

United States Senate

WASHINGTON, DC 20510

May 21, 2015

The Honorable Michael Froman
U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th Street NW
Washington, D.C. 20508

Dear Ambassador Froman:

We are writing to express our concerns that the Trans-Pacific Partnership (TPP) would provide multinational corporations an elevated platform before foreign trade tribunals to challenge and override environmental protections. We fear that the TPP's "investor-state dispute settlement" (ISDS) system will lead to the erosion of critical environmental and health policies, and undermine the Administration's international climate agenda.

We urge the Office of the United States Trade Representative to exempt policies that protect human health and the environment from ISDS jurisdiction within the TPP.

The ISDS system has already been used by multinational corporations to bypass regulations on fossil fuels established by local and regional governments. For example, the U.S. based oil and gas company, Lone Pine Resources, filed a \$250-million challenge against Canada in a North American Free Trade Agreement (NAFTA) tribunal over Quebec's moratorium on fracking. Quebec's moratorium was established to study the health and environmental impacts of fracking, but the challenge contends that the moratorium deprived the company of its right to profit from fracking in Saint Lawrence Valley.

As the Administration works to limit fossil fuel emissions both domestically and abroad, ISDS tribunals provide a mechanism to erode environmental safeguards. For instance, Vattenfall, a Swedish energy firm, launched a \$1.9 billion ISDS claim against Germany in 2009 over permit delays for a coal-fired power plant in Hamburg. The ISDS settlement required the Hamburg government to drop its additional environmental protections, and the coal plant began operation in February, 2014. While Hamburg had previously committed to reducing carbon dioxide emissions to 4 million tons by 2050, the power plant alone will release approximately 8.7 million tons of CO₂ annually.

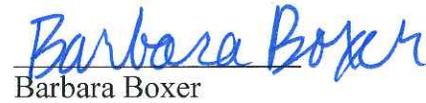
We believe that the TPP does not provide adequate reforms to ISDS to safeguard environmental protections and could jeopardize the ability of any TPP country to enact new policies that would fulfill their international climate commitments.

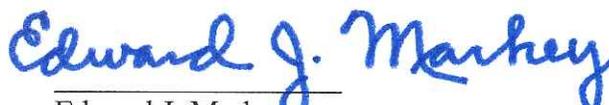
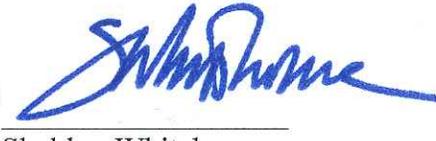
As the Administration looks forward to climate negotiations in Paris and aims to hold countries accountable for climate commitments, it is counterproductive and detractive to endorse a trade provision which gives foreign companies the ability to undercut these international commitments. We believe that the TPP does not provide adequate reforms to ISDS to safeguard environmental protections. It could jeopardize the ability of a participating country to implement new policies that would fulfill their international climate commitments. Without a clear exemption for policies that protect health and the environment, ISDS could put at risk the ability of countries to implement new policies that would inherently limit access to and extraction of fossil fuel reserves—which is a necessary condition to adequately address climate change.

We urge you to defend environmental and health provisions and exempt them from ISDS jurisdiction.

Sincerely,


Jeffrey A. Merkley
United States Senator


Barbara Boxer
United States Senator

 
Edward J. Markey
United States Senator

Sheldon Whitehouse
United States Senator


Al Franken
United States Senator