewhere. The Tufts University study relaxes those assumptions and predicts that the TTIP will actually decrease GDP in the EU by less than one percent and increase GDP in the US by just 0.36 percent.ⁱⁱ

The United States has yet to complete an environmental assessment of the TTIP. The EC-backed Ecorys study estimates that even with the small projected gains of the treaty TTIP will increase emissions. The EU study only partially estimates the impacts of the deal on carbon emissions, but estimates that the agreement will increase emissions on an annual basis by 11 million metric tons. The increase in emissions is just 0.07 percent from the baseline, smaller than the 0.47 increase in

GDP projected by Ecorys. When multiplied by estimates of the social cost of carbon, carbon emissions would cost the European Union \$1.4 billion annually.ⁱⁱⁱ

According to a comprehensive assessment of the literature conducted by the World Trade Organization and the United Nations, most trade and investment agreements tend to increase carbon emissions.^{iv} Trade and investment treaties impact emissions through at least three channels. First, trade increases the overall scale of economic activity, which tends to increase GHG emissions. This is referred to as the “scale effect.” This increase in emissions can be counteracted or accentuated through two other channels. The ‘composition effect’ postulates that trade liberalization would change the composition of industries within and across economies. If the shift is toward sectors or countries with less emissions per unit of output there could be a corresponding reduction in emissions—but the reverse could be true if the composition of economic activity becomes more emission-intensive after a treaty. Third, the “technique effect” can occur if a trade and investment deal spurs clean technology transfer and creates space to increase the stringency of regulation. However, as we show in the following section, the TTIP could curtail the policy space for climate policy, not expand it.^v

According to the EC-sponsored Ecorys TTIP report, the TTIP could increase emissions by increasing the scale of economic activity and by changing the composition of industries and trading partners—indeed the largest increase in emissions will be in China given that the treaty is projected to relocate some production to that country.

The EC study is only a partial one because it does not look at the environmental impacts of many ‘non-tariff barriers’ such as certain domestic subsidies. Indeed, eliminating fossil fuel subsidies globally would reduce greenhouse gas emissions by 10%. United States and the European Union, as members of the G20, have already made a commitment to phase out many fossil fuel subsidies.^{vi} The TTIP negotiations do not address this, nor do the modeling estimates include analyses of fossil fuel subsidy reductions on economic output or emissions. There has also been inadequate consideration of the potential impact of TTIP provisions that could limit the ability of governments to design and implement effective climate change policy. As we will see, it is the deregulatory aspect of the TTIP that poses the highest risk to climate change policy.

2. Regulatory Risks of the TTIP

The most urgent climate risks of the TTIP are regulatory in nature, and could jeopardize the ability of the EU and US to put in place the proper regulations to meet climate targets. The legal effects of the TTIP could take a variety of forms, including broad restrictions on regulatory authority under “investor-state dispute settlement” (ISDS) provisions, limits on carbon intensity standards, modifications of the U.S. fossil fuel export regime, and restrictions on renewable energy programs.

a. Broad restraints on climate regulations under investment rules

The TTIP’s investment chapter will likely provide investors with certain broad rights, including “fair and equitable treatment” and compensation for regulations deemed to constitute acts of “indirect expropriation.” These rights would be enforceable by private corporations, including fossil fuel companies, through a controversial process known as ISDS that could be used to challenge a wide range of government measures affecting climate change.^{vii} Similar rules under other treaties have been used to challenge climate-related measures, including a claim under the Energy Charter Treaty

based on Germany's regulation of a coal-fired power plant^{viii} and a pending challenge under NAFTA to Quebec's moratorium on hydraulic fracturing or "fracking."^{ix}

b. Limits on carbon-intensity standards

Regulations that limit the carbon intensity of transportation fuels could also be targeted under the TTIP. United States Trade Representative Michael Froman has reportedly used the TTIP negotiations to pressure the European Union to weaken the carbon intensity standards of the EU's Fuel Quality Directive (FQD) in order to facilitate the export of high carbon intensity oil.^x Although the European Commission subsequently modified the FQD proposal,^{xi} the TTIP negotiations could be used to impose restrictions on future efforts to implement carbon intensity standards for fuel.^{xii}

c. Modification of the fossil fuel export regime

One of the European Union's principal objectives in the TTIP negotiations is to secure "a legally binding commitment . . . guaranteeing the free export of crude oil and gas resources [from the United States] by transforming any mandatory and non-automatic export licensing procedure into a process by which licenses for exports to the EU are granted automatically and expeditiously."^{xiii} Creating an "automatic" and "expeditious" process for U.S. crude oil and gas exports could result in more GHG emissions than projected in quantitative analyses by promoting the production and consumption of these fuels.

