

# Proposed Trade Agreements Would Make Policy Implications of Environmental Research Entirely Irrelevant

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Scientists have traditionally held a range of contrasting views on the extent to which they should be involved in the political decision-making process. Many of us feel that, in return for the public funding we receive to carry out our research, we have to produce impartial knowledge that can be used by policy makers, but otherwise we should not be involved as scientists in political debates. However, when politicians devise policies that risk annihilating the societal impact of our work, some of us claim the right to be outspoken, as the two of us do in the following.

We feel that the prospect of environmental research becoming entirely irrelevant in the political arena should mobilize every environmental scientist. That threat, unfortunately, appears very real at the moment, because of several trade partnership agreements that are being negotiated secretly.<sup>1,2</sup> Inspired by the North American Free Trade Agreement (NAFTA) of 1994, negotiations started in 2010 on a Trans-Pacific Partnership (TPP) agreement among a number of countries around the Pacific Ocean, and in July 2013, similar discussions were initiated about a Trans-Atlantic Trade and Investment Partnership (TTIP) agreement between the U.S. and EU. In spite of several studies<sup>2,3</sup> demonstrating that neither of these agreements would lead to significant economic benefit for the overwhelming majority of people, except the wealthiest of investors, the agenda is being pushed forward. To avoid public opposition from the onset, little detail

about the negotiations has been made public, until leaks from different sources revealed the issues being considered, as well as the heavy presence of major corporations at the negotiation table.

Among the many provisions of these proposed agreements, one in particular should be of great concern to environmental scientists. It is referred to, reassuringly, as “Investor-State Dispute Resolution” (ISDR) by proponents, and, deprecatingly, as “corporation sovereignty” by many detractors. As is already the case under NAFTA and, since recently, also at the World Bank, this key provision of both TPP and TTIP would allow individual corporations having their headquarters in one signatory country the right to directly sue governments (at any level, from local to national) in another, if regulations they passed infringe on the current or *potential* profits of the corporations. Special, secret, three-man arbitration tribunals would be set up outside the regular judicial system of any TPP or TTIP-signing country, and therefore outside of any national oversight system, to address each claim and reach a decision about compensations, the amount of which would be at the tribunals’ discretion. In the past, except under NAFTA, only governments or international agencies could engage legal actions against specific countries for free-trade infringements.

If past lawsuits, under the NAFTA umbrella, are a foretaste of what might happen in the future under TPP or TTIP, environmental regulations of all kinds are likely to become prime targets of extremely widespread litigation. In July 1998, for example, the government of Canada settled a lawsuit brought about by the Virginia-based Ethyl corporation, because of Canada’s ban on one of the chemicals Ethyl produces, the gasoline additive methylcyclopentadienyl manganese tricarbonyl (MMT). Canada had to pay \$13 million in legal fees and damages, and agreed to reverse its ban on MMT, in spite of the fact that in the U.S., where the lawsuit emanated, EPA has also banned the use of MMT in reformulated gasoline, because of postcombustion release into the atmosphere of manganese, a known neurotoxin.<sup>4</sup> In separate cases, several companies (Cargill, Archer Daniel Midland, Tate & Lyle Ingredients, and Corn Product International) sued Mexico for a combined \$525 million because of its 2002 tax on high fructose corn syrup, whose consumption has a widely acknowledged link to prevalence of type 2 diabetes.<sup>5</sup> In 2012, a tribunal of the World Bank forced Ecuador to pay \$1.769 billion to Occidental

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Petroleum, after the country decided to revoke the corporation's oil concession because of business irregularities and environmental concerns. Finally, additional examples of environmental litigation are related to the hydraulic fracturing ("fracking") of shale formations for the production of methane gas. U.S.-based Lone Pine Resources has sued the province of Quebec for \$250 million because of its all-out moratorium on fracking pending further study. Recently, bankrupt Norse Energy USA has filed a lawsuit against the governor of New York because of alleged undue delays in lifting a similar moratorium on fracking in the state. If that lawsuit does not succeed within the context of the U.S. judicial system, Lone Pine Resources could in principle set up on paper a subsidiary in Canada or Mexico, which could refile under NAFTA...

With tens of thousands of corporations that could potentially file such lawsuits, it is not farfetched to imagine that most governments, from town boards upward, could become rapidly swamped in litigation if the trade agreements become law. Even if governments eventually win the suits, they will nevertheless have to spend a lot of money on attorney fees just to defend themselves. This is likely to discourage public officials at any level from enforcing existing environmental regulations, or from envisaging new ones, regardless of the will and collective preferences of the people, or the expert opinion of those best able to assess what should be done from a scientific perspective. At that point, the role of scientists will be relegated to being irrelevant bystanders.

To prevent this bleak future from materializing, we should try individually or through the institutions and scholarly societies to which we belong to raise awareness about the current trade negotiations, request more coverage of them in the media (especially in the U.S., where media coverage has been virtually nonexistent so far), and alert our elected representatives about the fact that some aspects of TPP and TTIP are of great concern to the environmental science community.

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### Notes

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