Although natural gas is widely viewed as a lower-carbon alternative to other fossil fuels such as oil and coal, expanded exports of liquefied natural gas (LNG) could actually result in increased GHG emissions for several reasons. Liquefying, transporting and regasifying natural gas is energy-intensive, causing exported LNG to be approximately 15% more carbon-intensive than natural gas that is used domestically. In addition, increased LNG exports will raise the price of natural gas in the United States, potentially resulting in the use of more coal to produce electricity. Expanded LNG exports will also encourage increased fracking for the production of natural gas, which could cause increased accidental releases of natural gas, known as "fugitive methane emissions."^{xiv} Given that methane is a much more powerful greenhouse gas than CO₂, "any climate benefits from increased natural gas use internationally could be dwarfed by accelerated warming caused by fugitive methane emissions."^{xv}

d. Restrictions on renewable energy programs

The TTIP could also conflict with efforts to address climate change by imposing new restrictions on policies design to promote renewable energy. Trade rules are already being used to challenge alternative energy programs. Since 2010 about a dozen disputes have been brought over renewable energy programs.^{xvi} The European Union has indicated that it intends to use the TTIP negotiations to seek new restrictions targeting renewable energy programs that contain local content requirements.^{xvii} Proponents of local content provisions argue that they are essential for developing the political support that will be necessary to maintain and expand renewable energy programs.

3. Putting Climate Change First

At the Paris Summit and in the newly crafted Sustainable Development Goals (SDGs) at the United Nations, the world's nations have pledged to “take urgent action to combat climate change and its impacts.”^{xviii} The TTIP must not undermine this goal.

Both the EU and US have made strides in prioritizing climate change in other areas of global economic governance, but not in international trade and investment policy. The European Investment Bank and the European Bank for Reconstruction and Development significantly restrict the financing of fossil fuel intensive economic activity. The United States also has executive orders that restrict the ability of the US to support the financing of coal projects through multilateral banks of which it is a member, and mandates that all projects be climate resilient. Such an approach is urgently needed in the TTIP.

The negative economic and regulatory impacts of the TTIP on climate policy noted above are not inevitable. A bold approach could be put forth where the TTIP excludes climate mitigation measures from ISDS, protects renewable energy programs and carbon-intensity standards, and discourages the production and consumption of fossil fuels.

As first steps in striking a new economic relationship that enhances our climate change goals, the United States and the European Union should commit to three principles:

- (1) the potential economic and regulatory impacts of the TTIP on climate policy should be carefully studied,
- (2) the provisions of the TTIP should be fully compatible with and supportive of climate policy objectives, and
- (3) the TTIP should at a minimum, not result in a net increase in GHG emissions—i.e. the TTIP must be “carbon neutral or better.”

As the SDGs articulate, “climate change is a global challenge that does not respect national borders. Emissions anywhere affect people everywhere. It is an issue that requires solutions that need to be coordinated at the international level.”^{xix} Trade and investment policy should not be an exception.

ⁱ Christine Lagarde, *A New Global Economy for a New Generation*, (remarks prepared for the World Economic Forum, Davos, Switzerland, January 23, 2013), available at <https://www.imf.org/external/np/speeches/2013/012313.htm>.

ⁱⁱ See Ecorys, 2009, *Non Tariff Measures in EU-US Trade and Investment –An Economic Analysis*, ECORYS Nederland BV; and CEPR, 2013, *Reducing Transatlantic Barriers to Trade and Investment*, Centre for Economic Policy Research, London; for a discussion of the limits of CGE modeling see Ackerman, F., and K. Gallagher. 2004.

“Computable Abstraction: General Equilibrium Models of Trade and Environment.” In

The flawed foundations of General Equilibrium: critical Essays on Economic theory, ed. F. Ackerman and A. Nadal, 168–80. New York: Routledge and Ackerman, Frank, and Kevin P. Gallagher, 2008, “The Shrinking Gains from Global Trade Liberalization in Computable General Equilibrium Models”, *International Journal of Political Economy*, vol. 37, no. 1, Spring, pp. 50–77.

ⁱⁱⁱ EC Staff Working Document, *Impact Assessment on the Future of EU-US Trade Relations* (2013) (“EC Impact Assessment”) at 49, available at http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150759.pdf. On the social cost of carbon (SCC), 11 million tons is multiplied by the average estimate in this comprehensive review of estimates J.C.J.M. van den Bergh and W.J.W. Botzen (2014), “A lower bound to the social cost of CO₂ emissions,” *Nature Climate Change* 4, 253-258.

^{iv} WTO-UNEP, *Trade and Climate Change* at xii (2009), available at

https://www.wto.org/english/res_e/booksp_e/trade_climate_change_e.pdf

^v See Gallagher, Kevin P (2008), *Handbook on Trade and Environment*, New York, Edward Elgar.

^{vi} See G20 Leaders’ Statement—The Pittsburgh Summit (Sept. 24 – 25, 2009), available at

<http://www.treasury.gov/resource-center/international/g7->

[g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf](http://www.treasury.gov/resource-center/international/g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf).

^{vii} See Gus Van Harten, *An ISDS Carve-Out to Support Action on Climate Change*, Osgoode Hall Legal Studies Research Paper No. 38, Vol. 11, Issue 8 (2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2663504; Meredith Wilensky, *POTENTIAL LIABILITY FOR CLIMATE RELATED MEASURES UNDER THE TRANS-PACIFIC PARTNERSHIP*, 8, Columbia Center for Climate Change Law, Columbia Law School (2014), http://web.law.columbia.edu/sites/default/files/microsites/climate-change/wilenskytranspacificpartnership8-7-14_-_revised.pdf.

^{viii} See Nathalie Bernasconi-Osterwalder and Rhea Tamara Hoffmann, *International Institute for Sustainable Development, The German Nuclear Phase-Out Put to the Test in International Investment Arbitration? Background to the New Dispute Vattenfall v. Germany (II)* at 4 (International Institute for Sustainable Development, June 2012), http://www.iisd.org/pdf/2012/german_nuclear_phase_out.pdf.

^{ix} See *Lone Pine Resources Inc. v. Canada (UNCITRAL)*, Notice of Arbitration, paras. 48-52 (Sept. 6, 2013), available at <http://www.italaw.com/sites/default/files/casedocuments/italaw1596.pdf>.

^x See *Froman Pledges to Preserve Jones Act, Criticizes EU Clean Fuel Directive*, *INSIDE U.S. TRADE* (Sept. 19, 2013) (subscription) (Froman raised concerns about trade impacts of the FQD “with senior European Commission officials repeatedly, including in the context of the . . . TTIP negotiations.”)

^{xi} See *EU Backpedals on Vehicle Fuels Policy in Face of U.S., Canadian Pressure*, *INSIDE U.S. TRADE* (Oct. 10, 2014) (subscription).

^{xii} See *id.* (“[O]utgoing EU Climate Action Commissioner Connie Hedegaard . . . signaled that the EU was leaving the door open to directly targeting tar sands . . . for penalties in the future.”)

^{xiii} See Council of the European Union, *Note for the Attention of the Trade Policy Committee—Non-paper on a Chapter on Energy and Raw Materials in TTIP* (27 May 2014), <http://www.scribd.com/doc/233022558/EU-Energy-Non-paper>.

^{xiv} World Resources Institute, *What Exporting U.S. Natural Gas Means for the Climate* (May 20, 2013), <http://www.wri.org/blog/2013/05/what-exporting-us-natural-gas-means-climate>.

^{xv} *Id.*

^{xvi} Cathleen Cimino & Gary Hufbauer, *Trade Remedies—Targeting the Renewable Energy Sector* at 19 (April 2014), available at http://unctad.org/meetings/en/SessionalDocuments/ditc_ted_03042014Petersen_Institute.pdf.

^{xvii} See European Commission, *EU – US Trade and Investment Partnership, Raw Materials and Energy, Initial EU Position Paper*, at 3, available at http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151624.pdf.

^{xviii} United Nations Sustainable Development Goals, <http://www.un.org/sustainabledevelopment/climate-change-2/>.

^{xix} *Id.*